**Freedom and Political Status: A Republican Theory and Critique of the Politics of Self-Determination**

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Politics

February 2016

**Abstract**

In contemporary politics many groups make claims for self-determination. Some of these claims are recognised by existing political authorities or the international community, whilst others are denied. Often this is regardless of the fact that the reasons why groups make claims for self-determination differ from group to group. This thesis assesses whether groups who make claims for self-determination should have their claims recognised or denied and for what reasons this should be the case. This thesis, therefore, provides an answer to the question ‘which groups have justified claims for self-determination?’ My thesis is that groups who are *dominated* have justified claims for this right.

This thesis is in two parts: the first is a critical examination of three existing theories of self-determination, and the second is a defence of a constructive alternative to these theories – it details a *republican theory of self-determination*. In part one I assess three theories in the existing literature on self-determination: the choice-based, nationalist, and just-cause theories of self-determination. I argue that none of these theories provides a framework that is satisfying enough to assess which claims for self-determination should be taken as justified in political practice. I argue that the ideas of the freedom to choose which political authority one should be subject to, nationhood, and the violation of human or social rights – which respectively reflect the justificatory basis of each of the existing theories – do not provide a satisfying enough framework to assess which claims for self-determination should be justified in political practice.

In part two I provide an alternative to the existing theories and argue that republican political theory provides a more compelling justificatory framework to assess claims for self-determination, with its idea of domination. I argue, that in comparative consideration of the three existing theories and the republican alternative, republicanism provides the most satisfying justificatory framework to assess the claims groups make for self-determination. I argue that groups that either: (i) fail to be afforded rights of self-government, or (ii) have the exercise of their rights to self-government constrained whilst other citizens sufficiently exercise these rights, are dominated and have sufficient justification for their claims to self-determination.

**Table of Contents**

**Abstract……………………………………………………………………………….......3**

**Table of Contents ……………………………………………………………………….5**

**Acknowledgements……………………………………………………………………..8**

**Author’s Declaration……………………………………………………………………9**

**CHAPTER ONE: INTRODUCTION…………………………………………………...11**

1.1.) The Political Context of Research……………………………………………….11

1.2.) Research Aims…………………………………………………………………….14

1.3.) The Concept and Conceptions of Self-Determination………………………...16

1.3.1.) The Concept of Self-Determination…………………...........…..........16

1.3.2.) The Historical Use of Self-Determination……..................................19

1.3.3.) Four Normative Conceptions of Self-Determination.......……………22

1.3.4.) The Right to Self-Determination and Candidates for this Right…....25

1.4) Methodology……………………………………………………………………......29

1.5) The Structure of the Thesis…………………………………………………….....32

**PART ONE: THE EXISTING THEORIES OF SELF-DETERMINATION……...….35**

**CHAPTER TWO: THE CHOICE-BASED THEORY OF SELF-DETERMI-NATION…………………………………………..………………………………………36**

2.1.) The Strong Associative Account of Self-Determination……………………….37

2.1.1.) Self-Determination as Resident Non-Citizenship……………………39

2.1.2.) Self-Determination in Dissenter Territories…………………………..42

2.1.3.) Emigration as Self-Determination……………………………………..45

2.2.) The Weak Associative Account of Self-Determination………………………..46

2.3.) The Democratic Choice-Based Theory of Self-Determination…...................56

2.3.1.) Daniel Philpott’s Autonomy-Based Theory of Self-Determination…57

2.3.2.) David Copp’s Respect-Based Theory of Self-Determination………60

2.4.) Conclusion…………………………………………………………………………64

**CHAPTER THREE: THE NATIONALIST THEORY OF SELF-DETERMI-NATION……………………………..…………………………………………………....65**

3.1.) The Special Obligations Account of National Self-Determination……...........67

3.2.) The Autonomy-Based Account of National Self-Determination……..............73

3.3.) Instrumental Accounts of National Self-Determination………………….….…80

3.3.1.) The Justice-Promoting Account of National Self-Determination......81

3.3.2.) The Democracy-Supporting Account of National Self-Determination…………………………………………………………...............………83

3.4.) The Fairness-Based Account of National Self-Determination……….............85

3.5.) Conclusion………………………………………………………………...........…89

**CHAPTER FOUR: THE JUST-CAUSE THEORY OF SELF-DETERMINATION..92**

4.1.) The Minimal Account of Just-Cause Self-Determination…………………...…94

4.2.) The Substantive Account of Just-Cause Self-Determination…................…104

4.2.1.) The Substantive Economic Rights-Based Account….........……....106

4.2.2.) The Substantive Cultural Rights-Based Account…………..………111

4.3.) Conclusion…………………………………………………………………..……116

**PART TWO: THE REPUBLICAN ALTERNATIVE………………………………...118**

**CHAPTER FIVE: FREEDOM AND POLITICAL STATUS: A REPUBLICAN THEORY OF SELF-DETERMINATION………………………………………….….119**

5.1.) Non-Domination as a Political Status……………………………………….…123

5.2.) Domination and Self-Determination……………………………………………131

5.2.1.) The Adaptability of Non-Domination…………………………………131

5.2.2.) Lovett’s Procedural Account of Non-Domination…........................132

5.2.3.) Pettit and Domination as the Tyranny of the Majority…….............136

5.2.4.) Laborde and Domination as Civic Misrecognition………………….146

5.2.5.) Bohman and Domination as Deliberative Exclusion……………….156

5.3.) The Two Conditions of Republican Self-Determination………………..........165

5.3.1.) Condition One……………………………………………………….....165

5.3.2.) Condition Two…………………………………………………….…....168

5.4.) Conclusion…………………………………………………………………….….172

**CHAPTER SIX: THE POLITICS OF SELF-DETERMINATION: A REPUBLICAN REAPPRISAL………………………………………………………………………….174**

6.1.) Republican Claims for Self-Determination………………………………….…175

6.1.1.) Non-Separatist Inclusion-Based Claims for Self-Determination….177

6.1.2.) Non-Separatist Reform-Based Claims for Self-Determination…...182

6.1.3.) Separatist Claims for Self-Determination…………………………...186

6.2.) Constitutional Procedures for Self-Determination……………………………190

6.3.) Conclusion: The Centrality of Self-Determination to Political Thought and Practice………………………………………………………………………………….201

**CHAPTER SEVEN: CONCLUSION…………………………………………………203**

7.1.) Summary of Thesis………………………………………………………………203

7.2.) Avenues for Future Research…………………………………………………..207

7.2.1.) The Institutionalisation of Claims for Self-Determination……........208

7.2.2.) The Political Phenomenology of Self-Determination………….......210

7.2.3.) Non-Domination and Recognition…………………………………...211

7.3.) Research Contributions………………………………………………….......…212

**Bibliography……………………………………………………………………….….215**

**Acknowledgements**

I would like to thank everyone past and present in the Politics Department at the University of York for making the past four and a bit years, first as a Masters and then as a PhD student, a fantastic experience and an exceptionally enjoyable time.

I would like to thank Matthew Festenstein and Martin O’Neill for their supervision and personal guidance. Their insightful comments and constructive criticism has provided my work with structure and given me invaluable clarity, especially when my thoughts were not still yet clear to me. I would like to thank both of them for pushing me to think about politics in ways I have never done before and for thinking that this is a worthwhile exercise along the way.

I am indebted to the whole range of people who commented on and helped me with my thesis in York and further afield. In York particular thanks to Jessica Begon, Michael Bennett, Juliana Bidadanure, Mónica Brito Vieira, Ben Chwistek, James Hickson, James Hodgson, Beth Kahn, Jelena Loncar, Matt Matravers, Mihaela Mihai, Tom O’Shea, Angie Pepper, Luis Rodrigues, and Tim Stanton. And many thanks to those elsewhere, who are too numerous to name, who asked questions about my thesis and gave me feedback at conferences and workshops.

The administrative staff in York have also been fantastic, providing me with lots of support, particularly with teaching. Sometimes it takes noticing the absence of problems to realise the support one gets. I would also like to thank the Politics Department at Newcastle University for providing me with a workspace where I have finished this thesis in the past months.

I have made a wonderful group of friends over the past four years, from those who I met whilst doing my masters – Erman, Will, Ben, Neil, and Alicia, to newer friends – Fay, Elisabeth, Will, John, Robin, and Michael. I want to thank them for their friendship and their *craic*. Oddly, I also want to thank the City of York, where I lived for four years. Like Sparta, York does not really need walls, because it has some fantastic people.

Special thanks go to my parents and sister, who have provided me with love and support not just over these few past years but always. Their constant encouragement makes everything easier and I can’t thank them enough for that. But, above all else I want to thank Leonie for her love, critical insights and intellectual challenges, as well as her companionship, encouragement and characteristic kindness. Because of her, life has been a blast whilst writing this thesis.

**Author’s Declaration**

* Some of the issues surrounding Scotland and the constitutional future of the United Kingdom in chapters five and six were initially discussed in: Fusco, A. (2014) ‘After the Referendum: Why it can’t be Business as Usual’, *Renewal: A Journal of Social Democracy,* Vol. 22 (1-2), pp. 38-46.

I hereby declare that I have read and understood the University of York's regulations on plagiarism and academic misconduct. I declare that this thesis is my own work.

Chapter One: Introduction: The Idea of Self-Determination

This thesis gives a *republican* answer to the question ‘which groups have justified claims for self-determination?’ It argues that *dominated* groups have justified claims for this right. The introduction that follows is divided into five parts. First, I will discuss the political context of this research, highlighting why a normative examination of the politics of self-determination is important – principally because it can be used to assess which claims for self-determination are justified in political practice. Second, I will detail the research aims of the thesis, including the specific problems in the literature on self-determination and republicanism which it addresses. Third, I will discuss the *concept* and *conceptions* of self-determination to give clarity to what is being examined in the thesis, including a discussion of definitions of self-determination and an examination of the historical use of the concept, in addition to what is involved in each normative conception of the idea and who according to each can exercise this right. Fourth, I will discuss the methodology of the thesis, and fifth, I will detail the thesis’ structure.

1.1.) The Political Context of Research

Claims for self-determination are an ever-present aspect of contemporary political life. Writing at the half-way point of the current decade a significant number of these claims have been made by groups who wish to redefine their political identity and status. These range from claims made in constitutional liberal-democracies such as Scotland, Catalonia, and Venice, in their attempts to become independent states, to Puerto Rico’s decision on whether or not it should become an American state, independent country, or continue with its existing status, to the issue of how constitutional reform should take place in the United Kingdom in the aftermath of the Scottish Independence referendum, to the question of the European Union’s existence – both from Eurosceptic and Federalist perspectives, which either wish to see member states withdraw from the union or alternatively see it transformed from a confederation into a *de facto*, if not *de jure*, federation.

This is complemented by a range of other claims for self-determination associated with political instability, violence, and the historical legacies of colonisation and territorial occupation. These include the creation of the state of South Sudan in 2011, the continuing conflicts associated with the Moro and Patani liberation movements in the Philippines and Southern Thailand/Northern Malaysia, the attempt to establish the Tuareg *Azawad* state in Northern Mali in 2012, Russia’s annexation of Crimea and the associated conflict in eastern Ukraine with the creation of the *de facto* confederation of *Novorossiya*, the emergence of the *Islamic State* holding territory in Syria and Iraq, and the renewal of the politically associated claim for a Kurdish state in the region, as well as the Palestinian people’s continuing claim for statehood against Israel, and the potential for New Caledonia to gain independence from France before the end of the decade.

These claims are not exhaustive of those made for self-determination since 2010. Indeed, claims for self-determination in both peaceful and violent forms, and in liberal-democratic and non-constitutional political contexts, have structured the political geography and history of the twentieth century and that before it. To note some significant examples of claims made for self-determination since the early 1990s, the independence of the constituent republics of the former Soviet Union, as well as the conflicts associated with the non-recognised states that also emerged with the collapse of Soviet political authority, such as Transnistria, South Ossetia, Abkhazia, Nagorno-Karabakh, and Chechnya, the Czech-Slovak political divorce, the independence of East Timor from Indonesia, Québec’s attempt at independence from Canada, the completion of the Belgian federalisation process, Scottish and Welsh devolution, and the Good Friday Agreement which allowed for the re-definition of Northern Ireland’s constitutional status at a future date.

Indeed, there are also some significant examples of claims made for self-determination prior to the 1990s, including the decolonisation of Africa and parts of Asia in the mid twentieth century, the independence of the United States in the eighteenth century, the creation of states in South and Central America in the early nineteenth century, the European state formation that occurred following the First World War with the collapse of the Austro-Hungarian, Ottoman, Russian, and German empires, the secession of the American Confederacy, the independence of Norway from Sweden, the south of Ireland’s secession from the United Kingdom, Iceland’s independence from Denmark, Bangladesh’s secession from Pakistan, Tibet and Taiwan’s claims against China, the conflicts associated with Biafra’s secession from Nigeria and the state of Katanga’s withdrawal from the then Republic of Congo-Léopoldville, as well as the continual claims for self-determination made by indigenous peoples, particularly in Oceania and North and South America, and even the claims made by radical political groups such as F.A.R.C. in Columbia and the Zapatistas in Mexico.

The diversity of these claims are vast. Yet few of these groups share the same motivation. What they do have in common, however, is that the groups in question assume that they are justified in their claims for self-determination. As Viva Ona Bartkus writes “a community embarking upon secession has already assumed the right to secede”.[[1]](#footnote-1)

This poses a problem that political theory should attempt to resolve. If groups use different reasons to justify their claims for self-determination, not all of these reasons can lead to the justification of every group’s redefinition of their political identity and status. For example, there were important differences between the reasons used to justify Bangladesh and the American Confederation or Katanga’s claims for self-determination. These differences were normatively significant in the justification of these groups’ claims – the former being subject to an abuse of human rights, whilst the latter respectively upheld the practice of slavery and the other was created, in effect, as amining colony for the interests of Belgian business.

Therefore, if groups use different reasons to justify their claims for self-determination it is necessary to assess which reasons should be taken as normatively significant in justifying claims for this right. In other words, it is only because some groups’ claims for self-determination should be justified that normatively assessing the politics of self-determination is an important activity. This can be done by determining which normative value should justify claims for self-determination.

With such a value a normative framework can be developed to assess which claims for self-determination are justified in political practice, and which are not. This is important because in actual politics citizens and decision-makers have competing intuitions over which claims for self-determination are justified. For example, on the face of it, it may seem that if the Estonian people have a right to self-determination, then the ethnic Russian population of the east of Ukraine have the same right, or if the Danish people have such a right that the people of Flanders must have that right as well.

Therefore, it is important to develop a justificatory framework to evaluate and compare between the competing claims that are made for self-determination in political practice. For example, to assess between the competing claims of Estonia and the Soviet Union prior to its dissolution, or in contemporary political circumstances between the claims of Ukraine and *Novorossiya* or Belgium and Flanders.

1.2.) Research Aims

I have three principal research aims in this thesis: (i) to develop a *republican* theory of self-determination that can provide a better justificatory framework to assess claims for self-determination over those of rival theories; (ii) to provide a conceptual overview of arguments for self-determination and highlight the normative problems with the justifications used by other theories of self-determination in the existing literature; and (iii) to contribute to the literature on republican freedom and politics by arguing that self-determination is a necessary, though not a sufficient condition for freedom as non-domination.

My first research aim is to argue that republican political theory provides a better justificatory framework to assess claims for self-determination than those of rival theories. My intention is to demonstrate that the republican idea of *domination* – that individuals and groups are unfree when they are subject to the arbitrary power of others – provides the intellectual resources to construct a better justificatory framework to assess claims for self-determination than those of other political and moral values.[[2]](#footnote-2) Specifically, my thesis is that groups’ claims for self-determination should be treated as justified when groups are subject to domination.

I will argue that domination consists in unequal exclusions from self-government. These exclusions, I will contend, are not limited to formal exclusions from self-government, as for example under colonial or apartheid political regimes, but also include informal types of political exclusion in constitutional liberal-democracies, where some citizens are constrained from exercising their rights of self-government to a sufficient standard, whilst others are not. This idea of *domination as unequal participation in self-government*, I will argue, is discerning enough to rule out illiberal, undemocratic, and exclusionary claims for self-determination, but is encompassing enough to capture the claims of groups – particularly those in liberal-democracies – whose claims for self-determination are not justified by other theories, or are justified on problematic political grounds, opening the door to claims for self-determination that should remain unjustified.

My second research aim is to give a conceptual overview of arguments for self-determination and to highlight the normative problems with justifications for this right in the existing literature. This is of significance as there are few, if any, works in the existing literature on self-determination which attempt to give a comparative overview of all of the different arguments for self-determination.[[3]](#footnote-3) I will provide a detailed account of each of the three existing non-republican accounts of self-determination to this end. I will critically assess the *choice-based*, *nationalist*, and *just-cause* theories of self-determination as a counterpoint to the republican theory. I will argue that: 1) the freedom to choose which political authority one is subject to, as the choice-based theory contends; 2) the prerequisite value of national identity for the conduct of politics, as the nationalist theory contends; or 3) the violation of human or social rights, as the just-cause theory contends, should not be taken as providing a satisfactory justificatory framework to assess claims for self-determination.

As such, part of my second research aim is to show why a *fourth* republican approach, that has not been previously detailed, should be taken as the best justificatory framework to assess claims for self-determination. In particular, this is because it brings the republican concern for domination, and more general democratic concerns, to the politics of self-determination, which have surprisingly remained absent from the existing literature on this subject – especially considering the role these concerns have played in many of the claims made for self-determination historically. Methodologically this aim is useful as it allows for the four accounts of self-determination to be examined comparatively and gives conceptual clarity to the different justifications for self-determination often obfuscated in political discourse and broader academic discussions.

My third research aim in the thesis is to contribute to the maturing literature on republicanism and freedom as non-domination. I want to make the claim that not only should claims for self-determination be understood as being justified by the value of non-domination, but that freedom as non-domination, politically understood, should also require the status of self-determination.

The third aim of the thesis involves developing upon democratic understandings of republican freedom and politics to argue that whilst the idea of self-government is an essential, and perhaps even the central concept, for developing a democratic account of non-domination, it is insufficient if self-government is had without self-determination – as I will argue can be the case. This is because I will argue that rights to self-government can become constrained in democratic political practice through the informal practices of other agents and that the best way for them to become unconstrained, in cases, is through dominated groups making claims for self-determination – claims, I will argue, which reconfigure the political relationships that exist between citizens that first created this constraint. Furthermore, I will show how this idea of constraint upon the equal and participatory exercise of rights to self-government connects the republican idea of self-determination with discussions about *the people* in contemporary democratic theory.[[4]](#footnote-4)

My aim is to argue that self-determination is a necessary condition for political freedom, or freedom from *imperium* – the arbitrary power that individuals and groups can be subject to by government, which makes them unfree.[[5]](#footnote-5) As such, my third research aim is not to claim that self-determination is a sufficient condition for politically manifesting republican freedom – this would be tantamount to arguing that self-determination is exhaustive of a republican account of politics – but only that self-determination is a necessary condition for political non-domination, but one that has nonetheless gone broadly unrecognised in the contemporary literature on this subject.

1.3.) The Concept and Conceptions of Self-Determination

**1.3.1.) The Concept of Self-Determination**

A republican theory of self-determination is one *conception* of self-determination, as are the choice-based, nationalist, and just-cause theories of this idea. The *concept* of self-determination, however, is something more general that each conception of self-determination shares with every other theory.[[6]](#footnote-6)

The general idea or the concept of self-determination is standardly captured in definitions that invoke a people – the subject or the *self* of *self*-determination – taking control of political power and defining how they live by *determining* for themselves how they are ruled, precluding rule by other groups. For example, the Oxford English Dictionary defines self-determination as “the action of a people in deciding its own government”.[[7]](#footnote-7)

Legal definitions, by contrast, tend to explicitly define self-determination as a *right*. These definitions tend to specify what a self-determining group should have control over. For example, nearly every United Nations document referring to the idea of self-determination, defines it as “the right of all peoples freely to determine their political, economic, and social status”.[[8]](#footnote-8)

However, both these definitions raise problems. General definitions and understandings of self-determination are ambiguous with regards to what *determination* involves. For example, the O.E.D. definition defines self-determination in a manner that could be interpreted as being synonymous with democracy. The *action of a people in deciding its own self-government* could be read as simplymeaning having democratic elections. However, democratic groups regularly make claims for self-determination against democratic states – of which Québec, Scotland, and Catalonia all provide examples.

Similarly this definition might be read as suggesting that all claims for self-determination must necessarily take a democratic form. However, some non-democratic groups, such as groups that were internationally recognised as having the right to self-determination as a result of being subject to colonial rule, did not become democracies after decolonisation. Therefore, this definition blurs the lines between a specific *conception* of self-determination – a democratic conception in this case – and the *concept* of self-determination, which is only supposed to involve a general idea of self-determination – one that is encompassing enough to capture all conceptions of this idea.

Likewise, legal definitions are subject to a similar problem. For example, the U.N. working definition of self-determination raises two issues. With the right of self-determination allowing *all peoples* to determine their political, economic, and social status, this means that even the most illiberal and discriminatory groups would be able to make claims for self-determination. This precludes any specific conception of self-determination placing conditions on its ideal that could prevent the claims of such groups.

This relates to the second issue, which involves the determination of a people’s *political, economic, and social status*. For a group to be free to determine its own political status this implies that the right to self-determination involves the right of statehood. This is because if statehood is one option among many as a form of political status, the U.N. definition allows all self-determining groups to choose statehood as their means of self-determination. This is problematic because not all groups can or should be granted statehood. Again, the definition rules out justifiable limitations upon the exercise of this right by specific conceptions of self-determination. These are appropriate in some political contexts to limit claims to self-determination for some groups to forms such as regional autonomy or other institutional forms, or in cases to simply deny some groups’ claims for self-determination altogether.

It is because of these issues that I propose to give a definition of self-determination that is not biased to specific conceptions of this idea. This definition will not predefine or preclude specific conditions being placed upon the idea of self-determination by any particular normative conception. Therefore, in this thesis I will take self-determination to be: *the right of a collection of individuals to be a discrete political group, which has authority over a defined set of political issues, free from the control of others in the exercise of these affairs.*

This definition defines self-determination as the right: 1) to be taken as a discrete group; 2) with authority over a defined set of political issues; 3) free from the control of others in the exercise of these affairs. Part one states that a self-determining group has to be a political group in its own right. This means that the group is not reducible to being part of a wider group of people. For example, although the people of Québec are Canadian political subjects their self-determination is not reducible to self-determination as Canadians but is also expressed through being politically Québécois. This is something the population of other Canadian provinces do not share in – although they do have their own equivalent regional statuses.

Secondly, to continue with the example of Québec, the reason why the citizens of Québec are self-determining as Québécois, and not just as Canadians, is because they have authority over a defined set of political issues. Similarly the reason the citizens of Québec are also self-determining as Canadians is because Canadian central government has political authority over a set of political issues that Québec does not have control over – as for example defence policy. Therefore, self-determination can take a number of different institutional forms, including statehood, regional or federal autonomy, or other more novel forms. This also means that individuals and groups can have more than one political identity and status of self-determination.

Finally, relating to part three of the definition, this definition does not specify positive conditions for how groups should control themselves – as for example necessarily involving democratic control – it simply requires an absence of the control of others. As such, all groups, both democratic and non-democratic, can be definitionally included as self-determining. This means that groups that are descriptively self-determining in contemporary politics can be included under this definition of self-determination, whereas they may not under certain normative conceptions of this idea.

To be clear, this definition does not claim that a desired or convincing *conception* of self-determination should not specify democratic or other conditions of control – in fact this is a necessary exercise, and an aim of this thesis – but only that aspects of specific conceptions of self-determination should not be *smuggled in* to define self-determination as a concept. Indeed, one can see why it is important not to substantively over-define the concept of self-determination by looking at how the concept has been used and the multitude of different ways in which it has been understood historically.

**1.3.2.) The Historical Use of Self-Determination**

Although self-determination is an idea that was used and articulated by thinkers prior to the American and French revolutions, it was with the advent of modern democracy and the idea that political authority is illegitimate unless it is popularly authored to some standard that self-determination emerged as a living political concept.[[9]](#footnote-9)

At this time, in the late eighteenth century, claims for self-determination were claims for democratic self-government. This was seen in the claim for self-determination made by the revolutionaries in the American War of Independence. In the American Revolution the thirteen colonies seceded from the British Empire, so that they could govern themselves, and not be subject to the discretion of the British parliament, in which they had no representation. The subsequent creation of the United States of America by the newly independent governments of the thirteen colonies formed a new political people – one that was created so that its subjects could govern themselves, brought together by their exclusion from representation in the British parliament, and not because of their pre-political commonality.[[10]](#footnote-10)

However, by the nineteenth century the idea of pre-political commonality began to play a role in the idea of self-determination. Whilst the impetus of self-government continued to drive claims for self-determination at this time, so too emerged in this period the idea of *nationalism*. This combined with the idea of democracy to structure how claims for self-determination were made. With the emergence of nationalism, the groups that were identified to make claims for self-determination were *nations*. [[11]](#footnote-11)

Nationalism identified nations as the appropriate or *natural* units for the exercise of self-determination.[[12]](#footnote-12) Unlike with the American revolutionaries, these units were pre-political. This was pertinent during the revolutions of the mid and late nineteenth century, and most notably during the revolutions of 1848. In 1848 the division of labour, so to speak, of anti-imperial democratic claims for self-determination was divided between the nations of Europe.[[13]](#footnote-13)

This idea of *national self-determination* crystallised in international legal and political norms after the First World War when it was decided that the new European order would be comprised of free and independent nation-states. Woodrow Wilson’s *fourteen points* articulated this principle and structured the jurisdictional and territorial terms of the Treaty of Versailles, establishing a number of new nation-states made from the territories and peoples of the former Austro-Hungarian, German, Russian, and Ottoman Empires. Furthermore, the newly established League of Nations was set-up to reflect the principle outlined by Wilson with an ostensible commitment to upholding peoples’ rights to national self-determination.[[14]](#footnote-14)

However, in interwar Europe, many of these new states ceased to be democracies – or never became democracies to begin with. Many of these states continued to invoke self-determination, attaching it to an idea of *national destiny*. By invoking the idea of national destiny these groups understood self-determination as a means to achieve a specific end or outcome for their nation – in cases an almost mythical greatness, which would be achieved in an unspecific future. These anti-democratic nationalists did not understand self-determination as it had been understood by the American revolutionaries, as the right to their own democratic *process* that could lead to any number of political outcomes, or even as the liberal-democratic nationalists of the bourgeois revolutions of the nineteenth century had before them. Instead, for many at this time self-determination ceased to involve any, or at least a significant democratic component.[[15]](#footnote-15)

Following the Second World War, international law continued to recognise the right of peoples’ self-determination. This right was, for example, enshrined in the United Nations charter. A significant number of claims for self-determination were made during this period by groups subject to colonisation. However, because of the Cold War these were the only claims that were internationally recognised during this period – with the exception of Bangladesh’s secession from Pakistan. Informally, at this time, justified claimants of self-determination had to pass the *salt water test* – claimants had to be divided from the political authority they were subject to by salt water, as was the case with the colonial properties of all European states.[[16]](#footnote-16)

However, with the end of the Cold War a vast array of new claims for self-determination emerged, for which there was much pressure on the international community to recognise, unlike before. Many of the claims for self-determination made at this time quickly became violent, leading to conflict, as in the case of the dissolution of Yugoslavia or the war in Chechnya. International law eventually reacted by placing substantial limitations on claims for self-determination, favouring instead models of intra-state self-determination through autonomy regimes and the promotion of minority rights.[[17]](#footnote-17) Indeed, claims for self-determination in the present international legal regime are generally limited to groups subject to gross human rights violations, as in the case of East Timor’s secession from Indonesia, Kosovo’s independence from Serbia, or the creation of South Sudan.

Despite the terms of existing international law, however, claims for self-determination continue to be made. Many of these are negotiated claims with states, such as when the Scottish Executive came to an agreement with the U.K. government on holding an independence referendum in 2014, whilst others continue to make unilateral declarations of independence by seizing control of territory with force, whereas others take a position half-way between these means by claiming self-determination and unilaterally proposing independence referenda, as in the case of Catalonia and Venice.

At the present time it is perhaps less clear than it has ever been if self-determination is a democratic, liberal, nationalist, or another idea. It holds significance for individuals and groups of different political persuasions, and is a pertinent idea in many political theories. Self-determination may have once been an idea that belonged exclusively to a particular political theory or mode of political thinking, but now it has become decontextualized from its intellectual origins in political practice. Instead, self-determination can be democratic, liberal, undemocratic, illiberal, nationalist, and non-ascriptive in political practice. Indeed, nor should it be assumed that self-determination has to take the political form of statehood – self-determination can take a multitude of political forms, from statehood to federalism and regional autonomy, and even to modes such as special representation in parliaments and mechanisms such as power-sharing.

However, this need not be a problem, particularly with regards to self-determination reflecting any particular substantive political ideal. By accepting that this is the case, that self-determination is an amorphous political concept, it can be considered as an idea that should not be judged as an abstract concept, but instead in terms of its specific normative conceptions. Although all conceptions loosely share an emphasis on redefining political identity and status by gaining political control over a set of political issues, they are vastly different with regards to the role and the value that they contend identity, status, and control should play in the politics of self-determination.

**1.3.3.) Four Normative Conceptions of Self-Determination**

This thesis will examine four normative conceptions of self-determination. These are the *choice-based*, *nationalist*, *just-cause*, and *republican* theories of self-determination. The first three conceptions are the existing theories of self-determination, noted in most typologies of the idea.[[18]](#footnote-18) The fourth republican account, however, is unique to this thesis.

The *choice-based theory* is an individualistic account of self-determination. It argues that individuals are free to make claims for self-determination so long as they can convince a sufficient number of others to exercise their rights to self-determination at the same time as them to form a group. The choice-based theory argues that individuals have no obligations to specific political authorities and as such, assuming a set of conditions and side-constraints, that groups of individuals are free to choose to which political authorities they should give their consent – entailing the right to create a new political authority if this is what a collection of individuals wish.

As such, according to the choice-based theory the groups that are justified in claiming self-determination are simply those who choose to be a self-determining group. These can be both ascriptive groups such as nations, but also non-ascriptive groups, such as administrative regions and other collections of individuals, such as groups with common, but unique, social or political beliefs from the *mainstream* of society.[[19]](#footnote-19)

The *nationalist theory*, by contrast, is an ascriptive account of self-determination. It argues that nations are the relevant claimants of self-determination. The nationalist theory argues that nations have certain ethical and political properties for which self-determination is required either for individuals to fulfil their moral obligations to their co-nationals, for them to exercise their autonomy within the appropriate cultural context, or to provide the prerequisite characteristics for the conduct of good or culturally-fair political activity.[[20]](#footnote-20)

The nationalist theories examined in this thesis are *liberal-nationalist* accounts of self-determination. In current politics many non-liberal nationalist groups make claims for self-determination. However, in the contemporary literature there are no significant academic defences of non-liberal nationalist claims for self-determination, if indeed there are any at all.[[21]](#footnote-21) Like the choice-based theory, the nationalist theory of self-determination assumes a basic standard of liberal justice as conditions for exercising claims for self-determination.

Both the choice-based and nationalist theories are *primary right* accounts of self-determination. These are accounts that contend that the right of self-determination is had without the groups in question being subject to a wrong by the political body that has authority over them.[[22]](#footnote-22) For the choice-based theory individuals have a primary right to self-determination, but in most cases can only exercise it collectively. Whereas for the nationalist theory, nations have a primary right to self-determination as a collective and intergenerational group, but that the exercise of this right is contended to be good for the individuals that belong to the relevant nation.[[23]](#footnote-23)

This compares with *remedial* accounts of self-determination, which contend that the right to self-determination is only had when groups are subject to a wrong by the political body that has authority over them. Remedial accounts of self-determination assume that existing political authorities have *prima facie* legitimacy over their subjects, and is only when the conditions outlined by each specific remedial theory of self-determination fail to be upheld that groups can claim the right to self-determination as a distinct political group.[[24]](#footnote-24)

Remedial theories do not deny that some groups of individuals have distinct social and cultural identities from their compatriots, as the nationalist theory of self-determination contends is relevant for justifying claims to self-determination, but argues that identities are not normatively significant in themselves to redraw political boundaries as a matter of right. Rather, for remedial theories it is legitimate to oblige individuals and groups who see their separate ascriptive identities – or indeed non-ascriptive identities and beliefs, as the choice-based theory contends to be the case – as requiring a separate political identity and status to the authority of existing political associations. However, this does not mean that remedial theories are insensitive to the claims of groups with identity or belief-based grievances, but they simply contend that having a different identity or values does not justify claims for self-determination.[[25]](#footnote-25)

Furthermore, primary right theories of self-determination tend to suffer from the charge that they are too *permissive*, justifying too many claims for self-determination, especially against just political authorities, whereas remedial theories of self-determination tend to suffer from the opposite criticism that they are too *impermissive* – that they deny the claims of groups that, on balance, should be justified.[[26]](#footnote-26) The just-cause and republican theories are remedial accounts of self-determination.

The *just-cause theory* argues that claims for self-determination are justified when groups of individuals are subject to rights violations. The just-cause theory contends that when political authorities violate their subjects’ rights that they should lose their legitimacy, making it acceptable for those who have had their rights violated to form their own self-determining political associations. The just-cause theory contends that groups that have not been subject to any rights-based violations should continue to obey the political authority to which they are presently subject. As such, the just-cause theory of self-determination argues that only groups of individuals who have had their rights violated are justified in making claims for self-determination.[[27]](#footnote-27)

By contrast, the *republican theory* of self-determination argues that it is groups who are dominated that have justified claims for self-determination. The republican theory contends that it is not simply the violation of rights that justifies remedial claims for self-determination, but rather, that it is also constraints upon the exercise of rights, or the absence of certain rights to begin with, which should justify claims for self-determination. The republican theory argues that claims for self-determination become pertinent when groups of citizens’ rights to self-government are constrained, whilst others are not, or when groups are deprived from having these rights altogether, whilst others have these rights.

This is a broader remedial conception of self-determination than that outlined by the just-cause theory. It is also, therefore, not as impermissive a theory of self-determination as the just-cause account, because for political authorities to retain their legitimacy under the republican account, they are required to uphold a more stringent set of conditions than those outlined by the just-cause theory, including the sufficiently equal democratic participation of citizens – which many political authorities, liberal-democracies included, fail to uphold.

**1.3.4.) The Right to Self-Determination and Candidates for this Right**

These four conceptions of self-determination do not directly reflect the discrete motivations that groups have for making claims to change their political identity and status – as in political life the reasons groups use to make claims for self-determination are overlapping, sometimes conflicting, and are even on occasion incoherent. The four theories are not direct mirrors of the specific claims that groups make for self-determination but are value-orientated accounts that can be used to assess the specific claims groups make in political practice – determining whether or not claims advance or undermine the relevant values and associated considerations or side-constraints that each account takes to be important.[[28]](#footnote-28)

As such, each of these four conceptions are justificatory frameworks to assess claims for self-determination. Each theory assesses claims for self-determination from the basis of a particular value. In their most abstract form, the choice-based theory of self-determination assesses claims from a particular idea of freedom, the nationalist theory from the basis of the value of identity, the just-cause theory from the basis of rights and their importance for their holders, and the republican theory from a rival conception of liberty. The comparative aim of this thesis is to find out which of these four values can provide the most satisfying justificatory framework to assess the specific claims which are made for self-determination.

Furthermore, each of these conceptions, with the exception of the choice-based theory, have an *objective* account of what constitutes a group with a justified right for self-determination. In other words, each conception defines what value should provide the justificatory basis for the right to self-determination and any group that embodies this in terms of its ascriptive characteristics – as in the case of the nationalist theory – or by virtue of the group’s treatment by other groups or elite political actors – as in the case of each of the remedial theories – has the right to self-determination.

This is important for objective theories as in political practice not all claimants of self-determination should have this right. In political practice not all claimants of self-determination are nations – as is the case for the nationalist theory – or are subject to human or social rights violations – in the case of the just-cause theory – or are dominated groups – as in the case of the republican account. For the nationalist, just-cause, and republican conceptions of self-determination it is only nations, those who are subject to human or social rights violations, or groups who are dominated that should have this right. Therefore, when groups that fail to meet the relevant standard make claims for self-determination, their claims are denied, because they fail to meet the objective criterion of what constitutes a justified claimant.

However, for objective accounts of what constitutes a group for self-determination in the converse situation, where groups are justified candidates according to a specific conception of self-determination, but do not actually make claims to redefine their political identity and status, these groups are contended to have the right to self-determination even in the absence of their exercise of it. Proponents of each conception may encourage these justified groups to make claims in political practice, however, ultimately candidacy for self-determination has to be accompanied by claims for its exercise – as the process to change a group’s political identity and status is one that takes place through political discussion and action.[[29]](#footnote-29)

This is in contrast to *subjective* accounts, for whom claim-making is sufficient to achieve the right to self-determination. For the choice-based theory, assuming a set of conditions and side-constraints are met, any collection of individuals can be a group with the right to self-determination by virtue of deciding to be so.[[30]](#footnote-30) As such, for the choice-based theory every potential coalition of individuals is a group with the right to self-determination.

Indeed, for each theory of self-determination the potential candidates are different. As noted, for the choice-based theory any self-constituting group of individuals is a potential candidate for self-determination. This could involve nations or administrative regions but also groups that have never existed before. This could include groups with shared political or cultural values, who have never previously seen themselves as a political group but all things considered decide that they would like to be. By contrast, for the nationalist theory nations are the relevant candidates to make claims for self-determination. Unlike the choice-based and other theories of self-determination, for the nationalist account, non-nations are not relevant candidates for self-determination. However, this is not to deny that nationalists may concede that non-nations have justified claims for self-determination on instrumental grounds.

For remedial theories, however, the candidates for self-determination are not pre-politically defined, as they are for the nationalist and choice-based theories. For the nationalist theory the groups who are candidates for self-determination are known prior to any claims being made – nations are always nations and by virtue of being so have justified claims for their own political identity and status.[[31]](#footnote-31) This means regardless of what happens in politics nations are due some form of political recognition. Similarly, regardless of what happens in politics, for the choice-based theory, groups are free to voluntarily self-constitute themselves a self-determining group. There are only some side-constraints that both theories must respect.

However, for both the remedial theories of self-determination it is what happens in politics that defines who the groups are that are candidates for self-determination. This is because for remedial theories grouphood is determined in relation to political legitimacy. For remedial theories it is the legitimacy of political authorities that determines who the candidates for self-determination are. For example, in America in the late eighteenth century it was the illegitimacy of British rule in the thirteen colonies that created the American people. The American people did not exist prior to the establishment of the United States – it was the establishment of this state, instead, that created the people. The American people did not exist prior to the establishment of the state. Unlike a nation waiting to be embodied with its own political power, it was the failure to make British rule legitimate in the colonies, through the extension of the electoral franchise that made a new people – those who could no longer be legitimately ruled by the existing political authority.[[32]](#footnote-32)

As such, for remedial theories, existing political authorities can embody the self-determination of their subjects when they maintain political legitimacy. It is only when they fail to uphold their legitimacy with regards to collections of their subjects that claims against them become justified. For the just-cause theory this is when collections of their subjects are subject to human and social rights violations. Whereas, for the republican theory legitimacy is lost when political subjects are unequally excluded from democratic participation or are deprived from having the right to democratic participation at all.

Conceptually, one cannot know prior to the activity of politics who these groups are. This is because their rights to self-determination are not justified with reference to their ascriptive characteristics or how they may choose to constitute themselves, but because of how they are treated by the political authority to which they are subject. In this sense, for remedial theories, candidates for self-determination are politically created through their negative political treatment. These groups can be nations, administrative regions, or groups that have never existed before. They are only specifically determined, however, when the legitimacy of the political authorities they are subject to is voided and in that moment make claims to be subject to a legitimate form of political rule. This poses a problem for remedial theories, however, that political reform and not just self-determination can establish legitimate rule for these groups. This is an issue that will be discussed in chapters four and five of the thesis.

Furthermore, because bad political treatment is something that can come and go, so too can remedial claims for self-determination – for remedial theories a group’s posterity is only assured by exercising their right to self-determination when they are entitled to it. If groups do not do this then their grouphood can dissolve along with their right.

**1.4.) Methodology**

As already stated, the methodology adopted in this thesis is to examine the politics of self-determination *normatively*. As such, I will not answer the question ‘which groups have justified claims for self-determination’ *descriptively*, by empirically determining which groups are recognised in existing international and constitutional law as self-determining. Rather, I will answer this question *proscriptively*, by considering which groups *should* be recognised as having the right of self-determination in politics.

This is because there are groups in political practice that are descriptively recognised as having the right of self-determination, which should not be according to different normative perspectives, whilst there are other groups who are prevented from making claims to self-determination under existing political and legal arrangements, which from the point of view of certain normative theories of self-determination should be viewed as having justified claims for this right.

There is a significant descriptive literature on the politics and the idea of self-determination, mainly in law and political science.[[33]](#footnote-33) Whilst the insights of these disciplines should not be ignored in the normative study of the politics of self-determination, they should not drive its enquiry. Rather, the normative study of this issue requires the politics of self-determination to be examined through the discipline of *political theory*. However, the political theory of self-determination has a more modest literature than these disciplines.

By political theory, what I mean in this thesis is the normative analysis of political concepts and conceptions of these ideas in light of certain empirical facts and fairly immutable aspects of the social, political, economic, and cultural contexts in which these concepts must be used and applied. I do not distinguish this from the more general discipline of *political philosophy*, but merely assert the importance of empirical and pragmatic considerations for normative political enquiry.

As such, the methodology in this thesis is akin to what some political philosophers term ‘non-ideal theory’.[[34]](#footnote-34) However, unlike some versions of non-ideal theory, the normative analysis in this thesis does not reflect a loosening of the conditions initially set by an *ideal* version of a political theory – that empirical facts about how values and ideas can be achieved in the circumstances of corruption and non-compliance, or how certain social, political, economic, or cultural changes necessarily have to prefigure the attainment of these values and ideas requires a loosening of conditions. Rather, the conditions set out by the normative analysis in this thesis are determined with regards to the circumstances of actual politics.[[35]](#footnote-35) Therefore, the methodological approach used in this thesis necessitates engagement with the legal and political science literature on the subject of self-determination to consider what the circumstances of politics are for this issue, even if this is not its primary subject of enquiry.

As a fact-sensitive form of normative political enquiry, the conclusions reached in this thesis are intended to be of use for political application and also to provide the basis for the further study of questions relating the real-world issues captured by the politics of self-determination.[[36]](#footnote-36) Indeed, the normative value principally used in this thesis – freedom as non-domination – is more conducive for fact-sensitive political theorising than other philosophical values or conceptions of freedom. This is because the language of domination fits better, rhetorically, with how political values and ideals are articulated in actual politics.

Cécile Laborde has discussed how non-domination is better placed to take on the common-sense rhetoric of right-wing liberalism and libertarianism in actual politics than contemporary egalitarian-liberalism to advance left-of-centre political ideals. This is because republicanism provides a language that is more convincing and less alienating in its critique of the political right, than the language of social justice and equality, favoured by academic liberalism and mainstream centre-left political parties and actors, which have little traction in contemporary politics. By contrast, Laborde contends, republicanism can discuss the concerns of the political left in contemporary politics on the same terrain as libertarianism and right-wing liberals, with its own language of what it means to be unfree in specific social, political, and economic relationships, rather than resorting to abstract principles which fail to provide sufficient personal motivation to engage in or support political change.[[37]](#footnote-37)

The same is true, I contend, with the politics of self-determination. In actual politics claims for self-determination are nearly always made passionately, with regards to the future of the group in question. These claims are not exclusively, but are mainly made using the language of nationalism. The dispassionate language of the protection of rights, which is the opposing vision to these types of claims for self-determination, appears conservative by contrast in its critique of their claims.[[38]](#footnote-38)

Republicanism can offer a less defensive vision of politics and can provide an affirmative vision of collective political life that does not deny the claims of some nationalist groups but can rhetorically redirect their grievances, especially in liberal-democracies, to take the form of legitimate grievances against democratic political exclusion, rather than the uniqueness of one’s group – capturing the concerns of both liberal-democrats and nationalists by a strategy of advancing, but nevertheless *de-nationalising*, claims for self-determination.

Furthermore, the approach taken in this thesis is *comparative*. One of its aims is to provide a conceptual overview of the existing theories of self-determination and to examine them comparatively to assess their strengths and their weaknesses. It is through critically analysing the existing theories in this way that a constructive alternative theory can be built. Through critically analysing the existing theories of self-determination clarity can be gained over what a theory of self-determination is required to diagnose and secondly, it also provides clarity over how problematic the side-effects are with the specific diagnoses of each theory of self-determination, to evaluate if they undermine it or not, as a satisfactory justificatory framework to assess claims for self-determination.

The aim of this approach is not to construct a bulletproof justificatory framework to assess claims for self-determination – as this is impossible for a theory of any concept – but rather to develop a justificatory framework that has no fundamentally bad consequences, but only secondarily bad ones, which should be weathered in comparison to the fundamental problems of other theories.[[39]](#footnote-39)

**1.5.) The Structure of the Thesis**

The structure of the thesis is as follows. Chapters two, three, and four will make up part one of the thesis. This will be a critical examination of *the existing theories of self-determination*. This will be followed by part two where a *republican alternative* will be discussed and defended. This will provide a constructive alternative to the theories examined in part one.

Chapter two will provide a critical examination of the *choice-based theory of self-determination*. In this chapter I will critically examine three versions of the choice-based theory of self-determination – the *strong* and the *weak* associative accounts of self-determination, and the *democratic-choice-based* theory of this right. I will argue that having the freedom to choose which political authority one should be subject to can problematically create relationships of domination, which ultimately constrain individuals’ ability to freely withdraw their consent from the political authorities they are subject to and place it elsewhere – as the choice-based account contends is valuable. Instead, I will argue that political obligations should be involuntary, so long as they are *democratic*, and that these democratic conditions apply to all citizens *equally*. I will argue that the idea of a democratic theory of self-determination is desirable, but in contrast to the choice-based theory, that this should be a *remedial* theory of self-determination.

Chapter three will critically examine the nationalist theory of self-determination. In this chapter I will review four accounts of national self-determination, arguing that whilst many nations should be taken as having justified claims for self-determination, it is not because they are nations, but because they are *dominated groups*, that they should be taken as having justified claims for this right. I will argue that this means that not all nations should have justified claims for self-determination, but only those that are dominated. Indeed, I will also argue because it is groups that are dominated which should have justified claims for self-determination that non-nations should also be taken as being justified claimants for this right.

Chapter four provides a critical examination of the just-cause theory of self-determination. In this chapter I will discuss two versions of this account and argue that that it is not simply the violation of rights that should justify groups’ claims for self-determination, but that *constraints upon the exercise of groups’ rights* or groups having *an absence of certain rights to begin with* should also justify their claims for self-determination. I will argue that this broader remedial wrong is captured by domination and the rights that one ought to be concerned with when it comes to remedial claims for self-determination are the rights that the just-cause theory side-lines and ignores – *rights to self-government*.

In chapter five I will defend a constructive republican alternative to the three existing theories of self-determination examined in the preceding chapters. In chapter five I will defend *two conditions* for groups to embody the republican idea of self-determination. I will argue that existing political authorities should uphold these two conditions to prevent remedial claims for self-determination becoming justified against them. In chapter five I will discuss the republican idea of domination in depth and will detail the idea of groups and individuals necessarily requiring non-dominating *political statuses* for their political freedom. I will detail how these statuses provide the conceptual basis for a republican theory of self-determination.

In chapter five I will also engage with four different accounts of what should be taken as constituting arbitrary power in the republican idea of non-domination. This is to determine what relationships of domination should be taken as justifying republican claims for self-determination. I will argue when groups are unequal participants in the exercise of democratic self-government that they are dominated. I will argue this domination can come from sources of *civic misrecognition* – when groups and their members are subject to relationships of arbitrary social and cultural power – or *exclusion from political deliberation*. I will argue that when groups fail to be sufficiently equal participants in the exercise of their own self-government they have justified claims for self-determination – which depending on the group in question can take the form of *separatist* or *non-separatist* claims for self-determination.

In the final substantive chapter, chapter six, I will discuss some of the political implications of the republican theory of self-determination. I will discuss some of the distinct claims for self-determination that the republican theory captures, in contrast to the other theories of self-determination. I will discuss how the republican theory captures a distinct set of *non-separatist* claims for self-determination that either take the form of *inclusion* into an already self-determining people – as in the case of migrants and other resident non-citizens – or *reform* of an existing political system, through means such as electoral reform.

I will argue that to fulfil the statuses of political non-domination that self-determination does not necessarily have to take a separatist form. However, I will also discuss some of the distinct *separatist* claims that the republican theory captures, including remedial claims for self-determination that can be made against rights-upholding democratic states. In chapter six I will also discuss and defend an institutional proposal for the *constitutionalisation of procedures for self-determination*, which I will argue can serve to promote the greater fulfilment of the two conditions of republican self-determination, discussed and defended in the preceding chapter.

**Part One: The Existing Theories of Self-Determination**

**Chapter Two: The Choice-Based Theory of Self-Determination**

In this chapter I will begin the critical discussion of the three existing theories of self-determination, starting with the choice-based account. I will critique the choice-based theory for providing an unsatisfactory justificatory framework to assess claims for self-determination, and in turn will begin to articulate an alternative republican justificatory framework, which I will detail in the second part of this thesis.

The unifying idea of choice-based theories of self-determination is that self-determination is not a collective but an *individual* *right*. Furthermore, all choice-based theories of self-determination are justified by an idea of *freedom* – natural and consent-based freedom or autonomy. Choice-based theories are those that give *voluntarist* accounts of self-determination, arguing that individuals are free to voluntary self-constitute a political group and make claims for self-determination as a *primary right*.

In other words the choice-based theory argues that individuals and the groups they constitute do not have to be subject to a political or moral wrong to exercise the right to self-determination. Rather, they are free to exercise this right with some specified conditions. For most choice-based theories of self-determination this means that there is no need to pre-define who the self-determining people are, as for example the nationalist theory of self-determination contends.

In this chapter I will argue that the choice-based theory of self-determination is problematic on a number of these fronts. Firstly, I will argue that self-determination should be understood as a *collective* rather than as an *individual* right. Secondly, that although self-determination should be justified in an idea of freedom, it should not be justified in natural freedom or autonomy, but in the republican idea of *freedom as non-domination*.

Thirdly and finally, I will argue that voluntarism and its connection to understanding self-determination as a primary right does not promote freedom, but rather constrains it. I will argue that self-determination should be understood instead as a *remedial* right. I will argue that because the choice-based theory contends self-determination should be a primary right, it is too permissive an account of self-determination, as the claims it justifies can undermine the value and practice of democracy and distributive justice, which are necessary conditions of freedom.

I will make these claims by examining three different accounts of the choice-based theory of self-determination. I will begin by examining *strong associative accounts of self-determination*. These are accounts that justify choice-based claims for self-determination on the basis of *freedom of political association*, with few, if any, conditions. I will argue that these accounts justify anarchic forms of self-determination that are problematic because in the absence of political authority they cannot protect individuals and groups against *interpersonal domination*, which can constrain the value of freedom of association itself.

I will then proceed to examine the *weak associative account of self-determination*. This account also justifies claims for self-determination on the basis of free political association, but unlike strong accounts it does so with stricter conditions – making it a *weaker* justificatory right. I will argue that this theory cannot provide a satisfactory justification for claims to self-determination, as it rests upon a problematic account of political authority that allows groups of individuals to justifiably make claims for self-determination that involves them shirking their political obligations to their compatriots. Furthermore, I will also argue that this account of political authority does not have the resources to protect individuals and groups against *political domination*, which similarly constrains individuals’ ability to collectively exercise their rights of free political association.

In the final section I will examine *democratic-choice-based accounts of self-determination*. These are accounts that argue that democracy justifies a primary right to self-determination. I will argue that these accounts fail to give a coherent account of why dissenting minorities are obliged to respect the outcomes of majoritarian referenda for self-determination or an account of why groups of individuals can freely choose to break democratically-imposed political obligations through self-determination. I will argue this can only be the case when democratic legitimacy is lost in political associations over certain subjects, contrary to what the democratic-choice-based theory claims. I begin, however, by examining the strong associative account of self-determination.

**2.1.) The Strong Associative Account of Self-Determination**

Strong associative accounts of self-determination are those that justify claims for this right on the basis of *freedom of political association*. These accounts contend that voluntary self-constituting individuals can form their own political associations and declare themselves to be a self-determining group. The strong associative account is one of the most permissive accounts of self-determination, because in comparison to weak accounts it places few, if any, conditions on what is required to justifiably self-determine. This is because the strong associative account of self-determination is grounded in the idea of *philosophical anarchism* – the idea that political obligations are only authoritative when they have been freely consented to by free individuals in an express fashion.

In this section I will argue that philosophically anarchist strong associative accounts of self-determination are too permissive in terms of the claims they justify and that involuntary political authority is a necessary requirement for a theory of self-determination and a rightly understood idea of free political relations. I will make this argument by principally examining Harry Beran’s strong associative account of self-determination.[[40]](#footnote-40)

For Beran, the freedom of political association that justifies groups’ claims for self-determination is grounded in individuals’ *natural right to self-determination*. In Lockean terms, Beran argues that individuals have natural rights, one of which is ‘personal self-determination’.[[41]](#footnote-41) The natural right to personal self-determination, Beran argues, is only compatible with political authority through consent. Beran argues that political obligation should only be accepted as legitimate if it has been voluntarily consented to by self-determining individuals, and in turn that political authorities should only exist when a sufficient number of individuals have voluntarily given their consent to the political body they constitute through free political association.[[42]](#footnote-42)

For Beran, consent ought to be discharged through ‘express and tacit consent’.[[43]](#footnote-43) This *membership-based theory of self-determination* is one that tacitly affirms one’s consent by remaining in an existing political association without complaint, and one that expressly removes one’s consent by ending one’s membership of that state. Beran argues that this can take place through four institutional forms: 1) emigration; 2) the creation of *dissenter territories*; 3) that native-born individuals become resident aliens; and 4) secession.[[44]](#footnote-44)

As such, without physically leaving the territory where one resides – except in the case of emigration – individuals can end their political obligation to the state by removing their consent and renouncing their membership of the political association that compelled them on the basis of their natural right to individual self-determination.[[45]](#footnote-45) I will examine each of these four forms in turn to show how only territorial secession – which necessarily involves political authority – is the only viable form of self-determination of these four types and how a rejection of the other forms invalidates philosophically anarchist strong associative accounts of self-determination. I begin by examining the idea of native-born individuals self-determining by becoming resident aliens.

**2.1.1.) Self-Determination as Resident Non-Citizenship**

When individuals exercise their self-determination by renouncing their citizenship and becoming resident non-citizens they remove their consent from the political authority that previously obliged them. When this happens the political authority that previously obliged them continues to exist so long as the other individuals that are subject to it continue to give it their consent.

For strong associative accounts of self-determination, those who voluntarily choose to remove their consent should be free from the majority of a state’s political obligations, but in return should lose many of their political rights. For example, individuals who self-determine by becoming resident non-citizens of a political territory would not be obliged to pay most taxes, but in return would not be entitled to goods such as state-funded healthcare. This might be an attractive prospect for individuals who are opposed to *big government* and would be content with the idea of being self-sufficient in the market or otherwise.

However, whilst this may hold for the trade-off between *positive* rights and duties, such as those in the above example, it will not hold for rights and duties of a *negative* kind, such as those of the right to life and duties to abstain from committing murder or to prevent causing physical bodily harm to others. This is because negative rights and duties are those that even supporters of the minimal state argue should be upheld.[[46]](#footnote-46)

If one considers resident non-citizens, such as denizens or guest-workers, or temporary visitors to a state, such as tourists, whilst these groups do not have to comply with all of the positive duties states oblige, they do have to comply with the negative duties obliged by the state. For the strong associative account the only positive duties individuals have to fulfil are those they voluntarily consent to such as paying value added tax on goods and services which they are not compelled to buy. For philosophical anarchists like Beran, having to comply with the negative duties is not a problem, because the basic negative rights and duties that are reflected in civil law tend to be those that overlap with natural rights and duties in any case.[[47]](#footnote-47)

Therefore, whilst a minimal state may not exist for the citizens of a particular political territory, it can justifiably exist for some, according to this account. In other words, the level of consent can vary between the residents of a territory, with some residents only being minimal subjects of a political authority, but justifiably so, because the laws they have to obey are those they would have to obey as moral agents anyway in the absence of political authority.[[48]](#footnote-48) All other positive duties are those to which they would give their voluntary consent.

However, whilst the acceptance of a minimal state, by philosophical anarchists, as being compatible with individuals becoming resident non-citizens, gets over the basic coordination problem of resident citizens and non-citizens being able to live together at all, it does not get over the issue of living within the same political territory altogether. The fact that citizens and non-citizens would live to together on varying terms of political obligation poses a problem. This is the problem of adjudication between resident citizens and non-citizens in their disputes over positive rights and duties.

Whilst under this account of self-determination political obligation can vary in degrees for the residents of a political territory, the day-to-day interpersonal relationships that constitute societies remains fairly untouched – it is likely people would continue to live together, work together, and exchange goods and services. When disputes emerge between resident citizens and non-citizens there is no source of authority to adjudicate between them – at least on issues concerning positive rights and duties.[[49]](#footnote-49)

In response, voluntary consent theorists of self-determination like Beran could argue that private contracts could provide the basis for these interactions. However, for contracts to have any force they have to be backed by the authority of the law.[[50]](#footnote-50) Voluntary consent theorists could concede this role to the state and declare the issues that contracts deal with, like property, to be *natural rights*, such as Locke contended to be the case. However, whilst pro-market claimants of self-determination as resident non-citizenship would be happy to accept this conclusion, left-wing anti-capitalist groups, for example, would not.[[51]](#footnote-51) For groups of this kind their claims for self-determination are made for the purpose of removing themselves from the necessary entanglements capitalism has in contemporary political obligations.[[52]](#footnote-52)

For these types of groups self-determination through resident non-citizenship will not be able to be exercised, unless like hermetical groups such as the Amish in North America, they refuse to interact with the wider society, or similarly become *drop-outs* like the individuals that lived the American counter-cultural communes of the 1960s.[[53]](#footnote-53) It is implausible to believe that all anti-capitalist groups, for instance, would see this as an attractive way of life and it is likely that many of the individuals that comprise groups of this kind would object to the burden of having to remove themselves from wider society to self-determine, when other groups of individuals’ self-determination through resident non-citizenship is compatible with wider social participation.[[54]](#footnote-54) This form of choice-based self-determination, therefore, is biased to certain types of groups.

The idea of self-determination as resident non-citizenship is supposed to be a way for free individuals to lose their political obligations, but for some groups it requires them to also lose their interactions with others to pursue the reason why they would want to lose their political obligations in the first place. As a form of self-determination, therefore, it places certain groups of individuals in involuntary relationships either way – either the involuntary political obligation required of the state to remain social participants or the involuntary obligation of social non-interaction to remain free of political obligation. As such, it will force some groups to look for stronger methods of self-determination, such as in dissenter territories, which I will now examine. Resident non-citizenship, therefore, cannot provide a suitable means to institute the strong associative ideal of self-determination.

**2.1.2.) Self-Determination in Dissenter Territories**

Self-determination in dissenter territories is the idea that individuals can renounce all of the political obligations they have to states by voluntarily consenting to live in territories where there is no political authority at all. Freely contracting individuals, it is contended by strong associative accounts of self-determination, are able to associate in whatever form they wish in these territories.[[55]](#footnote-55) Beran does not specify exactly how dissenter territories would be constituted, but presumably they are either territories that states have set aside within their nominal borders for dissenting individuals or they are globally recognised places acknowledged as being *no one’s land* – or *terra nullius* as in international law.

For philosophical anarchists like Beran, anarchic political relations are not envisaged to be as Hobbes described the state of nature – as a ‘war of every man against every man’.[[56]](#footnote-56) Rather, an anarchic society is envisaged in a manner more akin to Locke’s state of nature – one that is not plagued by the constant spectre of violence. For strong associative accounts of self-determination it is contended that it is more commodious for some groups of individuals to live in the absence of political authority than in its presence.

However, assuming that philosophical anarchists like Beran are correct about the absence of Hobbesian relationships of coercion defining life in dissenter territories, what cannot be guaranteed against in anarchic forms of social organisation is *domination*.[[57]](#footnote-57) This is the wrong that the republican idea of freedom protects against – a form of unfreedom that is not defined by the absence of interference or coercion but by the absence of relationships of *arbitrary power*.[[58]](#footnote-58) Domination can exist in the absence of actual interference of agents, when agents have the power to constraint or sanction groups and individuals preventing them from making free choices, by controlling or making use of the social, political, economic, and cultural conditions in which they live.[[59]](#footnote-59)

In an anarchic form of political association such as dissenter territories what specifically cannot be protected against is *dominium*.[[60]](#footnote-60) *Dominium* is what classical republicans called interpersonal domination – the domination that can become established in social relations between individuals, in comparison to *imperium*, which is the domination that emanates from the state. *Dominium* can exist, therefore, in the absence of political authority*.* Unlike *imperium*, which can only become manifest in political relations, *dominium* can become manifest in social, economic, and cultural relations. These relations will not be absent in anarchic forms of political organisation, such as dissenter territories.

In dissenter territories social relationships will continue to exist – groups and individuals, for example, will not cease to work together and form personal relationships because of the absence of political authority. One can consent voluntarily to these relationships. However, if these relationships become dominating, or are dominating to begin with, and one unwisely or reluctantly consents to them, or consents to them without knowledge that they are dominating, one cannot dissolve what was initially thought to be a voluntary contract. In other words, the idea of *free exit* that is a requirement of the idea of voluntarism is made non-exercisable by domination, because a third-party political authority is required to regulate relationships to prevent them becoming dominating.[[61]](#footnote-61) Therefore, any normatively desirable idea of voluntary human interaction conceptually requires political authority.

Individuals and groups can become trapped in relationships of arbitrary power in the absence of any actual coercion. For example, an employer could threaten an employee with destitution if there are no realistic alternative prospects of employment, forcing that employee to accept poor working conditions and pay. The same is true, for example, of an individual dominating their partner in a marriage or another personal relationship, when the partner who is dominated, in effect, has *nowhere else to go.* For republicans, this problem is solved with recourse to political authority and specifically to the *rule of law*. The rule of law, republicans contend, is a non-arbitrary form of power, which can be controlled to a sufficient degree by citizens, to act as a limit and conditioning-mechanism on agents who could establish relationships of domination over others.[[62]](#footnote-62) It is only with this that individuals can voluntarily consent to relationships because consent is not voluntary under conditions of domination.

Therefore, what should be of significance when anarchic forms of political association are established as modes of self-determination is not *consent*, but *arbitrary power*. Consent is not the best conceptualisation of free political relations because it is never voluntary with the possibility of being subject to arbitrary power. If one voluntarily consents, for whatever reason, to a dominating relationship, the voluntarism that constitutes one’s alleged freedom becomes meaningless, because one’s subjection to arbitrary power makes one’s choices non-exercisable. Political authority, therefore, is a necessary requirement of free political relations to protect against this, making self-determination based in any idea of freedom incompatible with anarchist political solutions.

This leaves emigration and secession – institutional forms that necessarily require political authority – as the remaining options to operationalise the associative idea of self-determination. I will now examine emigration as the final strong associative form of self-determination, because although it has the condition of involuntary political authority, unlike the previous two forms, it does not have the extra conditions that secession has – which I will examine in the subsequent section as a weak associative form of self-determination.

**2.1.3.) Emigration as Self-Determination**

Strong associative accounts of self-determination, such as Beran’s membership-based account, include emigration as a form of individual self-determination.[[63]](#footnote-63) This is because emigration involves removing oneself from the political obligation of one political authority and voluntarily obliging oneself to the authority of another. By expressing the removal of one’s consent through emigration, for strong associative accounts, one is self-determining by becoming a member of another political community – one which is itself already exercising the right to self-determination. Emigration, however, poses problems as a mode of self-determination.

Emigration is problematic because as a form of self-determination individuals have no control over how they come to exercise self-determination as right. Assuming political exit is guaranteed – which is the case in most existing states – to exercise the right to individual self-determination through emigration, one needs a corresponding right of *immigration* elsewhere. The right to be accepted as an immigrant and then subsequently as a naturalised citizen, however, is something over which non-citizens have no control. This right is at the discretion of the political authority one wishes to enter. As associative accounts of self-determination view political authorities as being voluntarily constituted, it is a correlative of this fact that if they want to refuse immigrants, freely associated political authorities are perfectly entitled to do so.

Furthermore, Beran applying Locke’s idea of tacit and express consent to emigration as a form of self-determination does not make as much sense in contemporary political circumstances, as it did when Locke developed his theory of consent and territory. Writing in the seventeenth century, Locke, like most Europeans, contended that large parts of the world had yet to be occupied.[[64]](#footnote-64) For Locke, when one removed their consent from a political authority, it was assumed that available territory was waiting to be cultivated and taken ownership of, especially in *the new world*.[[65]](#footnote-65) In this sense emigration made more sense as a form of self-determination because it involved *establishing* a political authority, not being *admitted* into an already existing one. However, in contemporary circumstances there is no inhabitable part of the world that some form of political authority is recognised as having jurisdiction over. As such, there is no place on earth where one can emigrate to, that is not at the discretion of a political authority to deny one’s entrance as an immigrant.

In many cases, therefore, emigrants are free to choose *nothing in particular*. For example, if one objects to the political obligations imposed by the Turkish or the Mexican government it is not the case that the individuals subject to these authorities are simply free to transfer their consent to the French or American governments instead. Therefore, the idea of voluntary consent integral to the associative ideal of self-determination cannot be operationalised in many cases through emigration. This leaves secession as the remaining political form of associative accounts of self-determination. Because involuntary political obligation is a condition upon the right to freely associate and that this means of self-determination has other conditions, I will discuss secession under the rubric of weak associative accounts of self-determination.

**2.2.) The Weak Associative Account of Self-Determination**

In the previous section I argued that mandatory political authority is a necessary condition for the political form claims for self-determination should take. This is because political authority is required to guarantee free interpersonal relations between individuals – in other words, to protect them against domination. As such, I argued in the previous section that non-citizenship within existing political associations and dissenter territories should not be taken as political forms to institute claims for self-determination.

Furthermore, I also argued in the previous section that emigration cannot successfully institute the right to self-determination because it fails to provide a guarantee for individuals that they will be able to become citizens of other authorities *by right*. This is in addition to the fact that emigration is not a political form that can provide the means for any collection of individuals, who as a *group*, wish to exercise the right to self-determination. As whilst emigration is possible for individuals, it is highly implausible as a mechanism for groups to exercise their self-determination by emigrating *en masse* – indeed, if they did, they would not be a group with the right to self-determination, but only an aggregate of individuals, each exercising their individual right to self-determination in parallel.

This leaves secession as the only political form that associative justifications for self-determination can take. Secession is a political form of self-determination that accepts the condition of political authority, but unlike emigration – which also accepts this requirement – it is a form that has in addition to this, extra conditions on the exercise of the right to self-determination. As such, this is why the claims of voluntarily constituted groups are justified as a *weak* associative form of self-determination.

In the previous section I rejected strong associative accounts of self-determination on the basis that they fail to protect against interpersonal domination. However, this is not the case for weak associative accounts of self-determination. For weak associative accounts, such as Christopher Wellman’s choice-based theory of self-determination, the rejection of anarchist and anarchist-friendly forms of self-determination is based in a neo-Hobbesian idea of non-coercion.[[66]](#footnote-66) In this section I will examine the idea of weak or conditional association grounding claims for self-determination through a discussion of Wellman’s theory.

I will argue that the idea of freedom of association should not be taken as the justificatory basis for claims to self-determination, because it rests on an unsatisfactory account of political authority, which allows collections of individuals to shirk their democratic and substantive obligations of justice to their compatriots and is one that can constitute the political domination of individuals, similarly constraining their freedom of choice, essential to the coherence of this account.

For Wellman, self-determination should take place within states. Wellman’s case for statist self-determination rests on the idea that in the absence of political authority individuals do not have a right to non-coercion. As Wellman writes, “[t]he reason that *I* have no moral right to be free from coercion…is that, even if *I* would rather forgo the benefits of society, my state may permissibly coerce me in order to secure political stability for my fellow citizens”.[[67]](#footnote-67) Under anarchic political relations, Wellman contends, there is nothing to protect individuals from the coercion of others. In the spirit of Hobbes, Wellman contends that it is legitimate for a state to coerce its subjects, because in the absence of its authority individuals have no right to be free from coercion. The state, Wellman argues, is therefore required to secure peace and discharge individuals’ duties and rights.[[68]](#footnote-68)

Wellman argues that this means that there is no “perfectly general and absolute right to freedom of association” as strong associative accounts of self-determination claim.[[69]](#footnote-69) Nonetheless, in accepting that the right of freedom of political association is limited by the condition of political authority, for Wellman, this has no necessary implications for the configuration that states ought to take. In other words, although individuals are required to obey political authority, *which political authority* they ought to obey is not predefined.[[70]](#footnote-70)

Assuming that the functions of a political authority can be fulfilled, Wellman argues, groups of individuals are free to self-constitute and declare themselves to be a self-determining group.[[71]](#footnote-71) Wellman states that any group of individuals who wish to exercise their rights to self-determination in this way can only do so by fulfilling certain moral conditions. These conditions are defined by a minimal account of justice, involving the maintenance of a basic set of negative rights.

For Wellman, these rights are broader than the Hobbesian right to life, but also include human rights which are justified on the basis that they provide a sphere of a decent human life free from coercion.[[72]](#footnote-72) This means that claimants of self-determination are required to protect members of minority groups’ basic rights, including their right to self-determination – so that if they wish they can exercise this right recursively.[[73]](#footnote-73) Furthermore, claims for self-determination cannot endanger the existence of the remainder state in terms of it being able to fulfil the requisite functions of a political authority, in terms of the minimal account of justice.[[74]](#footnote-74)

It is only when these conditions are met that individuals are free to self-constitute and declare themselves to be self-determining, forming a political group. For the weak associative account, this is as a state, but it could presumably also take weaker forms, such as a federal or autonomous region within a state. However, despite the weak associative account requiring these extra stipulations in comparison to strong accounts, it is still too permissive a theory of self-determination. If a sufficient number of individuals get together and meet the conditions outlined they would still be justified in making claims for self-determination that involve groups shirking their democratic and substantive obligations of justice to their erstwhile compatriots.

For example, under the terms of the weak associative account, the financially rich residents of the City of London would be justified in making a claim for self-determination to become a city-state tax-haven in the event of a future U.K. government placing the financial services industry under strict regulation or making it pay higher taxes. Such a claim for self-determination would meet all the criteria specified by this account – the City of London, for example, would be able to fulfil the functions of a state, it would not endanger the existence of the remainder of the United Kingdom, and presumably would uphold the basic negative rights of its subjects.

Associative theorists of self-determination recognise that these types of claims are objectionable. Their strategy to deal with them, however, is not to deny them with extra conditions, but to discourage their practice.[[75]](#footnote-75) Beran, for instance, argues that associative claims for self-determination should take place within a context of global distributive justice, conditioning groups of individuals not to make *cynical* claims of these kind.[[76]](#footnote-76) However, whilst global distributive justice is a laudable aim, in the case of cynical claims for self-determination these groups are likely to make these types of claims anyway, precisely because of their cynical content. To prevent these types of claims from being justifiably made, extra stipulations need to be fulfilled by groups making claims for self-determination. These could include the payment of a secession tax or political alimony.

However, these stipulations may still prove to be ineffective. Some groups may simply *bite the bullet* and pay the tax in order to get what they want. Stronger conditions are therefore required. These conditions should be on the nature of the group making claims for self-determination. To prevent cynical claims for self-determination being justified these conditions ultimately need to stipulate that groups should be subject to a moral or political wrong to justifiably claim self-determination. This would require self-determination to be a *remedial right*.

Similarly, Wellman’s strategy is to discourage, but not prohibit cynical claims for self-determination.[[77]](#footnote-77) This is because his neo-Hobbesian account of political authority cannot justify extra conditions on the right of self-determination beyond those of negative rights. Under Wellman’s account, political authority exists to protect individuals against coercion – positive political rights are superfluous for this task. Whilst having a more general discussion, Wellman contends that claims for self-determination should not be denied, because to repudiate them would (i) disrespect the individuals whose group autonomy is being denied, and (ii) that this would undermine democracy, as these claims are executed through democratic referenda.[[78]](#footnote-78)

First, with regards to the denial of group autonomy, Wellman contends, to deny groups’ claims for self-determination is to deny the autonomy of the individuals that compose them. Wellman writes, “respect for group autonomy is owed to the members of…groups because group autonomy is an extension of the autonomy of individuals”, he continues, “group autonomy often matters morally because individual autonomy matters morally and individuals sometimes exercise their autonomy in concert with others”.[[79]](#footnote-79)

Second, with regards to the denial of claims for self-determination undermining democracy, because there are deontological reasons to respect group autonomy and democratic claims are consistent with this, Wellman claims there are no reasons to deny any democratic claims for self-determination made by groups. As Wellman writes, “in the end, plebiscitary rights to secede are merely an extension of the principles of democratic governance to the issue of territorial boundaries”.[[80]](#footnote-80) For Wellman, if the minimal account of justice is upheld then democracy should not be prevented from tackling any questions, including those of political boundaries.

These responses, however, are inadequate in the case of cynical claims for self-determination. Firstly, when groups of individuals make claims for self-determination that involve the shirking of obligations to their compatriots, these undermine the social pre-conditions of others’ autonomy. For instance, the higher tax revenue obliged of the City of London in the previous example may have been required to pay for adequate healthcare or schooling, which are social institutions that individuals require to live autonomous lives. As such, secession can just as much be a form of disrespect, albeit in a less immediately obvious sense – by undermining others’ ability to exercise their rights – as a denial of group autonomy can be a form of disrespect in the refusal of certain claims for self-determination.

Secondly, the refusal of cynical claims for self-determination does not undermine democracy. Whilst weak associative accounts of self-determination advocate the use of democratic referenda as a means of gauging voluntary and involuntary political association, democracy plays no justificatory role in these accounts.[[81]](#footnote-81) In the previous section I argued in republican terms that to overcome interpersonal domination – which cannot be protected against under anarchic political relations – political authority is required in the form of the rule of law.

Whilst weak associative accounts of self-determination agree as much, that authority is needed and most would accept that this should take the form of the rule of law, these accounts do not necessarily agree with republicans over how the rule of law should be controlled.[[82]](#footnote-82) For contemporary republicans the law ought to be controlled by some form of democratic self-government.[[83]](#footnote-83) Taking Rousseau, in the place of Hobbes, for republicans the law and political authority is legitimate if the law is self-authored and political authority is self-imposed.[[84]](#footnote-84)

Democracy as a form of non-domination gives individuals sufficient control to collectively author the law as a citizenry and impose it upon themselves as a form of political authority to which they are sufficiently reconciled.[[85]](#footnote-85) However, for Wellman’s neo-Hobbesian account of legitimate political authority democratic control does not need to be a requirement, nor does it even have to be an instrumental consideration – even though Wellman claims that its decisions should be respected – because non-coercion can be had in the absence of democratic self-rule.

Instead, when democracy is taken seriously as the basis of legitimate political authority it requires that those who govern themselves ought to obey the law, no matter if what the law reflects is something that individuals and groups would rather not abide by.[[86]](#footnote-86) It is because of this that individuals and groups are prevented from shirking their obligations to one another. If things do not go a group’s way in the democratic process, they are not simply free to leave if they would have preferred another outcome. These outcomes create requirements upon all citizens, and all citizens are obliged to fulfil the obligations implicit in these requirements to other citizens, as well as the state.

Under this account, one cannot make claims for self-determination unless they are *remedial* – when political authorities cease to maintain their legitimacy, however defined, by different moral and political theories. In the case of the city of London there is no moral or political wrong and thus there is no justified claim for self-determination – those who wish to secede simply have not got their way in the democratic process, and have just *lost at the polls*. This criticism is not decisive against the weak associative account, but simply shows on balance the attraction of a remedial understanding of self-determination.

The relative attraction of a remedial account is also seen with reference to exclusionary claims for self-determination. Exclusionary claims are those like cynical claims for self-determination, which involve groups shirking their political obligations to their compatriots. How these claims differ, however, is because they involve the majority seceding from the minority. For example, in the early 1990s a northern Italian *Padanian* nationalist movement emerged, which argued that *Padania*, as the richer and more prosperous part of Italy, should secede from the relatively poorer south, so that it would not have to fulfil its obligations of distributive justice, mandatorily enforced by the Italian state.[[87]](#footnote-87) Indeed, the same can be read of the contemporary Flemish nationalist movement which continues to make independence claims from Belgium. This movement argues that majority Flanders would be better off financially if it severed its ties with minority Wallonia.[[88]](#footnote-88)

Even if the choice-based theory was reconstructed to prevent small-scale cynical claims, such as the City of London, and was used to only justify the self-determination of large-scale would-be liberal-democratic nation-states such as Scotland or Québec – which are not excluding claimants of self-determination – the account still cannot distinguish between these nations and exclusionary cases such as *Padania* or Flanders because any would-be large-scale liberal-democracy would pass its test of what counts as a justified candidate for self-determination.

Amandine Catala’s *non-remedial* just-cause account of self-determination is one such reconstruction of the choice theory.[[89]](#footnote-89) Catala argues that when a potential nation-state is a would-be liberal-democracy there is no reason to prevent groups that would constitute the citizenry of such a state from self-determining, as by fulfilling the requirements of being a liberal-democracy it is a just state. As such, Catala claims liberal-democratic groups are free to choose if they want to have their own political status or not.[[90]](#footnote-90)

However, this is problematic, because it could justify the claims of excluding liberal-democratic groups, such as those noted above.[[91]](#footnote-91) By contrast, when self-determination is understood as a remedial right it protects against these potentially dominating claims, because it can necessarily discriminate between exclusionary and non-exclusionary claims. It is worth noting that a reconstructed choice theory such as Catala’s could respond that a substantive conception of distributive justice could be placed as a requirement on being one such group who is *free to choose*. However, this is problematic because what it would give with one hand – the freedom of all would-be liberal-democracies to choose to separate – is what it would take back with its other – this choice, on the grounds of distributive justice, from some groups. This would create a world where *Padanian* or Flemish separatists would protest that they are treated unfairly, when they are liberal-democrats just like their Scottish or Québécois counterparts.[[92]](#footnote-92) As with the compatibility of cynical claims with the choice-based theory of self-determination, the compatibility of exclusionary claims shows on balance the attraction of viewing self-determination as a remedial right.

Furthermore, because Wellman’s account rests on a neo-Hobbesian idea of political authority the weak associative account of self-determination is compatible with non-democratic political regimes, even if he does not actively support them. Indeed, in a later work Wellman argues that democracy and self-determination do not have any necessary entanglement. In this work Wellman argues that non-democratic groups can make claims for self-determination on the basis of freedom of political association, assuming they meet the conditions stipulated by his minimal account of justice.[[93]](#footnote-93)

However, if non-democratic groups are justified in making claims for self-determination there is little to protect the individuals subject to these groups from the domination of the state. Although these non-democratic political associations would guarantee a minimum of negative rights, these rights could in many cases be insufficient, because as I argued in the last section, when individuals and groups are dominated, the voluntary consent that the associative theory of self-determination contends should be used if groups of individuals change their mind about the political authority they find themselves subject to, is meaningless, as it is constrained and made non-exercisable by arbitrary power. This means those subject to non-democratic political regimes are not free to exercise their *recursive right* of self-determination, as detailed by associative accounts.

This is pertinent, because choice-based theories more generally argue that collections of individuals are free to *self-constitute* a group and make justified claims for self-determination. Within a certain set of conditions imposed by the choice-based account – that they uphold individuals’ negative rights and sub-minorities’ own rights to self-determination – freely contracting individuals are allowed to delineate a group in which they are the political majority. This is problematic and open to abuse. The idea of self-constitution gives freely contracting individuals the ability to gerrymander groups in which the claims they make will be known to be successful, overriding the wishes of residing dissenters, who under other group configurations would have their wishes recognised.

The choice theory’s response to this line of criticism is that this gives dissenters the right to make recursive claims for self-determination.[[94]](#footnote-94) However, this right is not always exercisable. In making recursive claims some dissenting groups might threaten the viability of the initial claimant’s political association, and thus would not be justified by the conditions set by the choice theory. In resorting to the idea of recursive self-determination this highlights that in the idea of self-constitution there is an assumption that all individuals can through the exercise of their voluntary choices place themselves in political associations with which they are reconciled.

However, this cannot possibly be achieved through a territorially-based politics of self-determination. It assumes that there is a configuration of territorial political associations in which every individual is content. This is not likely. A politics of free voluntary movement, rather, would be better equipped to deliver this aim – but even this would be problematic because not many individuals have the disposition to leave the places in which they live without reluctance.[[95]](#footnote-95)

A convincing idea of grouphood, therefore, needs an account of the grounds on which it is legitimate to require political obligation from dissenters, which the choice-based theory cannot provide through the idea of the self-constitution. Such an account of involuntary political obligation must necessarily be a remedial theory, as this prevents one group losing their voluntarist or choice-based freedom in another’s voluntary exercise of their right to self-determination. If such an account is a remedial theory, although dissenters will not like the new political association they are subject to, it is acceptable to oblige them to the new political authority, as they are subject to no moral or political wrong in the new political association, whereas successful claimants of self-determination’s ability to overcome moral and political wrongs is most likely, or only achieved under a new political dispensation.

Freedom of political association, therefore, should not be taken as a satisfying account to assess claims for self-determination because of its problematic account of political authority. By contrast, *democratic* political authority can justifiably limit the right of political association, so that it cannot be used to make claims for and against the idea of political authority itself. However, other choice-based theorists of self-determination do not argue that freedom of association justifies claims for self-determination, but rather the freedom to choose is an aspect of democracy itself. I will now examine this more sophisticated democratic account of the choice-based theory of self-determination.

**2.3.) The Democratic-Choice-Based Theory of Self-Determination**

In the previous section I argued that the idea of freedom of political association – even in its weak conditional form – should not be taken as providing a satisfactory justificatory framework to assess claims for self-determination. This is because for freedom of political association to justify claims for self-determination it has to rest on a minimal anti-coercion-based account of legitimate political authority that allows cynical and exclusionary claims for self-determination to be made. Such an account of legitimate political authority has insufficient conditions to protect against these types of claims, but also political domination, which constrains the exercise of the right to voluntary political association central to the coherence of the weak associative account.

I argued that democracy should be taken instead as the legitimising basis for political authority, as democracy can protect individuals and groups against political domination. However, when democracy is the basis of legitimate political authority it makes freedom of political association invalid as the justification for claims to self-determination. This is because democracy – when it is properly constituted – creates involuntary political obligations between citizens that cannot be broken unless groups or individuals find themselves subject to a moral or political wrong, such as domination.[[96]](#footnote-96)

The democratic choice-based theory of self-determination, however, agrees that freedom of political association should not be the justificatory basis for claims to self-determination, but instead should be based in the freedom of democratic choice. In what follows I will discuss this view, arguing that democratic claims for self-determination only work on a remedial basis, unlike the democratic-choice-based theory claims, because when democracy is used as a primary right justification for self-determination it is not clear why sub-minorities should be obliged by the outcomes of majority referenda or why collections of individuals are free to break democratically-imposed obligations through self-determination. I will do this in this section by examining Daniel Philpott and David Copp’s democratic choice-based theories of self-determination.

**2.3.1.) Daniel Philpott’s Autonomy-Based Theory of Self-Determination**

For Daniel Philpott, the right to self-determination is a democratic right. Philpott argues that this right should be grounded in the idea of *Kantian autonomy*. The reason Philpott argues this should be the case is because he contends that a central aspect of Kantian autonomy is *political self-rule*.[[97]](#footnote-97) Philpott contends, like Kant, that free individuals should self-govern by imposing upon themselves their own moral law.[[98]](#footnote-98) Politically, Philpott argues, this translates into a defence of democracy as the desired form of government because democracy is the only form of government that is justified by the idea of self-rule.[[99]](#footnote-99)

For Philpott, because normal democratic self-government reflects the exercise of the good of autonomy the same is true of self-determination. Philpott argues, that when autonomous individuals come to decisions about the political authority they have reasoned is good for them, or best reflects justice or moral law, they are free to make claims for self-determination. Philpott is willing to leave exactly why groups of individuals may autonomously choose to make claims for self-determination, but remarks that it could be, for example, for cultural reasons to provide a context that is good for them to exercise their autonomy.[[100]](#footnote-100)

To deny claims for self-determination, Philpott argues, is to deny individuals the free exercise of their autonomy. In other words, a denial of their claims to self-determination is to make them unfree. Indeed, like the weak associative theory of self-determination, Philpott’s account places extra but stronger conditions on the exercise of the right to self-determination – also grounded in Kantian autonomy. These include personal negative rights, like the weak associative theory of self-determination, but unlike this theory a standard of distributive justice as well, in addition to respect for the right of political self-rule itself. The resultant political authority that emerges from claims to self-determination, Philpott claims, must fulfil these conditions.[[101]](#footnote-101)

Philpott requires these conditions to protect against illiberal and undemocratic groups’ claims for self-determination. For Philpott, autonomy-based self-determination only justifies the claims of groups whose collective political life would be in line with the principles of liberal-democracy. Therefore, only autonomously considered and morally acceptable liberal-democratic claims are justified according to his theory.[[102]](#footnote-102)

This would rule out claims such as those of the City of London – the example in the previous section – because it is not a moral claim, in the sense that it would undermine the moral obligation of distributive justice in the United Kingdom as a whole. Philpott’s theory, however, could provide justification for the claims of places like Québec or Scotland, and also non-national regions such as, for argument’s sake, the state of Pennsylvania in the United States, if the residents in these places had reasons for why political self-determination would constitute for them an appropriate exercise of their autonomy.

However, whilst Kantian autonomy is an idea of *individual* self-rule, democracy is an idea of *collective* self-rule. Because Kantian autonomy is based in individual self-rule it is in tension with the collective self-rule of majoritarian democracy – it struggles to show why democratic decisions that one does not agree with can be authoritative over autonomous individuals. As Robert Paul Wolff has persuasively argued, majoritarian democracy – which is more or less accepted in most contemporary democratic states – is not consistent as a form of political authority with the idea of Kantian autonomy.[[103]](#footnote-103) Wolff argues autonomy consists in following one’s own moral law, but that in majoritarian systems of democracy, political subjects are obliged to obey the will of the majority. As such, one is not obeying one’s own moral law, but the law of another.[[104]](#footnote-104)

For Wolff, this means that for democracy to reflect autonomy the decisions it authors have to be unanimous.[[105]](#footnote-105) This is so that they do not impose laws on individuals that are not their own. This creates problems for claims to determination that are conducted by majoritarian referenda. Even in cases of overwhelmingly *pro* or *anti*-secessionist claims for self-determination there are always dissenting minorities. For example, in 1905 when Norway voted to secede from its union with Sweden, 99.95% of the (male only) electorate voted for independence. Similarly, in the 2013 Falkland Islands Sovereignty Referendum 99.8% of the electorate voted to affirm the islands current constitutional status – despite this overwhelming majority, in raw numbers, three islanders voted to end the island’s status as a British Overseas Territory. Therefore, achieving unanimity appears to be exceptionally unlikely in self-determination referenda.

Nevertheless, one could imagine that a reformed version of Philpott’s autonomy-based democratic-choice account of self-determination could involve the condition of *collective deliberation*, such as in Habermas’ conception of political autonomy – with the idea being that through reasoned discussion individuals could collectively and unanimously agree on what their future political identity and status should be.[[106]](#footnote-106) However, in contemporary mass societies the idea that deliberation could also come to unanimous decisions is an equally implausible idea. Indeed, referenda campaigns, arguably, are the closest thing that exist in liberal-democracies to a mass deliberative politics. Referenda campaigns often manage to engage high amounts of citizens – with above average electoral turnouts – in serious discussion over what the future of their region should be. When the stakes are so high, the vote is not treated as trivial, as can often be the case in other elections.

However, these quasi-deliberative campaigns have not lead to unanimous decisions, or anything close to them. In Malta in 1964, Québec in 1980 and 1995, Puerto Rico in 2012, and Scotland in 2014, the citizenry were nearly equally divided. It might be possible to come to unanimous decisions by hashing-out agreements amongst elite actors, such as political representatives, although it is unlikely that this would take place in the spirit of deliberation, but rather something more akin to negotiation and compromise.[[107]](#footnote-107) But the decision to self-determine is one that Philpott contends should be made by popular referenda.

Reeling from the conclusion that unanimous democracy is not possible in the contemporary world, Wolff reluctantly concedes that there can be no mandatory idea of democracy and advocates instead voluntary anarchist democracy, which he contends is compatible with Kantian autonomy.[[108]](#footnote-108) I will not argue whether or not Wolff is correct in rejecting political authority on the basis of Kantian autonomy, but I do contend he is correct in his assertion that involuntary majoritarian rule is incompatible with *individual* self-rule in the Kantian sense. Taking this to be correct, therefore, majoritarian democracy only makes sense as *collective* self-rule.

This involves dropping individual autonomy as the justification for claims to self-determination and basing it instead – as was relevant for Rousseau, but not Kant – in non-domination.[[109]](#footnote-109) When democratic rule is based in non-domination collectively determined decisions can be authoritative over individuals because in the republican idea of freedom not all forms of interference constitute unfreedom or domination. Only interferences that take place from an agent or agency’s relationship of arbitrary power over others are dominating.[[110]](#footnote-110) Collective democratic decision-making does not reflect such a relationship of arbitrary power. Instead, assuming the democratic process gives individuals equal and sufficient control over decision-making, the outcomes authored by this process can be accepted as authoritative because they are not made on a whim by an authority with arbitrary power.[[111]](#footnote-111)

As such, a plausible democratic justification for self-determination should not be based in the idea of individual autonomy, because it cannot show why sub-minorities should accept majoritarian decisions as authoritative over them. However, for David Copp, democratic-choice-based claims for self-determination are not based in individual autonomy but in a weaker idea of *respect for groups’ political choices*. This I will examine now.

**2.3.2.) David Copp’s Respect-Based Theory of Self-Determination**

In comparison to Philpott’s autonomy-based justification of democratic-choice-based claims for self-determination, for David Copp the right to self-determination is based in *respect* for ‘societies’ choice to democratically self-govern.[[112]](#footnote-112) Copp argues that there should be non-interference in the exercise of this right because a failure to allow societies to self-determine shows a lack of respect for the value of their democratic choice.[[113]](#footnote-113)

Under the process of normal electoral democracy, Copp argues, respect is shown to individuals by giving them equal votes. Because individuals have an equal stake in the process they can accept the outcomes authored regardless of their content.[[114]](#footnote-114) Copp argues that the same is true of self-determination in democratic referenda. If referenda happen under fair and equal conditions, Copp argues, their outcomes should be accepted as binding on all the members of a society and be recognised by other political authorities. Like Philpott’s account, this narrows the scope of justified claims for self-determination to those of liberal-democratic claimants.[[115]](#footnote-115)

Copp argues that for referenda to be authoritative over all the members of a group the claimants of self-determination must necessarily be ‘societies’.[[116]](#footnote-116) Societies, Copp argues, are not nations. Copp gives the example of English-speakers in the province of Québec not being members of the Québécois nation but nonetheless being members of Québec society.[[117]](#footnote-117) For Copp, Québec is a society because all those resident in its territory are engaged in ‘social relationships’ and ‘practices of cooperation’, meaning that regardless of the outcome reached in a referendum on Québec’s constitutional status they must be taken together as a group to show their pre-existing social and cooperative commitment to one another.[[118]](#footnote-118)

However, Copp’s idea of societies as the appropriate candidates for self-determination is problematic. By societies what Copp must mean is *administrative political regions*. For example, it would be odd to claim that the residents of Montreal do not belong to the same *society* as the people who live less than an hour away, over the provincial border, in Ontario. Therefore, by societies what Copp must mean is administrative regions, because administrative regions, like states, have special obligations between their subjects such as those of citizenship or in this case sub-national or regional citizenship. These are involuntary relationships of formal political co-operation, which the residents of Québec do not have to the same degree with the residents of eastern Ontario – rather, these relationships are involuntary, at least in terms of those not obliged by the Canadian federal government.

This is problematic as a justificatory framework to assess claims for self-determination because it biases claims for self-determination to groups that already have the status of an administrative region. It excludes groups without this prior status. For example, prior to 1999 Wales was not an administrative region of the United Kingdom, but was a functional part of the entity described in U.K. law as *England and Wales.* Under Copp’s account, Wales would have had no right to self-determination – that which it exercised in reality through a narrowly-won referendum in 1997 and with the establishment of the National Assembly of Wales two years later.

Wales would only have been able to make justified claims for self-determination under Copp’s account if England ceded that choice – because the unit of making choices is the administrative region as a whole, if it were not, then Copp’s account would be a nationalist one that defines the appropriate candidates for self-determination as nations. However, because societies are in fact administrative regions in his account this means that groups that are subject to a remedial wrong have to rely upon the goodwill of the rest of their administrative region to concede the right to self-determine to them, giving the rest of the region arbitrary power over non-regional claimants.

Furthermore, what Copp’s account also ignores is that administrative regions in liberal-democracies are supposed to be in equal political relationships with other regions, and that their subjects are supposed to have a proportional and individually equal stake in the representation that elects their state’s central government. If a whole union or state affirms its self-determination through the boundaries of the *status quo*,because all individuals are treated equally in this process, all political subjects and the societies they form are obliged to respect this.

This is a stark conclusion because it means that no claims for self-determination can be made against liberal-democracies on Copp’s terms – assuming there is always a state-wide majority for the *status-quo*, which is likely to be the case.[[119]](#footnote-119) However, if the idea of equal respect for democratic choices is reconceptualised in remedial terms justifiable claims for self-determination can be made when groups are not equal participants in the democratic process.

When equal respect is violated or a groups’ equal democratic choices are constrained in some way, democratic claims for self-determination can become justified on a remedial basis, as opposed to on the grounds of a primary right. This is because the conditions that make democratic decisions authoritative over political subjects have been broken and claims for self-determination are justified because they restore groups to a position of equal democratic self-government.[[120]](#footnote-120)

Indeed, as a remedial right this has another advantage over Copp’s primary right conceptualisation of equal democratic choice, because by conceptualising the right in this way it does not bias claims for self-determination to administrative regions. This is the case because democratic disrespect and the violation of equality can happen just as easily outside of the neat confines of administrative borders. In conclusion, therefore, there is a democratic justification for self-determination, but it cannot be a choice-based primary right one.

**2.4.) Conclusion**

In this chapter I have argued against the choice-based theory as a justificatory framework to assess claims for self-determination. My problem with the choice-based theory has been that it argues that the motivation for self-determination should be political voluntarism. I have refuted this claim arguing, instead, that the motivation for justified claims for self-determination should not be political voluntarism but wanting a collective life to which individuals and groups can be reconciled that promotes their freedom. However, what is of value in the choice-based theory is that it destabilises the unquestioned legitimacy of existing political authorities in contemporary states. As I will argue in chapter five, this is a positive idea because few existing political authorities live up to the standard of legitimacy – albeit a different one than that articulated by most choice-based theories of self-determination – which they ought to maintain.

I have argued throughout the course of this chapter that each version of the choice-based theory of self-determination is problematic for different reasons. I argued that the strong associative account of self-determination is compatible with anarchic political relations in which there is no protection against interpersonal domination, which constrains this account’s own justificatory value of voluntary consent. I argued that the weak associative account of self-determination is problematic, because it can justify the claims of cynical and exclusionary claimants and that it also has an insufficient theory of political authority that similarly fails to protect individuals and groups against domination, constraining the account’s own value of voluntary political association.

Finally, I argued in this chapter that democratic-choice-based theories of self-determination either fail to give a satisfactory account of why individuals should accept majoritarian political decisions, such as in independence referenda, or to satisfactorily show how the political obligations the condition of democratic equality imposes between citizens and to the state can be broken. In this chapter I critiqued the choice-based theory principally as an individualistic primary right theory of self-determination. In the next chapter, however, I will examine the nationalist theory of self-determination to see if it as a collective primary right of self-determination can succeed where the choice-based theory failed.

**Chapter Three: The Nationalist Theory of Self-Determination**

In this chapter I will examine the nationalist theory of self-determination. I will argue that this theory, like the choice-based account, fails to provide a satisfying justificatory framework to assess claims for self-determination. The nationalist theory is a primary right account of self-determination. Its central claim is that nations are justified in making claims for self-determination by virtue of certain characteristics that they have. In other words, for the nationalist theory, nations have justified claims for self-determination by virtue of being nations. This is because nations embody certain characteristics, the theory contends, that should be politically recognised or considered as relevant for political conduct. These characteristics can be both ascriptive and political.[[121]](#footnote-121)

The ascriptive characteristics of nations that justify their claims for self-determination are their national culture. For ascriptive nationalist accounts, nations provide individuals with identities, cultural contexts, or culturally-specific goods that are valuable for them. Ascriptive accounts argue that public recognition of these aspects of nations is required so that groups and their members can protect what is valuable for them so that they can live the sorts of lives they want to live.

Whereas, for political nationalist accounts, it is not the ascriptive characteristics of nations that justify claims for national self-determination, but it is political values, such as solidarity, understanding, or trust, that they claim nations embody better than other forms of political association. Indeed, there are also hybrid accounts that claim that it is the political treatment national groups face from others that justifies the claims for self-determination required to protect the ascriptive characteristics which national groups value.

In this chapter I will critique the central nationalist claim that nations are justified in making claims for self-determination by virtue of being nations, because of the characteristics they embody. I will argue, instead, that nations are justified in making claims for self-determination, not because they are nations, but because of the remedial wrongs they are often subject to, specifically including domination. As such, I will not critique the nationalist account, as many anti-nationalists do, on the basis that it is illiberal and supports ethnic allegiances.

Instead, contemporary theoretical accounts of nationalism are almost all exclusively liberal. It is uncontroversial, for these accounts, that illiberal nationalisms are not justified in making claims for self-determination. Indeed, many anti-nationalist critics also ignore that there are many real-world liberal nationalist groups. Rather, I will critique the nationalist theory on the basis that liberal-nationalism fails to provide a satisfactory justificatory framework to capture and adjudicate upon many real-world liberal-nationalists’ justified claims for self-determination.

I will make this argument by examining four nationalist accounts of self-determination: 1) the special-obligations; 2) autonomy-based; 3) instrumental; and 4) fairness-based accounts of self-determination. I will argue that the *special obligations account of national self-determination*, which argues that nations are moral communities with special duties between their members, biases claims for self-determination to nations that are already embodied within states or other sub-state forms of political authority. I will argue that in instances of political conflict between politically and non-politically-embodied nations this can subjugate the latter to the former group, as a relationship of domination.

In the following section I will argue that the *autonomy-based account of national self-determination*, which argues that nations provide a cultural context from which individuals derive their identity and can exercise their autonomy, justifies the claims of non-national groups. This, I will argue, can create territorial fragmentation, undermining the nationalist idea of self-determination in a unified homeland and constrain the exercise of members of national groups’ autonomy. I will argue, because of this that ascriptive nationalist accounts cannot justify claims for self-determination, and that the justification of this value must be *political*.

Following this I will discuss two *instrumental political accounts of national self-determination*. I will argue that these accounts, which contend that nation-states give the best basis to pursue social justice and commitment to the procedures of democratic self-government, provide either too sectarian a reason for pursuing national self-determination, in the case of social justice, or that they support a politics of assimilation, instead of self-determination, in the case of democratic self-government. I will argue, instead, that an idea of problematic political treatment is required to justify national claims for self-determination.

In the final section I will discuss the *fairness-based account*, which uses an idea of unfair political treatment to justify national groups’ claims for self-determination. I will argue, that despite the fact that this account uses an idea of bad political treatment to justify nations’ claims for self-determination, unfairness is the wrong form of political treatment to assess claims for self-determination. This is because national-identity-based unfairness is a wrong that biases claims against non-nations that can also have justified claims for this right. I begin, however, by examining the special obligations account of national self-determination.

**3.1.) The Special Obligations Account of National Self-Determination**

In this section I will examine the special obligations account of national self-determination. This account contends that nations are a species of moral community in which *special obligations* exist between members. The account argues that a political process is required to exercise the special obligations that exist between members of a nation and that it is securing this process that justifies claims for national self-determination.

However, I will argue in this section that nations are not moral communities that have special obligations between their members in themselves. Rather, I will argue that nations are only communities that have special obligations when they are states or other political associations that can enforce the involuntary obligations of citizenship and legitimate political authority. I will argue that this problematically biases claims for self-determination to nations which are already embodied in states or other forms of political authority and that this can constitute the domination of non-state-embodied groups. I will make this claim through a discussion of David Miller’s special obligations account of national self-determination.[[122]](#footnote-122)

For Miller, national self-determination should not be considered as antithetical to the politics of liberalism. Instead, for Miller national self-determination is the basis from which liberal politics should be conducted.[[123]](#footnote-123) It is from this claim – that there is no necessary contradiction between nationalism and liberalism – that Miller develops a justification for national self-determination. Miller argues that the dichotomy constructed by anti-nationalist liberals and others between *universal* and *particular* moral obligations is mistaken. Miller argues, instead, that basic or universal obligations can only find pertinence through particularist expression.[[124]](#footnote-124)

In contrast to the Kantian view of moral duties being based in reason, Miller articulates a Humean account of moral obligations based in ‘sentiments’.[[125]](#footnote-125) Miller contends, that moral duties are not discovered through abstract reflection, but rather with reference to one’s own personal identity and motivations. Miller argues that it is from within the cultural context that constitutes one’s own personal identity and motivations that duties are constructed.[[126]](#footnote-126) These duties are not necessarily different from place-to-place, or from group-to-group, but Miller contends that they can only come to exist and be known through particular expression.

For Miller, duties to ones’ compatriots are not a functional discharge of universal obligations, but are duties that are constructed from within a shared cultural context, discoverable only to those living in that culture.[[127]](#footnote-127) Miller argues, the reason why these duties are accepted as morally authoritative by the individuals who live in the relevant culture is because the cultural particularism they reflect is not only good for the life of the group but also the individuals themselves, as it is aspects of the culture that constitute their identity that are reflected in these duties.[[128]](#footnote-128)

However, because particularist obligations can only be discovered in context, a process is required to discover them. For Miller, this is a deliberative process that draws on a mediating ‘public culture’.[[129]](#footnote-129) This is important for Miller because he argues that tradition cannot simply be taken as the basis of moral obligations. Rather, Miller contends, members of a nation should draw upon a history of duties to deliberate and affirm, reaffirm, or deny new and existing moral obligations in a context of old and existing cultural and social practices that constitute the life of the relevant nation. For Miller, this makes national obligations consistent with liberalism, because they are revisable and members of nations are equals in this process. Therefore, according to Miller’s liberal-nationalist account of self-determination, duties are not the product of a conservative view of morality, nor do they have to be imposed in a totalitarian manner.

Miller explains this point with reference to the example of the National Health Service in the United Kingdom. Miller contends, it is not from the abstract value of universal healthcare that the value of this institution is grounded, but from the continual role it has played in U.K. national life. The obligations the N.H.S. places on U.K. nationals, Miller argues, comes from a process of continual re-evaluation of its role in the nation. Nationals should consider why the N.H.S was founded in the context of the post-war period and consider if the duties it imposes on nationals are still a relevant part of national life – those that they should continue to affirm.[[130]](#footnote-130)

For Miller, the need to have this deliberative process – which necessarily is a political one – is what justifies claims for self-determination.[[131]](#footnote-131) In other words, by a nation being a liberal-democracy in its own right, it can discharge its own special obligations.[[132]](#footnote-132) For Miller, this is distinctly liberal because it is only when nations are self-determining that the basic needs and interests of individuals are fulfilled – as particularist duties are created to fulfil them.[[133]](#footnote-133)

However, this is problematic because only nations that are embodied within their own political authority can claim self-determination. This is because Miller has conflated the obligations of *citizenship* with the obligations of *nationality* – two ideas and concepts that are often wrongly treated as synonymous in day-to-day usage.[[134]](#footnote-134) The obligations of citizenship are the involuntary political duties individuals are required to obey because they are obligations of political authority. These can be cultural in content and can have the appearance of being duties of the nation, but they are not because they come from the source of legitimate political authority.

By contrast, national duties are obligations to the cultural life of a nation. However, nations can exist embodied in a state of their own or exist unembodied, subject to the political obligation of an authority that reflects the culture of another nation.[[135]](#footnote-135) Portugal, for example, is both a nation and a state, whereas Kurdistan is a nation but not a state. The northern portion of Kurdish nation is not embodied in its own state but is subject, instead, to the political authority of the state of Turkey – which publically affirms Turkish national identity.[[136]](#footnote-136) Furthermore, involuntary national duties can be embodied within regional political authorities, as is the case with non-state-embodied nations, such as Wales or Catalonia.

National duties for non-embodied groups such as the Kurdish can only be voluntary, because not every individual’s personal identity is constituted by the vision of national identity asserted by particular nationalist political advocates. Therefore, there is no way to adjudicate between different visions of national identity, without the political authority to legitimately enforce the deliberative process Miller advocates, whilst simultaneously remaining liberal.

Whilst a blithe anti-nationalist cosmopolitanism is mistaken to think that identities are voluntarily chosen or easily adapted – as identities are contextually formulated – it is true that there is no single or authentic version of a national identity.[[137]](#footnote-137) For example, being Irish means different things to different Irish people – not one single Irish nationalist group has a monopoly on defining what constitutes Irishness. It would be illiberal to enforce national identities that reflect one vision of Irishness, or any other national identity, onto all the members of a national group. Nor indeed, is this actually possible without the coercive power of the state being used to implement this in an illiberal fashion.[[138]](#footnote-138)

It is in this regard that Miller’s theory is subject to a *chicken and egg problem*. Non-embodied national groups have to claim self-determination to discharge their national duties in a manner that is consistent with liberalism, however, these duties do not actually exist until the group in question is self-determining. In other words, they have to have the mediating political process of deliberation to make these duties a reality, as duties of citizenship.[[139]](#footnote-139) Therefore, the special obligations account of national self-determination is biased towards politically-embodied nations, because these are the only nations that have liberal-consistent special obligations.

This bias is reflected in Miller’s discussion of secession. For Miller, groups are free to secede from multinational states when the national identities of the groups that compose these states are distinct and not easily reconcilable.[[140]](#footnote-140) However, for groups with dual or *nested* identities Miller places on these groups extra conditions. Miller argues that larger nations can have legitimate claims on minority groups. Miller contends that larger nations, under appropriate circumstances, can claim smaller nations to be part of their own.[[141]](#footnote-141)

Miller discusses this with reference to the relationship between Britain and Scotland. Whilst Miller supports the idea of Scottish devolution as a reflection of Scots dual or nested Scottish and British identities, Miller argues that in the event of a referendum on Scottish independence that all of Britain should be given a vote, because Scotland is a constitutive part of the British nation.[[142]](#footnote-142)

However, if one suspends disbelief and concedes that Scotland is a nation subject to a remedial wrong Miller’s claim that the special obligations of British nationhood begin to appear problematic.[[143]](#footnote-143) By including non-members of the proposed state in an independence referendum, the group in question’s ability to overcome the remedial wrong they are subject to is held at the discretion of non-members. One could assume in the case of the U.K. that this would lead to a denial of Scottish independence. But even if this was not the case and England, Wales, and Northern Ireland voted for Scottish independence, the fact that they have the power to deny Scotland’s independence is domination – it is at their discretion to deny a group with a remedial right their justified claim for self-determination. The rest of the U.K. in this case would have the arbitrary power to decide Scotland’s constitutional future and not the Scottish citizenry.[[144]](#footnote-144)

Miller’s argument to include the rest of a state’s subjects in a referendum is not unjustified if the group seeking to secede does not have a remedial right to self-determination, if they do have a remedial right, however, his argument would constitute these groups’ domination.[[145]](#footnote-145) Furthermore, the *status quo* bias in Miller’s theory of self-determination is seen in his discussion of Northern Ireland. Miller contends that the Good Friday Agreement which ceded the principle of U.K. sovereign rule over Northern Ireland – if a majority of its citizens decide this should be the case – was only acceptable for the instrumental reason of ending conflict in the province. However, Miller contends that this was wrong from a principled point of view, because as a part of the United Kingdom, the rest of the U.K. should have a say in Northern Ireland’s constitutional status, as such a loss of territory affects the British nation as a whole.[[146]](#footnote-146)

Withstanding the fact that the U.K. and Britain are not synonymous – the state is officially called the United Kingdom of Great Britain *and* Northern Ireland – and that the conflict in Northern Ireland was a conflict over national identities, Northern Ireland also has a place in the idea of the Irish nation. In other words, for many nationals of the Republic of Ireland *the north* is an integral part of the Irish nation.[[147]](#footnote-147) Indeed, the Republic of Ireland had a territorial claim over Northern Ireland until 1997, when it was removed from the Irish constitution by referendum, as a condition of the Good Friday Agreement.[[148]](#footnote-148)

Northern Ireland, therefore, can be understood as integral to both southern Irish nationalists and English, Welsh, and Scottish British nationalists’ stories of their nations, but for Miller it is only the latter group that have a legitimate claim over the region. Assuming, the strength of feeling between both groups is equal, for Miller to favour U.K. political rule over Northern Ireland is to provide an account of self-determination that is biased towards the claims of existing jurisdictional boundaries.

In the case of Northern Ireland the special obligations of British and Irish nationhood are equal, especially in terms of how the two communities in the region conceive of themselves, and thus there is no way to favour either groups’ jurisdiction over the territory. Therefore, the obligations of existing political authorities problematically supersede the obligations of nationhood in the special obligations account. The population of Northern Ireland are not *instrumentally* entitled to determine their own constitutional status, as Miller claims, but are entitled *in principle* because including the population of the rest of the United Kingdom gives this group arbitrary power over Northern Ireland Irish nationalists, in particular, who object to the jurisdiction of the *status quo*.[[149]](#footnote-149)

Northern Ireland and Scotland – assuming the latter has a remedial right to self-determination – and other groups who have remedial rights to self-determination should be able to decide what their constitutional status ought to be by themselves, regardless of how this affects others’ nationhood.[[150]](#footnote-150) In the next section I will discuss autonomy-based claims for national self-determination to see if this account can provide an alternative basis for the nationalist theory to offer a convincing justificatory framework to assess claims to self-determination.

**3.2.) The Autonomy-Based Account of National Self-Determination**

In the previous section I argued that the special obligations account does not satisfactorily ground nationalist claims for self-determination because it biases claims towards the self-determination of politically-embodied nations, against those of its non-embodied counterparts. This, I argued, would lead to the domination of non-embodied nations with justified remedial claims for self-determination by those embodied in states or with their own political administration. In this section I will discuss an alternative justification for national self-determination – the autonomy-based account.

The autonomy-based account of national self-determination argues that political recognition of a group’s culture is a requirement for its members to exercise their personal autonomy. This is because their culture provides for them the context in which their identity and chosen ends can develop and be cultivated. For the autonomy-based account, national self-determination is justified because it secures the cultural context for the exercise of its members’ autonomy.

However, in this section I will argue that cultural autonomy-based arguments for self-determination are not specific to nations. I will argue because of this that the autonomy-based account of national self-determination problematically justifies the claims of non-national groups, fragmenting political authority, which nationalists have reason to protect against. I will argue that autonomy-based arguments can ground group-based cultural rights, but it cannot justify claims for self-determination and instead that a political reason, separate from the ascriptive characteristics of nations is required to justify their claims. I will make this argument through a discussion of Avishai Margalit and Joseph Raz’s autonomy-based account of national self-determination.[[151]](#footnote-151)

For Margalit and Raz, groups that are entitled to self-determination are those that have an *encompassing culture*.[[152]](#footnote-152) This is a culture in which belonging shapes members’ identity in relationships of mutual recognition with others, and it is one that is sustained beyond the face-to-face interactions of a small number of individuals. As Margalit and Raz write, “individuals find in [an encompassing culture] a culture which shapes to a large degree their tastes and opportunities, and which provides an anchor for their self-identification and the safety of their effortless, secure belonging”.[[153]](#footnote-153) Therefore, encompassing cultures are valuable for their members because they provide a context for the exercise of their autonomy and provide the social preconditions for their self-respect and well-being.[[154]](#footnote-154)

However, Margalit and Raz argue to secure this context, individuals’ membership of an encompassing culture needs to be given a public component. This public component is self-government.[[155]](#footnote-155) Margalit and Raz argue that for some nationalists self-government is intrinsically valuable – for these individuals national self-government is the exercise of their autonomy.[[156]](#footnote-156) In other words, their culture is the politics of their nation. Nonetheless, Margalit and Raz recognise that this is not the case for all individuals and argue that self-government is valuable for these individuals, nonetheless, because members of encompassing groups are the best judges of how political power should be directed to protect their national culture, and not others.[[157]](#footnote-157)

For non-identifying individuals subject to the political authority of a self-governing nation, however, the autonomy-based justification for national self-determination can be problematic. When encompassing groups are self-determining they are political groups with jurisdiction over a political territory. However, not everyone in that territory is a member of the encompassing culture that is publically affirmed by the governing political authority. Margalit and Raz are aware of this problem in multinational states and contend that minority nations have equal claims to self-determination to protect their culture for the exercise of their members’ autonomy – presumably through some form of regional autonomy or similar solution.[[158]](#footnote-158)

However, for groups such as immigrants their self-respect and cultural well-being is not going to be obviously advanced by the protection of the host nation’s culture. Indeed, the stipulations of citizenship and residency in many countries involve a high degree of cultural integration or assimilation, which can be a painful and disorientating experience for members of these groups. However, and more crucially, some immigrant groups can have their own encompassing culture. These groups have (i) a link to their *homeland* and (ii) a link to fellow immigrants from the same culture. I will examine each of these points in turn.

First, it is problematic to assume that because immigrants are not resident in their homeland that it is not possible for them to still be part of their homeland’s encompassing culture. Margalit and Raz tend to discuss the idea of an encompassing culture as if it is an *immersive* idea – that it exists in a national territory almost as if it is a *swimming pool* that residents are submerged in. This is not the case. If one considers tourists who enter a national territory, they do not become awash in that territory’s national culture to the point where it becomes constitutive of their self-respect and well-being – rather this only comes with time and sustained integration and even this may not become a process that ever can become completed.

Rather, encompassing cultures should be thought of as a *practice*. Encompassing cultures should be thought of as something that individuals do and reproduce. In the 19th and 20th centuries many colonialists living in India or Myanmar, for example, or other parts of the British Empire, lived their lives as if they were living in Britain – they reproduced British national identity and the practices that they thought constituted this idea elsewhere. As such, with the autonomy-based account of national self-determination, in extreme cases migrants could bring their culture elsewhere and in quasi-Lockean terms claim political jurisdiction over territory. Migrant groups could claim territory not by adding-value through cultivating it, as was the case for Locke, but by mixing their culture with it.[[159]](#footnote-159)

Therefore, the idea of the political recognition of a group’s encompassing culture being good for the exercise of its member’s autonomy cannot be made specific to the homeland from which that culture initially came. In effect, migrants could annex territory elsewhere and bring it into political union with their homeland – in effect as a nationalist form of colonialisation. This could provide a justification for irredentist nationalist groups to gain territory that might be legitimately held by others by virtue of moving their residency to that place in sufficient numbers. However, the autonomy-based account would likely respond that for this to be possible a large enough group would have to be required to make claims for self-determination of this sort. Presumably the account would contend that this is not very likely in many, if not most cases.

Second and more crucially, however, the autonomy-based account would be likely to claim that this is not a major problem because inevitably what happens when immigration takes place is that immigrants’ culture dilutes and merges with the culture of the host nation. By the time these groups are second, third, or fourth generation immigrants they have assimilated into the host culture.

However, assimilation is not necessarily inevitable. Many first generation immigrants never fully integrate into their host culture. And whilst it is generally the case that second, third, and fourth generation immigrants adopt the host culture, it can still be the case that these groups have *hybrid* identities – those which individuals without tangible immigrant heritages do not. This is crucial as hybrid identities are not dual identities. Dual identity implies a neat compartmentalisation of aspects of two cultures in balance, which few, if any, individuals have. Rather hybrid identities are those that have the potential to become a *third identity* – those that are distinct from the *native* culture but also from that of the ancestral homeland because it is constituted by the culture and experience of generations of *their group* living in a host nation.

Hybrid identities tend to exist for groups that continue to affirm a link with an encompassing culture that is *foreign* to the encompassing culture of the nation in which they reside and are also members. However, hybrid identities have the potential to become third identities, and be seen as encompassing cultures in their own right, when post-first-generation immigrant groups are marginalised and excluded by a whole range of political, economic, social, and indeed cultural factors. If this happens, the autonomy-based account cannot deny these types of groups’ claims for self-determination, as they fulfil all its criteria. The group in question will have their own distinct encompassing culture and their self-respect and well-being will only be secured by its political recognition.

For other theorists, such as Will Kymlicka, who make autonomy-based arguments, this is a relevant problem. Kymlicka argues, that by becoming citizens of the host-state, immigrant groups voluntarily void their right to self-determination as a distinct group.[[160]](#footnote-160) However, whilst this may be true of first-generation immigrants, it is not the case for post-first-generation groups. These groups did not voluntarily cede their right to self-determine as a distinct group – they were born as citizens of a country and just like national minorities who make similar claims they have an encompassing culture that is indigenous to the political authority to whom they are subject.

Autonomy-based theorists like Kymlicka would of course contend that more political resources should be spent on integration to make sure the hybrid identities of post-first-generation immigrant groups do not gain political potency, but in the absence of successful integration – which is a recurrent experience in contemporary states – this theory is obliged to justify the claims of these groups.[[161]](#footnote-161) This runs the risk of territorial fragmentation. This is because hybrid identity groups are rarely concentrated in a particular location.[[162]](#footnote-162) The political implication of these types of claims would be to create a patchwork of political jurisdictions, resembling something like the territorial configuration of the Holy Roman Empire or something less-territorially unified, such as the *millet* systemthat governed the Ottoman Empire.[[163]](#footnote-163)

However, in many ways a millet-like system is the exact opposite of the nationalist idea of self-determination.[[164]](#footnote-164) For nationalists, the territory or *homeland* that composes the idea of the nation is just as important as the place where nationals actually reside. In other words, the land is part of their culture. One only has to consider the irredentist claims of nationalist groups to appreciate this point. As discussed before, the whole island of Ireland constitutes the Irish nation for most Irish nationalists, even the parts in the north where the population overwhelmingly identifies as British. Similarly, this is the case amongst revisionist Israeli Zionists, who argue that the Palestinian territories are part of the territory of the Israeli nation, or Serbian nationalists who make similar claims over the whole territory of Kosovo.

Therefore, the autonomy-based argument for national self-determination collapses into a radical multiculturalism that can justify the self-determination claims of groups that are not nations, but groups that nonetheless have an encompassing culture. Such a type of politics undermines the nationalist idea.[[165]](#footnote-165) It creates territorial fragmentation and in turn loses the instrumental benefits of being a nation in politics – which I will discuss in the next section – such as political solidarity and trust that nationalists find so valuable, in addition to the role that the land plays in their national identity and culture. In effect, this theory grants nations self-determination but not on the terms that most nationalists want, and thus in a manner that presumably must constrain the exercise of their autonomy as their national culture is in some way being inhibited.

The value of encompassing cultures for the exercise of autonomy, therefore, cannot be the basis of national self-determination because it justifies too much. At best this argument can provide an instrumental justification for national self-determination. In other words, that it is only when a group’s national culture is irrefutably threatened by another power and no other options of cultural preservations are available to that group that self-determination is justified on a remedial basis.[[166]](#footnote-166)

Indeed, Yael Tamir argues in a complementary fashion that claims for self-determination and cultural recognition should be considered as separate issues.[[167]](#footnote-167) Tamir agrees with the autonomy-based account of national self-determination that a groups’ culture is important for the exercise of its members’ autonomy. However, Tamir contends that the idea of national identity being important for individuals’ autonomy belongs to a wider species of claims to do with *identity politics*.[[168]](#footnote-168)

Tamir argues that many groups – national groups, religious minorities, sexual and gender groups, and others with beliefs and practices that differ from the majority population – have justified claims for political recognition. Tamir contends, however, for these groups’ recognition to equate to self-determination, would be politically destabilising.[[169]](#footnote-169) Tamir argues, instead, that such groups’ recognition should be received in the form of cultural or group-specific rights. In other words, that not all non-universal rights are necessarily illiberal but in fact culturally-specific rights can act as mechanisms for groups to exercise their basic liberal freedom on equal terms.[[170]](#footnote-170)

Furthermore, Avner de-Shalit complements this claim by arguing that self-determination should not be thought of as existing only to protect goods such as culture but instead as the basis of self-government, so that individuals can take control over their own lives.[[171]](#footnote-171) For de-Shalit the protection of culture is a consequence of self-determination, it is not the value that justifies it. De-Shalit argues that self-government does not merely exist to protect culture, but that it is a more fundamental exercise in controlling political power, rather than being vulnerable to power when it is controlled by others.[[172]](#footnote-172)

Nationalist groups can make claims for self-determination from this political basis, but this has the consequence of these groups being entitled to self-determination not because they are nations but because they are vulnerable to others controlling the political power that affects them. In the next two sections I will examine the political reasons that nationalist accounts contend justify claims for national self-determination – beginning in the next section with an examination of two instrumental accounts of national self-determination.

**3.3.) Instrumental Accounts of National Self-Determination**

In the previous section I argued that the autonomy-based account fails to satisfactorily ground nationalist claims for self-determination, because it justifies the claims of non-national groups. I argued that the justification of such claims can lead to territorial fragmentation, undermining the nationalist ideal of self-determination in a unified territory or *homeland*. I concluded that rather than giving a cultural justification for national self-determination – something that is based in the value of the characteristics of nations themselves – that claims for self-determination are only justified when they are *political*. In other words, it is not the value and the characteristics of the nation, but the political role that nations play – or how they are treated in politics – that should provide a coherent justification for nations’ claims for self-determination.

In this section I will examine the role that nations play in politics through a discussion of two instrumental accounts of national self-determination. For these accounts the question is not why nations ought to be states, as was the case for the previous two accounts, but why *states should be nations*. The first of these two accounts is an instrumental *justice-promoting* account of national self-determination. For this account, when states are nations, it is claimed, greater solidarity is fostered amongst citizens/co-nationals, which is valuable for promoting the normative ends of social and distributive justice.

The second instrumental account is a *democracy-supporting* account of national self-determination. This account contends that it is easier to create political trust and understanding between citizens/co-nationals of nation-states. The democracy-supporting account contends this creates greater commitment to democratic political procedures amongst citizens/co-nationals than in poly-national states where individuals have little tolerance or appetite for compromise with one another. I will argue in this section that both accounts are problematic.

I will argue that the justice-promoting account is problematic because left-of-centre distributive justice is too sectarian a political aim to be pursued in the face of democratic political disagreement. Furthermore, I will argue, that the democracy-supporting account is problematic because it can be used to support a politics of assimilation just as much as the politics of self-determination. As such, I will argue that instrumental political reasons are the wrong type of political reasons to justify claims for national self-determination. I begin by examining the justice-promoting account.

**3.3.1.) The Justice-Promoting Account of National Self-Determination**

The instrumental justice-promoting account of national self-determination argues that when states are also nations the citizens/co-nationals of such states have strong common sentiments providing an ethos of solidarity helpful for pursuing projects of social and distributive justice. In essence, for this account, nationalism is required as the precondition for socialism, liberal-egalitarian distributive justice, or social-democracy.[[173]](#footnote-173) For the justice-promoting account, therefore, claims for self-determination are instrumentally justified in poly-national states to promote the normative value of social and distributive justice.

Brian Barry is one such theorist who has made this argument in his essay ‘Self-Government Revisited’.[[174]](#footnote-174) Barry made this argument by inverting Lord Acton’s thesis against national self-determination.[[175]](#footnote-175) In his essay ‘Nationality’, Acton argued that national self-determination should be resisted because it is a threat to individual negative liberty.[[176]](#footnote-176) For Acton, negative liberty is the supreme normative value that ought to be protected against in politics and argued that nationalism threatens this value because it is a collectivist form of politics that values equality and often supports revolution.[[177]](#footnote-177)

Acton contended this is worrying because he argued equality and revolution are threats to political liberty. Acton argued, instead, that poly-national imperial politics is the best form of government because it secures individual liberty, as heterogeneous peoples – who have little in common – have no incentive to engage in collectivist projects of egalitarian politics. Because of this, Acton contended, the most that can be collectively achieved through an imperial poly-national politics is individual liberty and the rule of law – both of which, Acton argued, resist collectivism and revolution.[[178]](#footnote-178)

However, Barry opposed Acton’s view that negative liberty is the supreme normative value that ought to be upheld and pursued in politics. Rather, for Barry, individual freedom and equality are compatible values that both ought to be considered as politics’ ultimate normative end. As such, Barry argued that the politics of national self-determination is instrumentally justified in poly-national states because the break-up of these states can secure the necessary political and cultural preconditions to promote liberal-egalitarian distributive justice.[[179]](#footnote-179)

However, the justice-supporting account of national self-determination over-emphasises the role a cohesive national identity has as the necessary pre-condition to promote social and distributive justice. It is not necessarily the case that the cohesive identity of uni-national states leads to these desired political outcomes. For example, in uni-national states like the Republic of Ireland, Australia, and the United States, a cohesive national identity has not lead to social-democratic political outcomes in comparison to other uni-national states where this has been the case, such as in Denmark, Sweden, or Norway. Similarly in multinational states like Switzerland or Belgium, relatively high levels of distributive justice have managed to be promoted, at least in comparison to the above countries.[[180]](#footnote-180)

Therefore, what tends to promote just outcomes is not reducible to national identity – as if to claim national solidarity can be utilised by elite actors in the political process to achieve these ends.[[181]](#footnote-181) Indeed, views about social and distributive justice are often constitutive parts – or at least versions of – national identities.[[182]](#footnote-182) For example, American national identity is often thought to involve an idea of individualism and economic self-reliance and in recent times Scottish national identity has been contended to involve an idea of social egalitarianism in opposition to the neo-liberal economic values perceived to be embodied in the British state.[[183]](#footnote-183)

As such, it may not be that a strong national identity always aids the pursuit of social justice – in fact, in some cases it may do the opposite. But even if it did the justice-promoting account can only be taken seriously as a justificatory framework to assess claims for self-determination if one buys the controversial assumption that left-of-centre social justice should be the overriding normative priority of politics. This is a highly sectarian view of politics, and although its aims are ones I do not personally disagree with, it matters how distributive justice is achieved – such as through democratic agreement – rather than it being assumed that it is an end that should be pursued in spite of the fact that many people in democratic and non-democratic societies disagree with this end. Therefore, even if it were to instrumentally work, there are deeper overriding reasons for thinking that the justice-promoting account should not be taken to assess the normative validity of claims for self-determination.

**3.3.2.) The Democracy-Supporting Account of National Self-Determination**

By contrast, the democracy-supporting account of national self-determination is not focused on the *ends* that national solidarity can deliver, but on the political trust and understanding a shared national identity can provide to secure individuals’ commitment to the democratic *process*. This is what justified the idea of national self-determination for John Stuart Mill.[[184]](#footnote-184)

For Mill, the freedom-promoting institutions of liberal-democracy were best supported by citizens having an underlying shared national identity. A shared national identity, Mill argued, provides a common reference point from which a group of individuals can form a body of public opinion, necessary for coherent self-government. Mill argued that in poly-national political associations individuals can become divided by characteristics such as language, preventing them from acquiring the necessary means to functionally govern together.[[185]](#footnote-185) Mill argued, because of this that empires – which are nearly always poly-national political associations – should be broken-up to facilitate the functional self-government of free individuals.[[186]](#footnote-186)

However, Mill was aware that claims for national self-determination against poly-national states rarely involve a clean-break between distinct national groups, because there will almost always be national minorities within the boundaries of the new political unit. To deal with this problem Mill defended what he contended to be the positive value of the idea of national assimilation.[[187]](#footnote-187) The *lesser nationalities* of Europe, Mill argued, should embrace the national identities of those of their larger neighbours for the more important political value of self-government.[[188]](#footnote-188)

For national groups such as these, however, assimilation can be as bad as the absence of self-government under imperial politics. This is because these types of groups are required to lose the identity they value. For many nationalists, losing their identity is not an acceptable trade for self-government. Groups should not have to sacrifice either their national identity or their member’s rights to self-government to secure the opposing value.

When there are intermixed nationalities in a territory, national minorities should not be forced to assimilate, because treating a shared national identity as the precondition for self-government can constitute domination. Indeed, Lenin made an argument similar to this in his essay ‘The Right of Nations to Self-Determination’.[[189]](#footnote-189) In this essay Lenin argued that the value of national self-determination is not based in the political values a nation can give a state, but in the fact that claims for this ideal can end discretionary political rule. Comparing empire to divorce, Lenin argued, that *reactionaries* are opposed to divorce, not because it undermines the family as they purport to be the case, but because it empowers women. Lenin argued the same is true of political divorce, because it weakens the arbitrary power of *oppressing states* and extends democratic self-rule.[[190]](#footnote-190)

In other words, for Lenin, national self-determination was important because self-government protects individuals and groups from domination – overcoming the domination of the imperial state, which should then provide the basis to resist the domination and exploitation of the capital class and the market.[[191]](#footnote-191) Therefore, national self-determination should not be justified on the basis that nations are good for democracy, because it is democracy, rather, that is good for groups and their freedom – and it is simply the case that many of these groups are nations.

With this being the case a shared-national identity cannot be treated as a precondition for self-government. The political right of self-government must prefigure what binds citizens together in the exercise of their democratic powers. Indeed, there are a number of means of self-government, including federalism, regional autonomy, power-sharing, and special representation that can help towards this end, when a shared national identity poses an obstacle to the exercise of poly-national groups’ self-government.

It may be the case that the practice of self-government is more fraught under these measures than in single identity states, but this is the price that needs to be paid to secure the more fundamental right of self-government, which itself involves an entitlement against national assimilation. Therefore, whilst a political value must justify nations’ claims for self-determination, instrumental political values should not be taken to make this justification. In the next section I will discuss the fairness-based account as an alternative political basis to ground nationalist claims for self-determination.

**3.4.) The Fairness-Based Account of National Self-Determination**

In the last section I argued that instrumental accounts provide the wrong political justification to assess claims for national self-determination. I argued that it is not the role that nations play in politics, but how nations are treated in political context that justifies claims for national self-determination. In this section I will examine the fairness-based account of national self-determination. For the fairness-based account it is the *political treatment* of minority or non-*mainstream* national groups and their cultural identity that justifies claims for self-determination.

For the fairness-based account this political treatment is constituted by the ‘benign neglect’ of liberal states or is created from practices of uni-cultural nation-building in poly-national states.[[192]](#footnote-192) The account contends that these forms of treatment represent a failure of common citizenship, creating the unfair treatment of minority citizens.[[193]](#footnote-193) The account contends that self-determination establishes fair and equal parity between citizens with different national identities.

However, in this section I will argue that whilst an idea of bad political treatment is necessary to justify claims for national self-determination, unfairness is the wrong form of treatment. I will argue that the idea of fairness treats self-determination as a good to be *distributed*, when it should be thought of, instead, as a *status*. I will argue when self-determination is thought of being a good to be distributed that the fairness-based account misses the reason why self-determination should be thought of as being valuable. This is because it treats self-determination the same as other group-differentiated rights, which are used to compensate groups from forms of cultural unfairness in a multicultural society. I will argue it reduces self-determination to being a means to help minority groups exercise the same citizenship as their non-group compatriots, rather than as the entitlement to have their own citizenship – that which entitles groups to their own unique status of self-government, where they are not merely self-administrating rules made by others, but are making rules for themselves.

It is not my claim that unfairness should never justify claims for self-determination, but that unfairness-based accounts fail to highlight the broader reasons why self-determination is important – because groups can have justified claims for self-determination in the absence of being subject to nation-specific forms of unfairness when they are subject to other remedial wrongs. When they are subject to these wrongs self-determination provides the best means to protect against this, as groups subject to these wrongs do not have to associate – at least on a set of issues – with those who subjected them to this wrong in the first place. I will make this argument in the following section by discussing Margaret Moore and Will Kymlicka’s fairness-based accounts of national self-determination.

For Moore, the three other accounts of national self-determination – the special obligations, autonomy-based, and instrumental accounts discussed in the previous sections – provide a basis to understand why nationhood and national identity are important for individuals and politics. Moore contends that nations are moral communities with special obligations, especially in terms of the duties that stem from the creation and use of nationally specific goods; that national cultures are important for individuals and the exercise of their autonomy; and that nations provide certain instrumental goods such as democratic trust.[[194]](#footnote-194) However, Moore argues, that these accounts are not sufficient to justify claims for self-determination without the political component of *fairness*.[[195]](#footnote-195)

None of these components, Moore argues, can justify claims for self-determination, collectively or by themselves. This is because alternative political means, Moore argues, exist to embody the claims of these accounts. Cultural goods and identities, she contends, are not necessarily national goods and identities, and democratic trust can also be established in multinational political contexts. Moore argues, instead, that a nation-specific political justification is required to ground claims for national self-determination. This, she argues, is found in the idea of fair political treatment.[[196]](#footnote-196)

Moore makes this argument by drawing an analogy between how the liberal state treats different religions and how it treats different national identities. Moore argues that it is uncontroversial for the liberal state to accept the value religion has for many of its subjects. Moore contends that the same should be the case for how the liberal state views its subjects’ differing national identities. With religion the liberal state typically creates a public/private divide, contending that citizens should be protected in terms of their private rights to freely worship, but that the state should not publically affirm any faith.[[197]](#footnote-197)

Moore argues, however, in contemporary liberal states that there is an analogous established faith for national identities. States consciously or unconsciously promote the national identity of the dominant culture.[[198]](#footnote-198) The United Kingdom, for example, has promoted an overly English-centric British national identity and Canada has promoted an Anglophone Canadian national identity. Moore argues that the political architecture does not exist for minority members of many states to exercise their divergent national identities on fair and equal terms.

Furthermore, Moore argues, unlike religions, national identities cannot be removed from the public sphere. This is because nationalism is a political as well as a cultural idea and that it is impossible to actually have an acultural state.[[199]](#footnote-199) For example, a state has to use a particular language, or set of languages for administration, but by using certain languages and not others, states privilege the national identities of those who value the chosen languages.

Moore argues, therefore, that in poly-national political contexts minority national identities, which tend to be the groups that do not receive state privileges, should be recognised by the state to give the members of these groups a fair and equal basis to live and explore their own national lives, as this is required for the state to be consistent with its own liberal principles. Whilst national identities are important for individuals, Moore argues, it is the fair treatment of national identities, in a world where these identities are politicised and cannot be removed from political life, which justifies nationalist claims for self-determination.[[200]](#footnote-200)

However, as an issue of fairness, for this account the political basis to exercise the good of national identity is something that is to be *distributed*. This idea of the fair distribution of the political bases to exercise the good of national identity is discussed by Will Kymlicka.[[201]](#footnote-201) Kymlicka agrees with Moore that national identities are valuable, particularly for individuals’ autonomous self-expression, but that it is the unfair political treatment of these identities that justifies claims for national self-determination.[[202]](#footnote-202)

Kymlicka contends that rectifying cultural injustices is as important an aspect of liberalism as distributing economic and social resources.[[203]](#footnote-203) Kymlicka argues that distributing the political bases for individuals and groups to exercise their different national identities secures the liberal values of freedom and equality through *group differentiated citizenship*.[[204]](#footnote-204) For Kymlicka, group differentiated citizenship is when citizens with different cultural identities are given group-specific rights to exercise their basic liberal citizenship. These rights include poly-ethnic rights, such as exemptions for religious minorities with certain laws, and self-government rights or rights to self-determination.[[205]](#footnote-205)

However, viewing self-determination as a right to be distributed is problematic because it is not the same as other poly-ethnic rights. Kymlicka argues that self-government rights for national minorities, like other forms of group differentiated citizenship, are a means to exercise the same citizenship as their non-national civic compatriots. However, self-determination is not reducible to being an alternative means to exercise the same citizenship that national minorities’ compatriots have, rather it is a form of citizenship in its own right.[[206]](#footnote-206)

Self-determination involves groups taking control of political power for themselves and directing this power towards ends that they deem as being important.[[207]](#footnote-207) Self-determination gives groups the right to create rights for themselves and simply do things differently than from how things are done elsewhere. Therefore, the status of self-determination would still be valuable even in a hypothetically post-nationalist age where national identities are not politicised and are thought to be separate from the activity of politics, because groups can be subject to bad political treatment in ways other than the unfair treatment of their national identities. Groups can be subject to remedial wrongs for non-cultural reasons, such as when they are subject to the arbitrary power of others preventing them from exercising their rights or from voicing their democratic concerns on political, social and economic issues.[[208]](#footnote-208)

Therefore, under the correct conditions non-national groups can be justified in making claims for self-determination to protect themselves from these types of treatment. The fairness-based account does not capture these claims because remedial wrongs can exist in the absence of identity-based forms of unfairness. This does not mean that national groups are not subject to a remedial wrong when they experience national culture-based unfairness, but only that the language of unfairness obfuscates, rather than clarifies the remedial wrong to which nations can be subject. In other words, it is not because nations are wronged by national culture-based unfairness, it is because they are subject to a remedial wrong, more generally, that justifies their claims to self-determination.[[209]](#footnote-209)

This means that certain nations are justified in making claims for self-determination not because they are nations, but because they are politically wronged groups – something that not only nations can claim. The fairness-based account, therefore, provides an insufficient justificatory basis to assess claims for self-determination.

**3.5.) Conclusion**

In this chapter I have argued against the nationalist theory of self-determination. I have argued against the theory’s central claim that nations are justified in making claims for self-determination by virtue of being nations – either in terms of the ascriptive characteristics nations have or political values they can embody. It is because of this I have argued that the nationalist theory cannot provide a satisfying justificatory framework to assess claims for self-determination.

I argued in this chapter that the special obligations account cannot provide a satisfactory account of national self-determination because it lacks the normative resources to distinguish between politically and non-politically-embodied nations. I argued this is necessary because in political conflicts between politically and non-politically-embodied nations the special obligations account is biased towards the former. In the case of non-politically-embodied groups subject to a remedial wrong, the privilege politically-embodied groups receive gives them a form of arbitrary power that can constitute the former’s domination.

Secondly, I argued in this chapter that the autonomy-based account cannot provide a satisfactory basis for nationalist claims to self-determination, because it can justify the claims of non-nationalist groups. This, I argued, could create territorial fragmentation undermining the nationalist idea of self-determination in a unified homeland, in turn constraining the account’s own value of the free exercise of cultural autonomy. I argued, instead, that a political justification is required to ground claims for self-determination,

In the third section I discussed two instrumental accounts and argued that whilst these accounts provide a political basis to assess claims for self-determination, they provide the wrong political basis to assess these claims. I argued that instrumental accounts either provide too sectarian a justification for national self-determination in the case of the justice-promoting account or that the democracy-supporting account provides the justification for an assimilationist politics that can dominate national minorities instead of securing for them their own status of self-determination.

In the final section, I argued that the fairness-based account is correct to contend that some form of political treatment is required to justify claims for self-determination, however, this account provides too narrow an account of what constitutes poor political treatment, failing to capture the justified claims non-nations should be able to have for self-determination.

I concluded in the last section that nations are justified in making claims for self-determination, not because they are nations but because they are groups subject to a remedial wrong. This, I argued, means that nations are not the only groups that can make justified claims for self-determination. However, this also means that not all nations are justified in making claims for self-determination – nations who are not subject to any remedial wrong, therefore, do not have a right to self-determination by mere virtue of them being nations.

This remedial requirement is one the primary right nationalist theory of self-determination does not have – and only achieves in cases through its recourse to liberalism or democracy. In the next chapter I will examine the just-cause theory of self-determination. This is a remedial theory of self-determination. I will examine this theory to see if it can provide a satisfactory account of what constitutes a remedial wrong that can satisfactorily assess if claims for self-determination should be justified.

**Chapter Four: The Just-Cause Theory of Self-Determination**

In this chapter I will examine the just-cause theory of self-determination. The central claim of this theory is that the violation of rights should justify claims for self-determination. The just-cause theory is a remedial account of self-determination – it argues that existing states should be recognised as having *prima facie* legitimacy over their subjects, and that it is only when states violate their subjects’ rights that those who have had their rights violated are justified in their claims for self-determination.

For the just-cause theory of self-determination the rights that are of significance are those of individuals. However, some versions of this theory also take into consideration the rights of groups as providing justification for claims to self-determination. The rights violations the just-cause theory is concerned with include the violation of human, economic, cultural, and jurisdictional or territorial rights. Depending on what rights are violated the just-cause theory of self-determination either takes a *basic* or *substantive* form.[[210]](#footnote-210)

In its basic form the just-cause theory argues that the violation of human rights is what should justify claims for self-determination. However, the basic theory also argues – on what I will contend is an instrumental basis – that the violation of jurisdictional or territorial rights should also justify claims for self-determination. Whereas in its substantive form the just-cause theory argues that the violation of economic and cultural rights is sufficient to justify claims for self-determination.

However, I will argue in this chapter that the violation of rights should not be taken to be exhaustive of what should constitute a remedial justification for self-determination. I will argue, instead, that there are remedial wrongs in the absence of individuals and groups having their rights violated. This, I will argue, can happen in two ways that are relevant for the basic and substantive accounts of the just-cause theory of self-determination.

The first, which is relevant for the basic account, is that individuals and groups can be subject to a remedial wrong when they live under the threat of having their rights removed or infringed upon, even when their rights are not actively violated. The second, which is relevant for the substantive account, is that individuals and groups can be subject to a remedial wrong when they are informally constrained from exercising their rights, despite having their rights formally secured. These wrongs, I will contend, should be conceptualised in terms of domination.

It is because of these two wrongs that I will argue in this chapter for a broader remedial account of self-determination. I will contend that the violation of rights should not be a necessary condition for groups to be justified in making claims for self-determination and will argue, instead, that domination – which can exist in the absence of rights violations – is sufficient to justify claims for self-determination. However, this is not to dispute that rights violations can also be sufficient to justify claims for self-determination. This is because nearly every basic rights violations that happens in politics occurs within a political context of domination – albeit domination where it overlaps with the more obvious and tangible wrong of negative interference.

Furthermore, I will argue in this chapter that the just-cause theory has too *instrumental* a connection to the politics of self-determination with its justificatory basis in the violation of rights. I will argue that rights-based violations – in both the just-cause theory’s basic and substantive forms – can as easily be rectified by other political means. This is because self-determination is a right that lies between the political rights of *revolution* and *reform*.[[211]](#footnote-211) I will argue that a remedial theory of self-determination needs to show how the remedial wrong a state engages in only invalidates political obligation for a specific group of people within the state, as opposed to all of its population – as with the right to revolution – or how the state only loses legitimate political authority over a set of specific political issues, instead necessitating political reform. I will argue that a remedial theory needs to show why self-determination provides the best, if only, political means to protect against the wrongs to which groups are subject.

In what follows I will begin by examining the basic just-cause theory of self-determination, detailing its account and then critiquing it on the basis that it cannot protect individuals and groups from the threat of having their rights arbitrarily withdrawn – and additionally for having too instrumental a connection to the right to self-determination as a means to overcome basic rights violations. I will then proceed to examine the substantive account, where I will discuss the economic and cultural rights-based arguments for self-determination in turn, arguing that each collapse into more basic rights violations, failing to capture the real remedial economic and cultural claims groups have that do not come from rights violations. These, I will argue, are captured by the idea of domination. I begin by examining the basic just-cause account of self-determination.

**4.1.) The Basic Account of Just-Cause Self-Determination**

The central idea of the basic just-cause theory of self-determination is that the only rights violations that should justify claims for this value are the violations of *human rights*. For the basic just-cause theory human rights are taken to be basic rights – a set of rights that are sufficient to provide the conditions for a ‘decent human life’. This is in comparison to a broader list of human rights used to provide the conditions for a well-lived or ‘good human life’.[[212]](#footnote-212) This involves, for example, the right to life, the right to bodily integrity, and the right against torture, but excludes political, economic, and cultural rights.[[213]](#footnote-213)

The basic just-cause account contends that groups whose members have had their human rights violated by the political authority they are subject to should no longer be obligated by that authority and are justified in the claims for self-determination they make. The account argues that any other rights violations should not justify claims for self-determination – these include the violation of substantive civil rights or the violation of a more expansive conception of what should be taken to constitute human rights.

However, I will argue in this section that the rights-protecting account of legitimate political authority that the basic just-cause theory of self-determination rests upon provides an unsatisfactory basis to assess claims for self-determination. This, I will argue, is because it is unduly impermissive. I will argue, instead, that there should be a wider set of basic remedial claims for self-determination. Related to this, I will argue that the basic account is problematic because it has no concern for *who* or *what* is protecting individuals’ human rights. I will make the argument that the basic account is compatible with a benevolent human rights-upholding form of colonialism, against which basic claims for self-determination should be able to be made. I will argue that the republican idea of domination is required to capture the wrong of forms of political rule such as this.

Furthermore, I will critique the connection between human rights violations and self-determination as being overly instrumental in this section, arguing that the basic just-cause account only endorses self-determination in the absence of the realistic exercise and desirability of a right to revolution. I will make this argument, and those above, through a discussion of Allen Buchanan’s basic just-cause theory of self-determination.[[214]](#footnote-214)

For Buchanan, claims for self-determination should take form through the practice of international relations. To this end, Buchanan’s account of self-determination is part of a wider theory of international law.[[215]](#footnote-215) This is a non-ideal approach to the politics of self-determination. Buchanan takes this approach because he argues that claims for self-determination should be considered within a wider domain of normative concerns. Claims for self-determination, Buchanan argues, are often associated with conflict or more general acts of political violence and that not all groups that actually claim self-determination can or should be states.[[216]](#footnote-216) Buchanan notes the example of Chechnya’s violent attempt to secede from Russia as a case in point.[[217]](#footnote-217)

Furthermore, Buchanan contends that in actual politics claims for self-determination require international political recognition. Buchanan argues that it is not enough for a group of people to declare themselves to be self-determining – as many do – nor is it enough for a group to take *de facto* political control over a territory – as is the case with unrecognised states – but that in existing politics groups have to be internationally recognised by other states to become a self-determining group.[[218]](#footnote-218)

Buchanan’s idea is to move from a *positivist* idea of political legitimacy – which exists, albeit imperfectly, in existing international law – where all presently recognised states are treated as legitimate regardless of their conduct, to a *moralised* idea of political legitimacy, where states can lose their legitimacy if they fail to meet a specified moral standard.[[219]](#footnote-219) Buchanan argues, for this idea to have traction in the non-ideal circumstances of actual politics, the moral standard states must uphold cannot be too controversial, as it must be one that can maintain the allegiance of a critical mass of states.[[220]](#footnote-220)

Taking the wrong of conflict as the primary end that a moral theory of international law should protect against, Buchanan argues, that the moral standard of political legitimacy, which international law should respect, is individual human rights. Protecting human rights, Buchanan argues, secures a standard of basic non-interference for individuals where they are contended to be free and safe from political oppression.[[221]](#footnote-221) Similar to the position Rawls developed in *The Law of Peoples*, Buchanan contends, illiberal or non-constitutional states that meet this standard of *decency* can be recognised as legitimate so long as they uphold a basic standard of justice in the form of human rights – even if they do not meet many of the moral conditions of political legitimacy required for liberal-democratic states.[[222]](#footnote-222)

Buchanan contends that if states uphold the human rights of their subjects they should be recognised as having legitimate political authority over their populations and territory.[[223]](#footnote-223) However, for Buchanan, correlative to this is the idea that legitimate political authorities should be guaranteed non-interference in their internal affairs. Therefore, the basic just-cause account argues that it should be at the discretion of human rights-upholding political authorities whether they accept or deny any of the claims made for self-determination within their borders.[[224]](#footnote-224) This means that the basic account can deny claims for self-determination made by both liberal-democratic and illiberal and non-democratic groups.

For the basic just-cause account, it is only when states violate human rights and lose political legitimacy that claims for self-determination made by groups who have had their human rights violated are justified. For Buchanan, the paradigmatic case of such a group is Bangladesh, which after years of its population suffering basic rights violations seceded in 1971 from what was then West Pakistan.[[225]](#footnote-225) However, more recent examples, such as Kosovo and South Sudan’s respective secessions from Serbia and Sudan, also provide justified cases of basic just-cause self-determination. Furthermore, Buchanan contends if such a moralised account of political legitimacy had constituted international law at the time, groups such as the Kurdish population of Iraq would have been justified in their claims for self-determination when Saddam Hussain’s regime violated the human rights of the members of this group.[[226]](#footnote-226)

However, there is a second corollary to Buchanan’s moral theory of international law and self-determination – that any form of territorial incursion is a violation of a state’s right to legitimately govern its own territory and population. Therefore, the basic account places a prohibition on any form of invasion or annexation of legitimate states by other internationally recognised political authorities.[[227]](#footnote-227) If this practice occurs, Buchanan argues, groups who have been invaded or annexed have the right to self-determination.[[228]](#footnote-228)

For Buchanan, the Baltic States’ annexations by the Soviet Union in 1940 provide the paradigmatic cases of groups with this type of claim for self-determination. Buchanan argues, that at any time from 1940 to when the Baltic States actually re-gained their independence in 1990, Estonia, Latvia, and Lithuania had a right to self-determination – one that they were constrained from exercising until the collapse of the Soviet Union.[[229]](#footnote-229) Indeed, more recently the population of East Timor are an example of a group that had a territorially-based basic just-cause claim for self-determination. East Timor was invaded by Indonesia in 1975 shortly after it claimed self-determination during the process of Portuguese decolonisation. It was not until 2002 that the country’s independence was restored after a brutal conflict where significant human rights violations took place.[[230]](#footnote-230)

However, in comparison to these groups with justified claims, for the basic just-cause account, groups that have never had a previous status of internationally recognised statehood are not justified claimants of self-determination. For example, unrecognised states, such as South Ossetia, Abkhazia, Transnistria, and Nagorno-Karabakh – the former two of which are internationally recognised as being parts of Georgia, and the latter two as respective parts of Moldova and Azerbaijan – are not justified claimants, because according to the basic just-cause account, all four prior to being regions of the constituent Soviet Socialist Republics that comprised the former U.S.S.R., were not recognised as states.[[231]](#footnote-231) The basic account contends that groups’ such as these claims for self-determination should be decided by the states that have legitimate authority over them.[[232]](#footnote-232)

However, limiting justified claims for self-determination to groups of individuals who have had their human rights violated, or their internationally recognised statehood usurped, is problematic. This is because there are equally fundamental claims for self-determination that should be justified on a remedial basis. These claims require an alternative standard of political legitimacy – one that is not grounded in state’s upholding human rights.

When upholding human rights is the basis of political legitimacy it does not necessarily matter *who* or *what* is upholding political subjects’ human rights. For example, a human rights-upholding form of colonialism would count as a legitimate political authority for the basic just-cause theory – despite the colonial population being in an unequal political relationship with the metropole – because the standard of political legitimacy defined in its human rights-based account of political legitimacy is upheld by such a form of government. Indeed, for those who extolled the virtues of empire in the past or are nostalgic about its former practice in the present, the fact that often colonial politics prevented conflict and sometimes even secured a basic level of personal liberty, made and makes it for them a legitimate or even desirable form of government.[[233]](#footnote-233)

However, under a benevolent colonial regime individuals’ human rights are had at the discretion of the authority that exercises power over them. Because subjects have no control over the power that affects them, these rights can be discretionarily withdrawn. Therefore, colonised peoples – regardless if their experience of colonialism is benevolent or tyrannical – are subject to arbitrary power.

Colonised peoples’ rights are not had *by right* and as such are not rights at all. This is because individuals and groups do not have rights by virtue of who they are or by the terms of a relationship which define how they should be treated, rather, their alleged *rights* are merely spheres of licence that can be discretionarily withdrawn by the governing political authority. Therefore, subjects of any political authority should be entitled to some form of *political control* as the basic requirement of political legitimacy, to secure rights *by right* and not have their rights given at the discretion of an arbitrary power.

This necessarily has to take the form of non-dominating political control. This is because if it was the case that agreement could be found amongst international political actors to make political control a condition that political authorities are required to respect – in others words that political rights should be considered to be basic human rights under a reconstructed version of the basic just-cause theory of self-determination – this could have perverse consequences in terms of what political authorities might do to uphold these standards to maintain political legitimacy. Specifically, this standard could be compatible with an imposition of democracy through colonialism or a neo-imperial form of politics such as international intervention.

For example, in the case of colonialism, during most of the 19th and 20th centuries Algeria was incorporated as an integral part of the French state. The political subjects of France were entitled to citizenship on the same terms as the population of metropolitan France and like the citizens of metropolitan France had representation in the National Assembly in Paris. However, this extension of political control was not legitimate.

France illegitimately seized control of Algeria after the Ottoman Empire retreated from the region in the early 19th century. In incorporating Algeria, the French state usurped the local populations’ right to self-determination gained with the end of Ottoman rule. It was only in 1962 after a bloody war of independence that this usurped right was reclaimed. For the just-cause theory of self-determination individual Algerians’ rights of self-government were upheld by the French state during this period presumably making French-Algeria a legitimate state for a reconstructed version of this theory.

However, for republicans the right to self-government belongs to those who are dominated, and not non-dominated others who could impose this right through a benevolent form of colonialism.[[234]](#footnote-234) Therefore, for republicans, French Algeria was an illegitimate state because despite Algerians nominally having their rights to self-government upheld, their right to self-determination was usurped. For republicans, colonised peoples have justified claims for self-determination not because their rights are necessarily violated but because they are dominated – dominated often by a usurpation of their pre-existing statuses of self-determination or in the Algerian case from the possibility of ever being able to exercise their own right to self-determination in the first place.[[235]](#footnote-235)

This is also relevant to the wrongs of invasion and annexation, which like some forms of colonialism are only *instrumentally* and not intrinsically wrong for the basic just-cause theory of self-determination.[[236]](#footnote-236) For Buchanan, the wrong of entering and absorbing another sovereign territory is that it breaks the rules of international law – but, for Buchanan, the rules of international law are only an instrumental corollary of his own human rights-based account of political legitimacy. In other words, these rules have no moral or intrinsic political value, it is only the rights they are supposed to protect that are of value in Buchanan’s account.[[237]](#footnote-237)

Therefore, if these rules did not exist there would be no wrong for the basic just-cause theory of self-determination in invading or annexing another state if the offending authority upheld the human rights of the population subject to the new authority’s control. For example, the wrong of France hypothetically invading and annexing Spain, for the basic account, is not France’s usurpation of Spain’s right to self-determination, but rather that France has merely broken the terms of non-interference that ought to be adhered to as a stipulation of international law. Indeed, failure to grasp this wrong is exposed in a number of cases where pre-existing statuses of internationally recognised statehood do not exist. Anna Stilz gives the example of the United States’ military occupation of Germany after the Second World War to highlight this point.

Stilz argues, because Nazi Germany was a systematic human rights abuser and therefore not a legitimate state that for the basic account there is no reason why the United States could not have annexed the territory of Germany it had control over after the Second World War by upholding the human rights of the population resident there.[[238]](#footnote-238) Stilz argues, for the basic account, the United States could have taken legitimate political control over the American-occupied zone of post-war Germany on a permanent basis, because it, unlike the previous Nazi government, upheld its subjects’ human rights.[[239]](#footnote-239)

Similarly, in contexts where there are failed states or states that cannot control portions of their territory, for the basic account it is acceptable for powers to enter and take legitimate political control over such territories if they uphold the human rights of the population that reside there. For example, it would be entirely acceptable for another political authority to enter and take legitimate political control of portions of contemporary Somalia or the Democratic Republic of Congo’s territory – and thus portions of their populations.

The basic just-cause account, therefore, cannot capture justified claims to restore the right to self-determination when it has either been usurped or lost – as for example the German people’s right to restore their democracy after more than a decade of Nazi rule, or the requirement that other political actors respect, for instance, Somalia or the Democratic Republic of Congo’s right to self-determination – that which they cannot effectively exercise.

Both types of annexation in these examples are dominating because the process of securing the relevant populations’ human rights is done at the invading power’s discretion. Because these forms of annexation are made in a discretionary manner, it gives those individuals and groups being annexed no control over the process, even though the process could establish rules that are inimical to their basic interests, but are nonetheless consistent with their human rights.[[240]](#footnote-240) Like with the case of French-Algeria, for republicans, the right to self-determination cannot be imposed by non-dominated others, it belongs to those who have been dominated, as in the case of the post-war population of Germany, or authorities that need assistance in exercising this right, as in the case of Somali and the Democratic Republic of Congo.

Furthermore, the connection between human rights abuses and justified claims for self-determination in the basic account is a highly instrumental one. Just as much it does not intrinsically matter *who* is upholding human rights for the basic just-cause account of self-determination, equally it does not intrinsically matter *how* human rights are upheld for this account.

If groups are subject to human rights abuses they are entitled to a right to *revolution* – perhaps even more so than to self-determination.[[241]](#footnote-241) This is because it is not the territorial constitution of the political association that is the problem, rather, it is what practices the human rights violating political association is engaged in. Using self-determination, therefore, as an institutional means to protect human rights in the aftermath of abuses is only an instrumental means for the basic just-cause account. This is because the right to revolution is not easily exercisable or one that’s practice is normatively desired, leaving self-determination as the only realistic option. For example, it would be very hard to see how East Timor, for example, could have exercised a right to revolution against the whole of Indonesia, when East Timor was a small and geographically isolated part of Indonesia’s territory, which also lacked the necessary sympathy from other non-East Timorese Indonesian political subjects to exercise this right.

Similarly, when states engage in human rights abuses, it is odd to think that states only lose legitimate authority over those whose rights they abuse, as the basic just-cause account claims. When states engage in political violence they ought to lose their right to govern altogether, rather than the state continuing to have legitimate political authority over non-seceders – those whose rights they did not abuse. Furthermore, if the right to revolution cannot be exercised, the alleviation of human rights abuses could just as easily be achieved through means such as legitimate military intervention.[[242]](#footnote-242) The basic just-cause theory provides no reason why East Timor, for example, should have become an independent state, rather than the Indonesian central government being externally deposed and replaced by a human rights respecting regime.

This is because the basic just-cause theory provides no reason to interpret the predicament East Timor was subject to, for example, as being one not where the state had lost legitimate political authority over its East Timorese subjects, but rather that Indonesia’s *government* had lost this right over all its subjects. If in a situation like this the rights-abusing government was removed from power and its subjects’ human rights were upheld by another set of governors then the group whose rights were abused do not have a right to self-determination, under the conditions specified by the basic account.

Of course, there are good reasons to oppose military intervention – not least the threat of violent conflict – and it is because of the relevance of these considerations that the basic account, all things considered, plausibly maintains a connection between human rights abuses and self-determination. However, my contention simply is that the just-cause theory gives no intrinsic reasons why the alleviation of human rights abuses must necessarily take the form of self-determination.

Furthermore, the basic account gives no intrinsic reason why those that have had their human rights violated should be treated as a *group*. This is because for the basic just-cause theory it is individuals that have human rights violated and not groups. Therefore, one practical response instead of the politics of self-determination could be that legitimate political authorities have a duty to accept individuals who have had their human rights abused as refugees. For example, when Saddam Hussain’s regime violated the human rights of the Kurdish population under its jurisdiction, the basic just-cause account gives no intrinsic reason why the population of Iraqi Kurdistan should have been taken as a group, rather than as disparate refugees by legitimate states, such as Canada, Finland, or Japan. It is simply because of the impracticality of doing this that the basic just-cause account can maintain a plausible fit between human rights abuses and self-determination.

However, with an idea of non-dominating political control instead of human rights providing the basis of legitimate political authority, there is a reason to take individuals as a group when they experience a remedial wrong – including the wrong of human rights abuses. This is because, through collective political control, groups create collective interests, which they have an interest in protecting and politically sustaining. This can be the case both when collections of individuals have previously been and have not previously been self-determining groups.

When collections of individuals have been a political group in the past, there are political goods and interests that that group will have collectively created though the activity of political cooperation, which have since been usurped by another political authority.[[243]](#footnote-243) However, when collections of individuals have not been a political group before, their collective experience of poor political treatment can be enough for them to formulate collective interests that are worth protecting against on their own terms. Indeed, many colonised groups came to be groups in this exact manner, as many hitherto non-existent political groups were created by their experience of being subject to the arbitrary power of colonial political authorities.[[244]](#footnote-244)

It is my contention that non-dominating political control is the value which intrinsically fits with claims for self-determination, because it is only through the non-dominating political control inherent in the idea of self-determination that protection from arbitrary political power can be found. By being able to control political power oneself, through some form of self-government, subjection to others authorities’ wills is protected against. Therefore, when human rights violations take place, self-determination is intrinsically justified by the value of non-domination, because of this idea of political interests.

Furthermore, because non-domination requires an idea of political control, a greater set of groups are justified in making a basic set of claims for self-determination as states are required to fulfil more criteria to have political legitimacy. These include the claims of colonised groups, groups living in apartheid societies, or those living in other inequitable political unions – even if these political associations uphold their subjects’ human rights.[[245]](#footnote-245)

Moreover, the value of non-domination also captures human rights violations, because these violations are expressions of the exercise of arbitrary political power – as no properly controlled political authority would be able to engage in such violations. Indeed, these are the violations that the republican tradition was concerned with when it referred to the political condition of *tyranny*, such as being subject to a tyrannical monarch.[[246]](#footnote-246) In the next section I will examine the substantive just-cause account of self-determination, which unlike the basic account, implicitly agrees that some form of political control is a requirement for political legitimacy.

**4.2.) The Substantive Account of Just-Cause Self-Determination**

In the previous section I argued that the basic just-cause theory of self-determination is problematic because its human rights-based account of political legitimacy is one that has no intrinsic concern for *who* or *what* should protect individuals’ rights. I argued that the basic account has no principled objection to dominating types of government – such as a benevolent form of colonialism and some forms of imperial politics more generally. I, therefore, argued that the basic just-cause theory denies a broader set of remedial claims for self-determination that should be justified, and instead are only captured by the republican idea of non-dominating political control. I argued that claims against colonialism and imperialist politics should be considered to be *basic* or fundamental claims for self-determination.

I made this argument because when groups are subject to these types of rule they do not have rights as a matter *of right*, but only on a discretionary basis – where their rights are subject to the perpetual threat of removal, as the political authority they are subject to has the capacity to exercise this arbitrary power. Furthermore, in the previous section, I argued, that self-determination is only one option amongst others which can be used to protect human rights. I argued that non-dominating political control – unlike human rights-based political legitimacy – has a non-instrumental and more plausible connection to the right of self-determination.

In this section I will examine substantive-rights-based versions of the just-cause theory of self-determination. Substantive accounts implicitly agree that some form of political control is required for political authorities to have legitimacy. This is because the context in which substantive-rights-based claims for self-determination are made is not in international law – as the basic account contends – but in liberal-democratic or constitutional states, where some form of self-government is required to legitimately have political power.

In what follows I will examine two substantive-rights-based accounts of self-determination – (1) the *economic* and (2) the *cultural rights-based* accounts of just-cause self-determination. These accounts argue that when individuals – and in the case of some cultural accounts – groups, have their substantive-rights violated, they are justified in making claims for self-determination. These rights are guaranteed by a deeper conception of social or distributive justice than the basic account – one that falls broadly into the liberal-egalitarian paradigm.[[247]](#footnote-247)

However, I will argue that each of these accounts misdiagnose the remedial wrong experienced by groups as economic and cultural grievances. I will argue that it is not strictly rights violations that ought to be of concern when groups voice economic or cultural grievances, but that it is arbitrary forms of power that constrain the exercise of individuals’ and groups’ rights – specifically their rights of democratic-citizenship or self-government.

I will argue that the mass violation of economic and cultural rights overlap with more basic rights violations – making this account indistinct from the basic account – and will argue, instead, that groups with economic or cultural grievances can have sufficient justification for their claims for self-determination when their grievances do not come from a violation of economic or cultural rights, but rather from the inability to legislate in the democratic process for economic or cultural rights to begin with.

I will argue this is because the creation of these rights lies at the legislative discretion of other groups of citizens, who implicitly or explicitly refuse to heed minority groups’ concerns – and legislate for their basic interests. I will argue lacking the ability to legislate for these interests constitutes a form of domination that ought to constitute a broader remedial justification for claims to self-determination.

Furthermore, I will argue in this section that the substantive account also has an instrumental connection to self-determination. However, unlike the basic account, which connects with a right to revolution, I will argue that the substantive account fits as well with a politics of political reform. I will argue that only the violation of non-dominating democratic political control intrinsically connects with the right to self-determination. I will examine the economic and cultural accounts of substantive rights-based just-cause self-determination in turn, beginning with the economic account.

**4.2.1.) The Substantive Economic Rights-Based Account**

In his earliest work on the politics of self-determination Allen Buchanan argued that the violation of economic rights should justify claims for self-determination. Buchanan called this ‘discriminatory redistribution’.[[248]](#footnote-248) Buchanan argued that groups of individuals who are subject to government schemes that burden them, in comparison to other citizens, are justified in making claims for self-determination.[[249]](#footnote-249)

Buchanan argued this can happen in two ways. First, groups of individuals can be overly burdened in terms of having to disproportionally raise revenue for the rest of a political association. This is when one group of individuals are subject to *discriminatory taxation*, whilst others in the same political association are not. Those who are discriminated against have to pay for the state and other citizens’ activities as a result of their treatment.[[250]](#footnote-250)

For Buchanan, this is not a claim about the illegitimacy of taxation, which some libertarians make, contending that taxation is inherently exploitative and being subject to it should justify claims for self-determination.[[251]](#footnote-251) Rather, for the substantive account, what is being objected to is the lack of impartiality in the tax rules, which means that one group – both the rich and the poor within that group – have to shoulder the burden of taxation, as opposed to it being shared equally between citizens of equivalent economic standing in the rest of the state.

The second way in which discriminatory redistribution can take place is when a group fails to receive equal distributive or regulatory entitlements.[[252]](#footnote-252) For example, when a state deliberately neglects one group in the spending of public money, whilst all other citizens receive a share. For the substantive account, both instances are violations of economic rights.

The first, discriminatory taxation, is a violation of property rights, which for the substantive account are a conditional part of distributive justice. The substantive account does not claim that property is an unconditional right – as stated above taxation can be consistent with distributive justice – but it does claim that if there is an economic scheme of private property, under the terms of a liberal account of distributive justice it is unacceptable that this right is afforded to some and not others, as it should apply to all subjects equally.

The second, failure to receive entitlements of distributive justice, is also a violation of rights, as economic rights are positive rights that require the presence of something – in this case economic goods. Groups that fail to receive the specified goods of distributive justice whilst others receive these goods, are subject to a rights-based injustice, because others have failed to provide the goods to which the group are entitled.[[253]](#footnote-253)

However, Buchanan stresses that a *violation* of rights is required to make economic-based claims for self-determination. Groups cannot simply have economic grievances to justify their claims for self-determination, and argues accordingly that a number of side-constraints must be considered when assessing claims for self-determination.[[254]](#footnote-254) For example, Buchanan notes how the American Confederacy had a justified economic-rights-based claim for self-determination when it seceded from the United States in 1861 – precipitating the American Civil War. The American south was overly burdened in terms of the taxation revenue it had to raise by the north, which was overwhelmingly invested in northern industry and its related infrastructure.[[255]](#footnote-255)

However, Buchanan argues that this right was trumped by the more fundamental consideration of protecting individuals’ basic rights.[[256]](#footnote-256) To use the term anachronistically, the confederacy was a *human rights abuser*, because it protected the practice of slavery. Similarly, being burdened in terms of taxation is only a problem if this practice is engaged in, in a discriminatory manner. For example, as discussed in the previous chapter, in the early 1990s a strategic northern nationalist movement emerged in Italy on the basis that the prosperous and more numerous north would secede from the relatively impoverished south.[[257]](#footnote-257)

This *Padanian* nationalist movement wanted to shirk its duties of economic redistribution to the south of Italy, to increase its own already high level of welfare. The *Padanian* nationalists were not justified in making an economic claim for self-determination, according to the substantive account, because their economic rights were not violated. Rich southern Italians paid as much tax as northern Italians – it was simply the case that the north had relatively more wealthy citizens than the south. Indeed, had this group in fact been successful in making its claims for self-determination it would have been the rights violator, because it would have failed to uphold its distributive duties that correspond to the economic rights of Italy’s southern population.

Therefore, without relative disadvantage groups cannot make successful claims for self-determination according to the substantive account.[[258]](#footnote-258) For the substantive account this is even the case if the group in question has less wealth than of the remainder population. This is relevant to the claim Catalonia has against the Spanish state as Catalonia is a comparatively wealthy region of Spain with an active secessionist movement.

As with the example of *Padania*, Catalonia would be prevented from making claims for self-determination by the substantive account because it is not subject to economic discrimination. The substantive account sees these claims for secession in the same bracket as would-be micro-states – groups who would make *cynical claims* for self-determination to be tax-havens or to shirk their distributive requirements to their compatriots.[[259]](#footnote-259)

However, when violations of economic rights take place – those that the substantive account contends justify claims for self-determination – these violations reflect a more fundamental violation of rights than the economic rights-based account accepts to be the case. When groups of individuals are subject to discriminatory redistribution it is not the *economic* character of the violation that is of concern, but it is the fact that the violation stems from *discrimination*.

When individuals are treated differently to other political subjects, this is a violation of their basic civic standing and constitutes a violation of their basic civil rights. This is because being treated equally and impartially under the law is a basic condition of citizenship in liberal-democratic or constitutional states. Therefore, the claims that the substantive just-cause account of self-determination argues are justified are akin to those that the basic account captures – or at least are a version of them.[[260]](#footnote-260)

Although discriminatory taxation may not constitute a breach of the idea of basic equality before the law that is at the bedrock of a just liberal-democratic or constitutional political order, it does constitute a more fundamental rights-based injustice than the economic character of this claim would suggest. Therefore, whilst a violation of economic rights may not necessarily constitute a violation of human rights, it does constitute a violation of equal political standing or civil rights, which ought to be required to hold political legitimacy in a constitutional or liberal-democratic state.[[261]](#footnote-261) This is the standard against which violations should be judged to whether or not they constitute basic rights violations. The discriminatory violation of economic rights conforms to this standard.

It is not my claim to dismiss that discrimination of this type should not justify claims for self-determination – it should – but only to argue that there can be more distinct economic grievances that exist in the absence of discrimination or more general rights violations that can constitute a remedial wrong, in contrast to the substantive just-cause account of self-determination. In the democratic political process, even if individuals are treated equally – when they are afforded equal votes like all other citizens and therefore are not discriminated against – if they end up being permanent or consistent minorities, they are in an unequal position relative to one another despite being formally equal. Groups of individuals that meet this description are subject to a remedial wrong.

This is not because these types of groups have had their rights violated, but because they cannot exercise their rights of self-government on equal terms with their compatriots and thus have their interests figure in the decisions that become law. When this occurs these groups are subject to the domination of their compatriots, as their compatriots have the arbitrary power to make the law they are subject to and not them.[[262]](#footnote-262) As there are poorer and richer regions in nearly every state, this political dynamic can justify claims for self-determination for groups that are poor as a result of being subject to dominating political power.

Economically worse-off regions that are worse-off as a result of being placed in a perpetual minority position by others in democratic votes are justified in their claims for self-determination, even if their claims do not necessarily have to take the form of statehood, because they are prevented from exercising their rights of self-government.[[263]](#footnote-263)

This is distinct from regions that are worse-off than they might have been as a result of simply losing at the polls on a one-off occasion – or on a series of decisions that can be overturned at a future date. Indeed, arguably, this is the experience of *Padanian* nationalists. This is because the real issue for them is not domination but the fact that they resent the redistributive requirements made of them. However, this is something that can be realistically altered by a democratic vote involving all of the Italian population, to change the level of taxation set by Italian central government.[[264]](#footnote-264) It is because of this that they should not have a remedial claim.

Furthermore, although this wider remedial conception agrees with the substantive just-cause theory that the cases of Padania and would-be tax-haven micro-states are unjustified claimants of self-determination, this domination-based conception of self-determination is more sympathetic to the claims of places like Catalonia. This is because Catalonia, arguably, is a nation that has had its democratic political aims constrained by the rest of Spain. Despite being a comparatively richer part of the Spanish state, because it is subject to this treatment it is justified in making claims for self-determination, in spite of its economic prosperity.[[265]](#footnote-265)

Indeed, the right to self-determination does not unconditionally entail a right to all of a region’s wealth. It is perfectly acceptable in the case of groups such as Catalonia that conditions are imposed so that relatively wealthier regions of states have to make wealth transfers to the rest of the state or take a proportion share of the remainder state’s debts to exercise their right to self-determination. In effect this would be a *secession tax*.

This is not unique to wealthy regions, as comparatively less wealthy regions which have justified claims for self-determination are entitled in circumstances to have a share of the remainder state’s wealth or other economic goods.[[266]](#footnote-266) In what follows I will examine the substantive cultural rights-based theory of self-determination, to see if it, unlike the economic account, makes a more convincing case for a rights-based account for self-determination.

**4.2.2.) The Substantive Cultural Rights-Based Account**

For the substantive cultural-rights-based account groups are justified in making claims for self-determination when their cultural rights are violated. This comes in two forms. The first is the argument that when groups of individuals have their culture existentially imperilled they are justified in making claims for self-determination. This I will call the *cultural imperilment account*. The second is an argument that comes from the literature on federalism and self-determination, which argues when groups’ intra-state autonomy – that protects their cultural rights – is violated by central government these groups are entitled to self-determination. This I will call the *intra-state cultural autonomy account*.

For the cultural imperilment account, it is assumed that the basic rights of liberalism – freedom of speech, worship, and association – give individuals the freedom to live and practice, with others, their culture.[[267]](#footnote-267) Although this account may not go as far as nationalist or multiculturalist accounts in arguing for substantive cultural rights – although versions of this account do – it recognises the basic connection between a liberal society and being able to do what one wishes as free individuals, assuming the practices one engages in do not conflict with others’ basic rights.[[268]](#footnote-268)

The cultural imperilment account, therefore, recognises the value of culture for individuals in the same way as liberalism recognises the value of other goods that individuals should be free to enjoy in a liberal society. The account argues when cultures are existentially imperilled – from whatever source – groups of individuals are justified in making claims for self-determination. For Buchanan, these claims have to meet certain conditions: 1) that the group’s culture is existentially imperilled; 2) that less disruptive methods than self-determination are unavailable to protect the group in question’s culture; 3) that the culture needs to meet the basic standards of liberal justice; and 4) that the group wishes to set up a liberal state.[[269]](#footnote-269)

The second condition is important for Buchanan, because if other methods are available to protect a group’s existentially threatened culture, they should be used, as self-determination can cause political disruption and even conflict. Buchanan suggests that groups in this position should press for special cultural rights or even purchase private property to informally secede, such as to a *reservation* where they can practice and sustain their cultural life, protected from outside sources.[[270]](#footnote-270) The third condition is required so that the culture being protected is not a deeply illiberal one. Buchanan argues that there is no value in protecting, for instance, a culture that is predicated upon fascism.[[271]](#footnote-271) Lastly, the fourth condition is necessary to protect basic liberal rights and to ensure the free exercise of other cultures within the new state.

However, the cultural imperilment account is problematic for the same reason as the substantive economic rights account. If a group’s culture is existentially threatened without statehood it is hard to see how this threat could have come about without the violation of more basic rights. For example, when the Kurdish population refused to assimilate under Saddam Hussain’s regime into the Iraqi state identity his strategy of forceful assimilation did not stop short of the removal of groups’ culture – it involved the violation of more of their human rights. Therefore, for a culture to become existentially threatened, even in less drastic circumstances, the state would at least have to violate their subjects’ basic liberal rights of association and free speech. If states engage in this practice then the destruction of a group’s culture is a secondary consideration to protecting their basic rights.

Furthermore, cultures do not become threatened in liberal states because of rights violations, they come to be threatened by what Will Kymlicka calls ‘benign neglect’ – that minority cultures need public recognition to sustain them against the pressures of societies with a dominant culture.[[272]](#footnote-272) It is this phenomenon that the intra-state cultural autonomy account contends justifies claims for self-determination.

For the intra-state cultural autonomy account the politics of benign neglect is not grounded in the value cultures have for individuals’ identities or the exercise of their autonomy – as is the case for some of the nationalist accounts examined in the previous chapter, or multiculturalists like Kymlicka – but it is grounded in a liberal political concern about unfairness in only supporting the private activities of some citizens and not others. It is analogous, for this account that if the state subsidises the opera that it should subsidise soccer, just as much as in a state like Canada, for example, that if the state upholds the English language in public administration that it should do the same with French – and indeed Cree,Inuktitut, and Ojibway, as well as Canada’s other indigenous languages.

The intra-state cultural account argues that states with more than one national culture should be organised along multinational lines to give equal public recognition to these cultures on these grounds. Indeed, Wayne Norman argues this is necessary because states cannot escape the fact that they are continually engaged in nation-building projects, even in the most innocuous ways, such as through how they deliver public services in specific languages, what histories are taught in schools, and simply things like what faces and voices are seen and heard on the television and radio – especially if these broadcasters are state-funded.[[273]](#footnote-273)

It is for this reason – that nation-building is inevitable, because it is not a completely intentional practice – that Norman contends nation-building is a practice that must be *federalised*. In other words, for nation-building to be consistent with the idea of the liberal states, Norman argues, it has to be done on a multi-national basis to give equal recognition to the goods members of non-dominant cultures wish to enjoy as free individuals.[[274]](#footnote-274) The intra-state autonomy cultural account, argues accordingly, that it is when this aspect of ethno-cultural justice fails to be upheld that claims for self-determination become justified. Specifically, it is when states violate the terms of federal political arrangement designed to reflect this aspect of justice that groups ought to be able to secede from their union.[[275]](#footnote-275)

However, the violation of regional autonomy agreements that this account contends justifies claims for self-determination are not really violations of cultural rights, but rather are violations of constitutional procedures in the liberal-democratic state. For a state to violate an intra-state autonomy agreement it has to break its own specified constitutional rules on how the parts of a political union relate to one another.

This is analogous to a state legislating in another – the wrong is not the content of the rights violation, but the fact that a state is not respecting the jurisdictional bounds of another political authority. If one accepts that the wrong of breaking the terms of intra-state autonomy agreements is the same wrong as a state invading another – albeit without entering its territory in this case – one can see that this is a fairly uncontroversial violation. This is a wrong that even the basic account sees as justifying claims for self-determination – with its own account of intra-state autonomy agreements based in the same argument. Buchanan, for instance, argues that if groups have their regional autonomy violated the international community should recognise these groups if they declare independence.[[276]](#footnote-276)

Therefore, what is more interesting in terms of cultural claims for self-determination is groups with certain cultural goods – such a minority language which is for them a basic interest – who are prevented in terms analogous to poor regions being subject to arbitrary power in the democratic process from being able to legislate for the goods that matter to them, because they are placed in a permanent minority by other citizens. These groups are at the mercy of the political majority to concede to them cultural rights or federal autonomy, so that they are able to enjoy their basic cultural interests. These are dominated groups.

Indeed, as Michel Seymour has argued, Buchanan’s substantive cultural-rights-based account of intra-state autonomy is highly problematic for groups without such autonomy agreements to begin with, because they can never get as far as having their collective rights violated – as they are not recognised as having any collective rights in the first place.[[277]](#footnote-277) It is crucial, therefore, that a remedial account of self-determination has a sufficiently broad enough conception of what constitutes a remedial wrong or it will be heavily biased towards recognising only those groups that are already recognised as having intra-state statuses of self-determination.

In this sense the intra-state cultural autonomy account *jumps the gun*, because groups who are prevented from having their cultural interests reflected in the law can be subject to a remedial wrong by virtue of being prevented from having a status of intra-state autonomy to begin with, rather than this status being formally violated as the substantive account contends. Indeed, by focusing on rights violations and not seeing political discretion as the problem, reformist political options are as relevant for groups subject to cultural and indeed economic-based forms of unfairness.

For instance, under these conditions, the cultural-political majority could discretionarily grant minorities cultural rights, instead of regional autonomy, to create ethno-cultural justice – but this can be problematic for some groups. The problem with reformist options such as cultural rights is that the discretionary power behind them exists just as much when groups have these rights as when they do not. Cultural rights can be withdrawn through official procedural channels – in the same manner as how they were created – by the cultural-political majority, without actually engaging in rights violations themselves, because they have effective political control over the state’s legislative functions and therefore can do so in a legitimate manner.[[278]](#footnote-278)

Cultural minority groups are subject to no remedial wrong when they are subject to this type of power, according to the substantive cultural rights-based account, because rights cannot be violated if they do not exist. The concern for discretionary or arbitrary power captures this wrong and its intrinsic connection with self-determination, as it is when groups are self-determining that they can legislate for themselves and not be subject to the discretionary whims of other citizens.[[279]](#footnote-279)

Therefore, cultural concerns are best captured as concerns for domination. Indeed, cultural concerns are often the contingent products of groups of citizens not having effective democratic political control. If claims for self-determination emerge from the absence of having rights, as opposed to rights being violated, what should be of concern when claims for self-determination are made is the equal democratic standing of citizens in liberal-democratic states. It is whether or not this holds, I will argue in the next chapter, which ought to justify or deny claims for self-determination.[[280]](#footnote-280)

This requires some form of self-determination, as I will argue in the next chapter attempts at political reform can lead in cases to more domination. As such, claims for self-determination should be judged on whether or not groups have equal democratic political control. This broadens the wrongs remedial theories of self-determination should be concerned with – compared to the narrow conception outlined by the just-cause theory.

**4.3.) Conclusion**

In this chapter I have argued against the just-cause theory of self-determination. I have made the argument that the just-cause theory provides too narrow an account of the remedial wrongs that ought to justify claims for self-determination. I argued that the violation of rights only captures some of the most egregious political acts that justify claims for self-determination and that often rights violations have too instrumental a connection to this value. I argued, instead, that constraint on rights’ exercise, or the absence of rights to begin with, should be taken to justify remedial claims for self-determination – creating a broader set of justified claims for self-determination than the just-cause theory permits.

Indeed, the reason why the just-cause theory is such an impermissive theory of self-determination is because it has an overly *social*, as opposed to *political*,conception of justice. Its view of justice is one that is concerned with what rights and goods are owed to individuals, as opposed to being concerned with how individuals and groups should govern themselves. It is not my connection to dismiss the social aspects of justice but only to show that they are insufficient and to claim that their relevance is secondary for the politics and justification of self-determination.

As such, the republican account I have begun to outline, and will detail fully in the next chapter, could be understood as a just-cause theory – albeit one that has a broader conception of justice than the accounts examined in this chapter. I am happy to accept this conclusion, but will continue to refer to this account as the republican theory of self-determination, seeing it in a manner akin to how the choice-based and nationalist theories relate to each other – as separate accounts that are both *primary right* theories of self-determination.

Therefore, I will treat the just-cause and republican theories as distinct but nevertheless related *remedial* theories of self-determination. Indeed, in the next chapter I will not disregard the language of rights altogether, but rather will assert the importance of *political rights* – particularly rights of democratic-citizenship and self-government – in context of how they do not need to be violated, but simply constrained, to dominate groups and thus justify their claims for self-determination.

However, the language of social and personal rights does provide a useful political function – though not necessarily a justificatory one – for the politics of self-determination. This is an *epistemic* role. As I will argue in the next chapter, awareness or recognition of domination is not always guaranteed in politics. Where rights violations exist or have existed in the past, often domination is near-by. Rectifying rights-based injustices can shine a light on the wider domination that needs to be rectified in politics and society, or by thinking about the violations groups experienced in the past, one can question if the rights and legal frameworks designed to combat these injustices themselves have been sufficient to improve the position of the groups that experienced these wrongs in terms of their contemporary self-government. Rights violations are not an exhaustive guide for this process but they can play an invaluable role. In what follows I will detail my own constructive alternative to the just-cause and choice-based and nationalist theories – the republican theory of self-determination.

**Part Two: The Republican Alternative**

**Chapter Five: Freedom and Political Status: A Republican Theory of Self-Determination**

In this chapter I will argue that republicanism is the political theory that provides the most satisfying justificatory framework to normatively assess claims for self-determination. Using the core republican value of *freedom as* *non-domination* I will argue that subjection to domination is the political relationship that should justify claims for self-determination. This is in contrast to the other justifications for self-determination discussed in the previous chapters – (i) the violation of human and social rights – defended by the *just-cause theory*, (ii) the value of groups’ identities – defended by the *nationalist theory*, and (iii) the freedom to withdraw one’s consent from political authorities – defended by the *choice-based theory of self-determination*.

Being subject to domination is the prime political evil diagnosed by republican political thought. For republicans, being dominated is to be subject to the discretionary will of another agent or agency. When agents are subject to such a will they are placed under a relationship of arbitrary power that makes them unfree. For republicans, therefore, domination is considered to be the antithesis of the core social and political value of freedom – otherwise known as *freedom as non-domination*.[[281]](#footnote-281)

However, for non-domination to be a persuasive political value that ought to justify claims for self-determination it is important to show how this value involves overcoming problems of *misrecognition* and *political exclusion*. I will argue in this chapter that misrecognition and political exclusion are expressions of domination itself. To do this a contrast needs to be drawn between narrower and more broadly-construed interpretations of domination. I will argue that a more broadly-construed conception of non-domination, which captures concerns for misrecognition and political exclusion, provides a more satisfying justificatory framework to assess claims for self-determination over those of rival political theories. I will argue that this is because both non-domination and self-determination are *political statuses*.

The emphasis placed on non-domination in contemporary political theory – particularly in Philip Pettit’s work – is to view this idea as an alternative form of freedom.[[282]](#footnote-282) However, in this chapter I will argue that this is an incomplete view of non-domination. As Quentin Skinner has made clear in his historical study of the concept, for classical republicans, non-domination was not thought of as a modern negative conception of liberty – as a *description* of relationships that either aid or hinder the unimpeded action of agents. Instead, non-domination was thought of as a political concept – one about a person’s place in a political order and society and the standing that this place gives an individual in relation to others and the state.[[283]](#footnote-283)

In short, Skinner argues, in the classical republican tradition non-domination was thought of as an idea of *citizenship* – specifically that a person who had the political status of non-domination was a citizen who lived on equal political terms with others sharing in the collective control of political power. In this chapter I will argue that this understanding of non-domination as an idea of citizenship should be reconstructed for contemporary political purposes and be more broadly conceived in terms of democratic-citizenship. This, I will argue, involves specifying extra conditions on groups of individuals being able to sufficiently direct political power, in addition to citizens’ control of it. I will argue when groups fail to be able to sufficiently exercise their democratic-citizenship on equal terms with their compatriots that they have justified claims for self-determination. This argument takes the form of two conditions which I will defend throughout the course of this chapter. The conditions are as follows:

1. That there is equal formal democratic-citizenship amongst all the subjects of a political authority, and
2. That there is sufficiently equal democratic participation of all citizens in the collective exercise of their democratic-citizenship

I will argue that when political authorities fail to uphold these conditions, groups are dominated and that self-determination provides the best, if only means, to secure their freedom. I will argue when these conditions are not upheld this provides sufficient justification for groups and the individuals that comprise them to have justified claims for self-determination. In other words, I will argue that self-determination secures free political statuses of individual and collective citizenship for groups and their members.

The first condition of republican self-determination stipulates that political authorities should be democracies, which entitle all of their subjects to the equal formal control of political power. In other words, it stipulates that all political subjects should be democratic citizens.[[284]](#footnote-284) The second condition, however, stipulates that formal citizenship is insufficient for republican freedom in liberal-democratic or constitutional states as groups can be dominated when they are informally constrained from making the law when other groups of citizens are substantively participating in this process. In other words, groups can be dominated by others group of citizens – those who are substantively participating in making the law.

The second condition is stipulated as *sufficiently* equal democratic participation because perfectly equal participation is too high a standard to achieve in political practice. Therefore, the second condition is conceptualised as a threshold under which no group of citizens should fall. Condition two necessarily follows from condition one – individuals require formal citizenship to participate in democratic politics. Condition one, however, can be fulfilled individually – though in cases also collectively – whereas condition two necessarily involves groups.

The two conditions do not spell out a comprehensive theory of non-domination but only a republican theory of self-determination. They are envisaged to provide a domination-based justification for self-determination by contending that when condition two is not upheld in liberal-democratic states, groups which fail to fulfil this condition are dominated by other groups of citizens. When condition one is not upheld in democratic and non-democratic regimes, claims for self-determination are also justified, but as a condition on exercising this claim the new political authority must uphold both the first and second conditions. It is only when both conditions are upheld, I will argue, that the non-dominating status of collective citizenship or *self-determination* exists. As such, the second condition is the condition that makes the republican theory a distinct account of self-determination.

The republican theory is distinct from the three other theories of self-determination. First, in contrast to the choice and nationalist theories of self-determination – which are primary right theories – it is only when the two conditions fail to be upheld that claims for self-determination are justified. The republican justification is a *remedial* theory of self-determination – it assumes that existing political authorities have *prima facie* legitimacy but that they can void this if they fail to uphold the two conditions.[[285]](#footnote-285)

This means that the republican theory denies a number of the claims which the choice and nationalist theories of self-determination defend. It denies the claims of voluntary contracting individuals subject to no form of domination, defended by the choice theory, and also denies the claims of nations that are not dominated, defended by the nationalist account. The republican theory, however, justifies the claims of dominated nationalist groups, not because of the value of the group in question’s identity, as the nationalist theory argues, but because of the domination to which this group is subject.

Furthermore, the republican theory is also distinct from the just-cause theory of self-determination, because it argues that groups and the individuals that comprise them can be dominated in the absence of a violation of their rights. The republican theory contends it is not always the formal violation of rights that constitutes a remedial wrong, but being subject to relationships of power that informally constrain the exercise of citizens’ political rights, or the absence of these rights to begin with, can also constitute this wrong.

The republican theory, therefore, justifies claims that the just-cause theory of self-determination denies – these include the claims of dominated nationalist groups that the just-cause theory prohibits because there is no formal violation of rights. In this chapter I will argue that domination provides a more satisfying justificatory framework to assess claims to self-determination than the three other theories, because it can capture the claims of these types of groups without opening the door to illiberal nationalist groups or dominant and powerful claimants who would be entitled to make claims under a primary right framework.

In what follows I will begin by discussing the idea of republican liberty to show that within the idea of freedom as non-domination there is a central concern for political status. This idea of political status, I will argue, is pivotal for articulating a satisfactory republican account of self-determination – as having a secure political status both as an individual and as part of group are necessary conditions for political non-domination.

Following this I will discuss what political relationships should be considered to constitute domination. This discussion is between narrower and more broadly-construed conceptions of domination. I will argue that only the latter can provide a satisfying justificatory framework to assess claims for self-determination as only more broadly-construed conceptions of domination can diagnose the political wrongs that need to be protected against to uphold the second condition of republican self-determination. I will examine four accounts of domination to this end. The first two accounts, Frank Lovett’s *procedural account of domination* and Philip Pettit’s account of *domination as the tyranny of the majority*, I will argue, fail to draw an appropriate link between non-domination and self-determination. Whereas the second two accounts, Cécile Laborde’s account of *domination as civic misrecognition* and James Bohman’s account of *domination as deliberative exclusion*, I will contend, offer broader conceptions of domination that make an appropriate link between non-domination and self-determination.

Using Laborde and Bohman’s theories of domination I will show how domination is constituted by *unequal participation in self-government*. I will contend that the relationships that constitute *domination as unequal participation in self-government* – providing the second condition of republican self-determination – come from sources of (i) structural or what I will term *arbitrary social and cultural power* and (ii) informal political practices such as agenda-setting. I will argue these sources of domination are not mutually exclusive in political practice and when groups are subject to them that they are justified in making claims for self-determination. I will then discuss the two conditions of republican self-determination in detail, having illustrated their significance in the previous sections. I begin, however, by discussing the idea of freedom as non-domination as a political status.

**5.1.) Non-Domination as a Political Status**

To successfully defend the argument that being subject to domination ought to be the relationship that justifies claims for self-determination, clarity is required over what domination is and why it constitutes unfreedom. To do this in the first section of this chapter I will discuss the idea of republican liberty and different interpretations of how a contemporary republican theory of politics should be conceptualised. This will bring into focus how non-domination as a political status can justify claims for self-determination.

For republicans, domination is the principal social and political relationship that should be combated by a legitimate form of government. Republicans contend that domination exists when one is subject to the discretionary will of another agent or agency. This is because when one is subject to the discretionary will of another this constitutes a form of arbitrary power that makes the agent subject to it unfree. Therefore, for republicans, freedom as non-domination is the central value to conceptualise the social and political relationships that exist between groups and individuals.

Freedom as non-domination, as it has come to be known in contemporary political theory, is a conception of liberty that has been excavated by historians of political thought to challenge the once prevailing view that modern constitutional government is rooted in the Lockean idea of natural rights.[[286]](#footnote-286) These historians of political thought have argued that the roots of modern constitutional orders are found instead in a tradition of Italian-Atlantic republican political thinking stretching from the Renaissance to the American Revolution via the thought of the English anti-royalists and *Commonwealthmen* of the seventeenth century. Historians such as Quentin Skinner and Maurizio Viroli have argued that this tradition cohered around the Roman political idea of *libertas.*[[287]](#footnote-287) In particular, Skinner has argued in conceptualising politics in terms of *libertas* the republican tradition of Machiavelli to Milton and Harrington, to James Madison and the founders of the American Republic, conceptualised liberty in terms of *negative* rather than *positive liberty*.[[288]](#footnote-288)

Beginning with Machiavelli and his contemporaries, Skinner argues that freedom for the Italian-Atlantic republican tradition was conceptualised as an absence of arbitrary power, as opposed to an Aristotelian realisation of one’s self through the activity of politics.[[289]](#footnote-289) Yet Skinner also argues that *libertas* in this tradition was not negative freedom in the modern sense – the Hobbesian and subsequently utilitarian idea of interference necessarily being an infringement of freedom – but for the Italian-Atlantic republican tradition liberty was also a *status.* Skinner argues within the Italian-Atlantic republican tradition having the status of *libertas* was to also be a member of a free state – a state under which good laws maintained non-arbitrary relations between rulers and members of the state.[[290]](#footnote-290)

The main implication of Skinner’s interpretation of this tradition is that the right form of government – a constitutional government in contemporary terms – is necessary for the achievement of liberty, meaning that *an individual can only be free as a member of a free state.*[[291]](#footnote-291)Within this is the thought that: 1) to be free, individuals need to have a special boundary drawn around them – the status of being a *citizen* which entitles them to political membership and protection from the law – and 2) that as a collective group, citizens also require a boundary – the status of *self-determination*, which makes the individuals that collectively comprise the state free. By virtue of this, the state is not controlled by those who are external to its membership.

Inspired by Skinner’s historical work, Philip Pettit is the theorist who has done most to revive this republican tradition of liberty in contemporary political theory.[[292]](#footnote-292) Pettit has analytically codified republicanism around the idea of freedom as non-domination and has argued republican liberty should be thought of as a rival conception of freedom to what Isaiah Berlin termed *negative* and *positive liberty*. For Pettit, unfreedom – or domination as he specifically conceptualises it – is when one is subject to arbitrary power. Pettit contends, this opens up a form of unfreedom not captured by negative conceptions of liberty – that no actual interference is required for unfreedom to exist but all that is needed is the *possibility* of interference.[[293]](#footnote-293)

Pettit argues that not all forms of interference are arbitrary – that there can be non-arbitrary forms of interference that are consistent with freedom. The implication of this, for Pettit, is that the only forms of interference that constitute unfreedom are interferences that are *arbitrary*.[[294]](#footnote-294) For Pettit, this contrasts with negative conceptions of liberty which define freedom as an absence of interference and positive conceptions of liberty which define freedom as the achievement of ends that originate from an individual’s or group’s will.[[295]](#footnote-295) Pettit draws upon the classical Roman contrast between *master and slave* as his paradigmatic case to explain this comparison.[[296]](#footnote-296)

Pettit uses the example of a benevolent slave-owner, who because of his tolerant disposition does not interfere with his slave. The slave-owner is content, rather, to leave his slave to his own devices. Pettit argues under negative conceptions of liberty, which define freedom as non-interference, the slave is wrongly considered to be free – in the example, the slave achieves non-interference and therefore must be considered by negative conceptions of freedom to be free.

Pettit, however, contends this is wrong and argues that the slave is unfree because the slave’s freedom is conditional upon the master’s goodwill. If the master’s disposition were to change the slave might find that he no longer experiences a lack of interference. The master, therefore, has arbitrary power over the slave – as he has the capacity to interfere with him at his discretion. The fact that the slave is subject to this power through a relationship of ownership means the slave is not interfered with as a result of *contingency*, rather than as a *matter of right*.[[297]](#footnote-297)

It is only by ending the relationship of arbitrary power that the slave can be free. So long as arbitrary power is had over the slave, the slave lives subject to the *possibility* of arbitrary interference making him unfree. For Pettit, it is this possibility that constitutes unfreedom, not actual interference, as it is for negative conceptions of liberty that define freedom as non-interference.[[298]](#footnote-298) It is this possibility, Pettit contends, that makes domination a distinct idea of unfreedom in comparison to other ideas such as coercion.

Furthermore, in comparison to positive ideas of liberty, where freedom consists in making ends that originate from an individual’s or a collective’s will manifest, Pettit argues, freedom is achieved by ending relationships of arbitrary power that subjects agents to the discretionary will of others.[[299]](#footnote-299) Because republican liberty does not require the achievement of ends from one’s will, for Pettit and Skinner, this makes freedom as non-domination a distinct ‘third concept of liberty’.[[300]](#footnote-300)

However, Pettit’s claim about the distinctiveness of freedom as non-domination has been controversial. *Pure negative liberty* theorists have subjected Pettit’s conception of republican liberty to rigorous analysis and have argued that it is not a distinct idea of liberty.[[301]](#footnote-301) Pure negative liberty theorists have argued a sophisticated form of freedom as non-interference can capture the republican concern for the unfreedom of the slave. Like Hobbes, pure negative liberty theorists agree one cannot be unfree to do what one actually does. When the slave performs actions x, y, or z, the slave still freely performs actions x, y, or z.

Where pure negative liberty theorists disagree with Hobbes is when the slave performs actions x, y, or z he is not free to perform those actions without incurring the interference of his master – if actions x, y, or z displease him. When the highwayman demands *your money or your life*, as in Hobbes’ example, pure negative liberty theorists contend the overall freedom of the traveller is reduced. The denial of certain exercisable options, therefore, also counts as a form of unfreedom according to pure negative liberty theorists. As such, pure negative liberty theorists agree that the slave’s overall freedom is reduced, which would not be the case if the relationship of ownership was ended.

Pure negative liberty theorists have also refuted the idea that the possibility of interference is what constitutes unfreedom. Matthew Kramer has given the example of ‘the gentle giant’ to illustrate this point.[[302]](#footnote-302) Kramer imagines a village that lives free and peacefully in the nearby presence of a kind giant who has the ability to destroy the village. Kramer contends that the inhabitants of the village are free as the giant keeps to himself and has no interest in interacting with the villagers. Because interference is so improbable – though not impossible – Kramer contends possibility is not what is of significance in conceptualising what freedom is. Domination, therefore, for Kramer and other pure negative liberty theorists, is not a distinct idea of liberty nor is it an idea that carries a concern that cannot be captured by a more sophisticated account of negative liberty.

Keith Dowding provides a complementary example to critique freedom as non-domination to a similar end with what he calls the ‘coalition problem’.[[303]](#footnote-303) The coalition problem is the idea that at any given time there is always a potential “coalition of others who could dominate any agent in any sphere”, making, “all agents...subject to domination”.[[304]](#footnote-304) Because of this Dowding argues freedom as non-domination is subject to a *reductio ad absurdum* as no agent can ever have this type of liberty. For example, individuals are always subject to the arbitrary power of others by the potentiality of being kidnapped by a coalition of others who could come together to capture and ransom any individual for their personal gain. The fact that this *could* happen according to Dowding does not make one unfree. The potential threat of being subject to a coalition of kidnappers is a threat for every person, meaning that everyone is dominated. This threat, Dowding argues, is so remote and implausible that the idea of possibility is not relevant for conceptualising what constitutes unfreedom – domination, therefore, for Dowding like Kramer is not what defines unfreedom.

Republicans have resisted these criticisms. Skinner, for instance, has argued to lose a concern for domination is to lose sight of the fact that unfreedom is an ‘existential condition’ – a condition that structures one’s daily expectations and standing.[[305]](#footnote-305) The implication of Skinner’s claim is that unfreedom is not a metric like the pure negative theorists’ view allows them to claim, but that it is a condition that structures how agents can conceive of themselves and their relations with others and the state. As Skinner made clear in his discussion of *libertas*, in comparison to modern idea of freedom as non-interference, republican liberty is a *status* that makes individuals free through being a member of a free state or polity.

This view of freedom as non-domination as a status highlights a further relevant contrast with negative conceptions of liberty. For classical and contemporary republicans the law, when it is properly constituted and implemented, can be entirely consistent with liberty – it can be a non-arbitrary form of interference that can sustain and even enhance freedom.[[306]](#footnote-306) This is in contrast to negative conceptions of liberty which follow Hobbes in contending that “the liberty of subjects, depends on the silence of the law”.[[307]](#footnote-307) For republicans, this is why Dowding’s coalition problem is not a criticism that needs to be of concern. The potential kidnapping of any individual can be constrained by the non-arbitrary interference of the law. With laws making kidnapping and related or similar practices illegal, the law prevents practices such as these from being able to take place.[[308]](#footnote-308)

For theorists of negative liberty this is not an option as the law necessarily constitutes a form of interference that reduces agents’ ability to make free exercisable choices.[[309]](#footnote-309) Defenders of negative conceptions of freedom have critiqued republicans for holding this view – that there can be non-arbitrary freedom enhancing or sustaining forms of interference – arguing that freedom as non-domination must be a moralised and non-descriptive conception of liberty that is integrated into and conceived from a wider normative project with other independent values.[[310]](#footnote-310)

Pettit and others such as Frank Lovett have rejected this charge and have argued that freedom as non-domination is a descriptive conception of liberty.[[311]](#footnote-311) Pettit, for example, in his recent work has altogether dropped the language of arbitrary and non-arbitrary power and instead has attempted to reconceptualise republican liberty in the language of ‘controlled and uncontrolled interference’.[[312]](#footnote-312) Pettit concedes that the language of arbitrariness gives the impression of an independent moral wrong which can be evaluated from a number of different ethical standpoints. In moving to the language of controlled and uncontrolled interference, Pettit argues, this overcomes the charge of moralisation creating a matter of fact description of whether or not a form of interference is controlled – which Pettit contends would be considered to be the case regardless of agents’ differing ethical viewpoints.[[313]](#footnote-313)

Republicans who contend freedom as non-domination is a descriptive conception of liberty, however, have struggled to show how republican liberty is a distinct idea of freedom by fighting pure negative liberty theorists on their own terrain. In arguing that republican liberty is not a normative conception of freedom they have conceded the main thing that makes non-domination unique – that it can give a distinct answer to the question of what social and political relationships are required for human beings, who necessarily have to live together in a world where political authority exists, to remain free.[[314]](#footnote-314)

Therefore, for another set of republican theorists the charge of moralisation is not taken to be a criticism, but instead as an accurate assessment of the republican idea. These theorists have accepted that freedom as non-domination’s uniqueness is integrated into the wider normative political project of *republicanism*, rather than as a distinct analytical conception of liberty.[[315]](#footnote-315)

My contention is that the second group of normative republicans are correct to view non-domination in this way. This is because by conceiving of republican liberty in this fashion, this is the only way to make sense of Skinner’s claim that freedom as non-domination is a status. If individuals can only be free as members of a free state or polity, freedom as non-domination must be tied up with the normative preconditions of a set of social and political institutions. It makes little sense to talk of status as an entitlement to membership in the absence of any institutions to be a member of.

Freedom as non-domination, therefore, should be conceptualised normatively to capture the idea of political status. Normative freedom as non-domination should be conceived as being integrated into a wider republican theory of politics and the constitutional state. This mirrors how many dominant accounts of liberalism from Locke to Mill to Rawls and Dworkin have conceived individual liberty’s role within a wider normative context of legal protections and basic liberties. Republicanism, therefore, can presuppose the context of a constitutional political order as well, but can do so in its own distinctive manner.[[316]](#footnote-316)

Furthermore, many normative theorists of freedom as non-domination have emphasised a *participatory* element to republican freedom in a way that descriptive theorists have not – distinguishing republican views of constitutional government from liberal interpretations of the same idea.[[317]](#footnote-317) Normative theorists have argued that democratic self-government is the normative power within a constitutional political order that individuals and groups must have so that they are not subject to arbitrary power.[[318]](#footnote-318)

However, whilst normative theorists of non-domination have emphasised the individual status of citizenship as a necessary condition for republican liberty, few republicans have given serious attention to the collective status of self-determination as an equally necessary condition for freedom as non-domination.[[319]](#footnote-319) It is this that will be given attention in the following section.

In what follows I will discuss what political relationships should count as manifestations of domination. I will examine four accounts of republican unfreedom and argue that those accounts that successfully conceptualise domination in terms of exclusion from sharing in the status of democratic-citizenship and its participatory exercise are those that successfully justify republican claims for self-determination – they are those that successfully reflect the two conditions of republican self-determination. I begin, however, by briefly noting the value of non-domination’s adaptability as a social and political concept.

**5.2.) Domination and Self-Determination**

**5.2.1.) The Adaptability of Non-Domination**

Central to the appeal of domination as the justification for groups’ claims to self-determination is its *adaptability*.[[320]](#footnote-320) This is because the idea of being subject to arbitrary power can be expressed in a number of forms. Claims for republican freedom have figured behind a diverse number of social and political causes, including anti-monarchism and opposition to oligarchy, revolutionary claims for self-government, constitutional and more general democratic reform, female suffrage and the claims of other emancipatory causes, as well as the labour movement’s complaint against the dominating condition of wage slavery.[[321]](#footnote-321)

The diversity of these causes has led some to argue that domination is an indeterminate idea – one that can be harnessed for competing social and political ends.[[322]](#footnote-322) However, for others this has not been regarded as a weakness, but as a strength, as domination is an idea that can be adapted to new forms of unfreedom that emerge over time from changing social, economic, cultural, and political circumstances.[[323]](#footnote-323) For example, it is unproblematic that the republicans of the Italian Renaissance had no concern for *wage slavery*, as many contemporary republicans do, as this was a political concern that only became apparent in the 19th century with the emergence of a maturing capitalism.

This means whilst the value of freedom is fixed, and a basic understanding of unfreedom as arbitrary power is fixed also, which social, political, economic or cultural concerns define what constitutes arbitrary power in any particular instance is not proscribed from within the concept itself. This leaves the possibility that new forms of arbitrary power may emerge – that hitherto have not been conceptualised – that may create new and unforeseen claims for freedom and self-determination.[[324]](#footnote-324)

This does not necessarily make different conceptions of domination incompatible with other expressions of republican liberty, as they can cohere. For example, creating laws to constrain the arbitrary power of bosses over their employees does not conflict with the political enfranchisement of different groups in society. Nonetheless, some adaptations of domination can conflict. For example, the domination of political rule by autocrats, solved by the politics of democratic self-government has created new forms of domination, such as the domination of minorities in majoritarian democratic systems, captured by the idea of ‘tyranny of the majority’.[[325]](#footnote-325)

Therefore, one claim for freedom can create new forms of domination. The task at hand for republicans in light of this potential incompatibility is to determine which accounts of domination can actually embody claims for liberty in political practice and which accounts can become sources of domination themselves. It is those accounts of non-domination that actually embody political freedom I will now argue justify claims for self-determination.

**5.2.2.) Lovett’s Procedural Account of Non-Domination**

To be dominated is to be subject to the discretionary will of another agent or agency – one that places an agent under a relationship of arbitrary power. For republicans this idea – that domination is constituted by arbitrary power – is uncontroversial. However, what is subject to controversy amongst republicans are the specific social and political relationships that constitute the content of arbitrary power. Much like idea of the ‘harm principle’ in John Stuart Mill’s thought, controversy arises as soon as the question is posed – *what counts as arbitrary power* – in place of the question regularly asked of Mill’s theory – *what counts as harm*?[[326]](#footnote-326)

For Frank Lovett the fault line in this controversy lies with whether or not one has a *substantive* or *procedural* view of what constitutes arbitrary power. The substantive view of arbitrary power, Lovett writes, is one where the “decisions made according to the will or pleasure of a power holder...do not reflect the relevant interests of...affected parties”.[[327]](#footnote-327) In other words, the substantive view of arbitrary power is one that ‘tracks the interests’ of those over whom power is exercised.[[328]](#footnote-328) By contrast, the procedural view of arbitrary power contends that an agent is subject to domination only when other agents and agencies have the ability to exercise unconstrained power over them, regardless of what that agent’s substantive interests may be. The procedural view, therefore, is a descriptive or positivist account of what constitutes arbitrary power.

Lovett advocates the second, *procedural*, understanding of arbitrary power. He argues that this view is sufficient to diagnose what he contends to be arbitrary power – relationships that allow decisions to be made on a whim over other agents. Lovett contends that to overcome these relationships rules and procedures should be put in place to act as external constraints on agents and agencies. These rules should be designed to constrain agents’ and agencies’ capacity to interfere with others at their discretion.[[329]](#footnote-329)

These rules and procedures have to be impartially implemented and adhered to, Lovett notes, for them to act as genuine constraints on agents and agencies with the capacity to arbitrarily interfere with other agents.[[330]](#footnote-330) With impartially implemented rules and procedures, the procedural account of non-arbitrary power embodies the idea of a free state being one that is governed by the ‘rule of law’ as opposed to ‘the rule of men’, central to classical republican thinking.[[331]](#footnote-331)

By contrast, the substantive account is critical of the procedural view for being an insufficient account of what constitutes arbitrary power. The substantive view contends that whilst rules and procedures are a necessary condition for having a non-arbitrary political regime, they are insufficient because no matter how impartially implemented rules and procedures may be they can still be compatible with certain relationships of arbitrary power. Lovett raises the example of discriminatory political regimes himself to defend the procedural view from this criticism. The criticism is as follows: because the procedural view does not take into account the interests over whom the rules and procedures have jurisdiction, in discriminatory regimes such as the southern United States prior to the extension of civil rights to black Americans and others like apartheid South Africa, even though the rule of law prevailed, the groups subject to these regimes were still subject to arbitrary power.[[332]](#footnote-332)

Lovett concedes that it is intuitive to agree with the substantive account and think that groups subject to these regimes were dominated. However, Lovett argues that these groups were not. Lovett argues that groups subject to these regimes were certainly subject to an independent moral wrong, but that this wrong was not domination. Lovett contends that in these types of regimes no group wielded power over others to arbitrarily interfere with them at their discretion. Even though the law was discriminatory, Lovett argues, laws do not dominate because they have no will. Lovett contends, rather, that only agents and group agencies can dominate because they have a will.[[333]](#footnote-333)

Lovett is motivated to make this argument because he wants to separate descriptive and normative concerns in giving a definition of domination. For Lovett this is a methodological point. Lovett argues that a definition of domination is required that is separate from the normative features of any given state of affairs or situation, so that a generalised account of domination can be given, which can be easily applied in political practice. With such a descriptive definition of domination, Lovett contends, in political practice instances of domination can be easily located to implement rules and procedures to constrain agents and agencies from exercising arbitrary power over each other.[[334]](#footnote-334)

However, my contention is that Lovett’s separation of the descriptive and normative elements of domination is deeply problematic. It is problematic because it fails to capture a concern about the process and context from which rules and procedures are defined. Rules and procedures do not come to exist from within a normative vacuum. This is why Lovett is incorrect to contend that the wrong experienced in discriminatory regimes is not domination.[[335]](#footnote-335) The reason why a discriminatory regime that impartially implements the rule of law is dominating is because one group creates the law that all are subject to – a law that happens to apply to different groups in a discriminatory manner.

Lovett is correct that impartial procedures do not dominate, but the point, rather, is that they do not dominate by themselves. The domination that occurred in discriminatory regimes, such as the pre-civil rights United States or apartheid South Africa, was one step removed from the procedures themselves and was found instead in how the rules were created in these societies. Therefore, the discrimination faced in these regimes was the result of one group having the arbitrary power to decide the rules that are in opposition to another group’s interests.

This type of domination goes beyond Lovett’s idea of having the capacity to interfere with an agent at one’s pleasure as defining what constitutes arbitrary power and adds the condition of *differentiation in political status* protected against in the first condition of republican self-determination. This is the idea noted by Skinner that freedom as non-domination is distinct from the modern concept of negative liberty in that it has an extra concern for *status* – that one can only be *free as a member of a free state*.[[336]](#footnote-336) Lovett’s conception of non-domination lacks this normative element, placing his emphasis instead on impartiality. Impartiality, however, is meaningless for groups and individuals unless they are in equal standing to the other members of the same political association. Otherwise, which rules and procedures individuals and groups are subject to – even if they are impartially implemented – are at the discretion of the rest of the population.

In discriminatory political regimes the rules and procedures are in direct contrast to one or more groups’ interests. These groups have an interest in changing the rules and the procedures, but this change is held at the discretion of another group. This is why there is domination even when the burden of the law falls equally on two or more groups, such as in apartheid South Africa. For example, in apartheid South Africa interracial marriage was prohibited and thus the burden of this law fell equally on all groups. The domination that emanated from this rule did not stem directly from the law itself but from the fact that the rule was imposed on a restricted electoral franchise that gave white South Africans the discretion to impose this law on everyone.[[337]](#footnote-337)

Equal standing, therefore, is not equivalent with the sharing of equal burdens. For equal standing to exist an extra condition is required of equal control over defining the rules and procedures that apply to all. This is the first condition of republican self-determination – the equal status of citizenship that gives all political subjects the democratic entitlement of the right to vote. It is in the absence of equal standing that claims for self-determination are justified. It is in contexts where the right to vote is denied to groups, such as in discriminatory political regimes, that these claims are relevant. Lovett’s procedural account of non-domination fails to capture these claims because they are substantive interest-reflecting claims for self-determination – it fails to capture these claims because it fails to recognise that political subjects have an interest in their own self-government.

The only claims for self-determination Lovett’s account captures are those that stem from a state’s failure to impartially uphold the law.[[338]](#footnote-338) These claims, however, can often be insufficient. To think, for example, that the wrongness of the apartheid regime in South Africa stemmed from a failure to impartially uphold the law is to miss the deeper problem that the laws themselves were dominating and but also discriminatory because only a minority of South Africans were involved in creating and defining them.

The just-cause, choice, and nationalist theories of self-determination are sympathetic to this conclusion. However, for none of these accounts is the idea of equal and inclusive political membership at the normative core of their justification for self-determination. Equal and inclusive citizenship, however, constitutes the normative core of the republican justification for self-determination, as stipulated in the first condition. As such, it is with substantive conceptions of domination with which republicans ought to have their concern and with which groups’ claims to self-determination ought to be justified.

**5.2.3.) Pettit and Domination as the Tyranny of the Majority**

Whilst the rule of law is a necessary condition for non-domination, for Philip Pettit, it is insufficient to secure republican freedom. For Pettit, *political control* is a further requirement to protect agents against arbitrary power. Every political subject, Pettit contends, should have an equal stake in controlling the political power to which they are subject. In this regard, Pettit, unlike Lovett, agrees with the first condition of republican self-determination. However, Pettit argues that political control secured through the practice of participatory self-government should at best be an instrumental condition for securing agents’ non-domination. This is because, Pettit argues, participatory democratic politics can often be the source of agents’ domination, particularly if those agents are minority groups. Minorities, Pettit argues, often do not gain equal political control through the participatory democratic process. Pettit’s concern, therefore, is for the domination of minorities by the *tyranny of the majority* in representative democracies. As such, Pettit argues against the second condition of republican self-determination.

For Pettit, one is subject to arbitrary power when an agent does not have their ‘commonly avowable interests’ reflected in public decision-making.[[339]](#footnote-339) For Pettit, commonly avowable interests are those that constitute a *public interest* that should be promoted by the state and is contended to be good for all the members of a political association, assuming that they accept they have to live together on terms of formal equality.[[340]](#footnote-340) The public interest is in classical terms what republicans referred to as the *common good*.[[341]](#footnote-341)

Pettit writes, “the public interest...is composed of those goods that anyone who accepts the necessity of living on equal terms with others is likely to want to have collectively guaranteed or promoted. It consists in the interests that people are going to share insofar as they have equal status as members of a polity”.[[342]](#footnote-342) For Pettit, the public interest consists in certain public goods – for example, public health and criminal justice, as well as others – but provides enough room in the involuntary scheme of citizens living together under mandatory political authority for individuals and groups to pursue their own interests, assuming they do not conflict with the goods that define the content of the public interest.[[343]](#footnote-343)

In modern constitutional politics representative democracy is the primary institution used to define what the content of the public interest should be. However, Pettit is wary of entrusting representative democracy fully with this task. Pettit argues representative democracy cannot define what the public interest is for a society because in practice it never – or rarely – captures the basic interests of all of a polity’s members, nor does it do this in a coherent fashion.[[344]](#footnote-344) The main reason representative democracy cannot define a society’s public interest, for Pettit, is because it operates under a system of majority voting. Pettit argues that because of this, what is taken to be the *public* interest is often in fact the interest of the numerical majority.[[345]](#footnote-345)

For Pettit, a majoritarian system of representative democracy can only define a society’s public interest with a political sociology that rarely exists in modern societies – that who the numerical majority are changes from vote to vote. In the absence of this political sociology being a reality in most, if not all political contexts, Pettit contends, majoritarian democracy creates *permanent minorities* who are subject to the ‘tyranny of the majority’.[[346]](#footnote-346) For Pettit, these minorities are what he calls ‘fixed identity minorities’. These are groups such as ethnic, cultural and linguistic, religious, and gender and sexual minorities, whose identity, Pettit argues, ‘pre-commits’ them to political positions on which they cannot change their preferences.[[347]](#footnote-347)

This means that these groups become permanent minorities who have to weather the political decisions made by the numerical majority of a society – whatever they may be – because it is at the majority’s discretion whether or not they author outcomes that reflect or offend minority groups’ basic interests. For Pettit, this is a paradigmatic case of arbitrary power – that one groups’ wishes are held at the discretion of another. It is because of this, Pettit argues, that substantive limits should be put on representative democracy as the institutional mechanism tasked to define any society’s public interest.[[348]](#footnote-348)

Pettit argues this should be done in two ways – through (1) an *ex ante* and (2) an *ex post* solution to the problem of the tyranny of the majority. The first (1) *ex ante* solution is to take items off the political agenda. For Pettit, this is to work in two ways. Firstly, (1a) to pass certain political competencies to non-political expert bodies and agencies – those often referred to in Ireland and the U.K. as *quangos* (quasi-autonomous non-governmental organisations).[[349]](#footnote-349) The second (1b) is to make certain basic interests minorities have, constitutionally enshrined rights that cannot be easily amended or made subject to the pressures of normal day-to-day politics.[[350]](#footnote-350)

The first of the *ex ante* solutions to the problem of the tyranny of the majority – (1a) the depoliticisation of certain issues – is designed to overcome the short-termism and corrosive populism, Pettit contends, representative democracy is subject to. Pettit writes by way of illustration “government policies on interest rates, on energy and environmental issues and perhaps criminal sentencing ought not to be left entirely in the hands of the elected. Politicians, being focused on the electoral short term, are always likely to favour lower interest rates, easier energy and environmental demands, and tougher retributively satisfying sentences. And however attractive in the short term, such policies can be very destructive and costly over the long haul”.[[351]](#footnote-351)

By depoliticising issues such as these, as well as others, Pettit argues public goods can be strengthened in place of sectional goods that are often reflexively authored by a populist politics that is in many cases not good for minorities. For Pettit, depoliticising issues where minorities’ interests are in contrast to the majority will protect minorities because it will consider these groups’ interests in the absence of the promise of their votes – votes which majority representatives in practice do not pursue.

The second ex ante solution (1b) of creating special constitutionally protected rights is designed so that controversial ethical issues – which often arise as a result of pluralism – do not become politicised. Pettit writes “the effect of constitutionally protected rights would be to put various issues off the popular agenda, as with familiar measures that disallow majority voting on whether to set up an established religion, on whether to give special rights to heterosexuals, on whether to privilege those in a particular ethnic group, and the like”.[[352]](#footnote-352)

For Pettit, constitutionally protected rights would protect minority groups from majorities creating laws that reflect majority privileges or laws that violate minorities’ interests. This is in addition to Pettit’s account of social justice which contains a comprehensive list of ‘basic liberties’ that goes beyond the standard list of negative rights enshrined in most liberal-democratic political constitutions. Pettit’s basic liberties also include a context-specific set of social and economic rights.[[353]](#footnote-353) For Pettit, these rights depoliticise what he takes to be a minority-friendly view of social justice from contestation in normal politics.

The *ex ante* solution, in both its forms, attempts to insulate minorities from majority domination before it happens. However, (2) the *ex post* solution to the same problem accepts that on occasion non-public factional decisions will be authored. The *ex post* solution recommends the use of institutions to diagnose these failings. Specifically, Pettit recommends, the institutionalisation of a *contestatory politics*. A contestatory politics is one where groups and individuals can contest decisions made by majority vote, when they believe these decisions violate their basic interests. This can be done by citizens bringing their objections to designated bodies such as ombudsmen for specific subjects or through judicial review.[[354]](#footnote-354)

Pettit contends this should have two effects. First, that if contestations are successful that *formal legal constraints* will be placed upon existing and future legislation – as is common in the practice of judicial review.[[355]](#footnote-355) And second, that by virtue of contestation existing and its practice being engaged in – regardless of the formal outcomes reached – that a series of *depoliticising norms* would emerge becoming unwritten constraints on what politicians are willing to legislate for.[[356]](#footnote-356) These forms of contest, Pettit contends, will re-correct the decisions made by the majoritarian process redefining the law to reflect a society’s public interest.

However, Pettit’s strategy of constraining representative democracy to deal with the problem of majority domination has been criticised by other republicans. Richard Bellamy, for example, has argued that rather than showing greater respect for the equality of citizens and inclusiveness of their interests Pettit’s method in fact shows less.[[357]](#footnote-357) Bellamy argues under the contemporary conditions of pluralism there is deep disagreement amongst citizens over what constitutes the public interest.[[358]](#footnote-358) It is in this context, Bellamy argues, when *political* decisions are made through non-political means – by judges, experts, and other non-elected officials – that only citizens whose interests are reflected in their judgments will accept them as legitimate, in a *lived-psychological*, as opposed to objective or formal sense.[[359]](#footnote-359)

For Bellamy, when political decisions are made – decisions that reflect normative content or judgements – in a depoliticised manner, they are perceived as reflecting the interests of a particular group and not the society in question’s public interest. This is whether or not citizens are right or wrong about the *objective* nature of the judgement in any metaphysical sense – that the judgment reflects some truth in the manner of moral realism – but rather that citizens disagree on what is good for all of society.[[360]](#footnote-360) Bellamy contends, therefore, that this disagreement cannot be solved with recourse to some special authority, as the content of this authority’s judgement will be viewed in no way as more legitimate than any other – it will reflect only one conception of the public interest amongst many.[[361]](#footnote-361)

For example, when a group loses on a ruling about a controversial ethical issue such as abortion, the losing group cannot easily accept this ruling as in the public interest because of their beliefs. For Bellamy, when political decisions are made in this way, the normative standing of citizens is violated, as decisions of this kind fail to treat all citizens’ concerns and interests with equal weight, because the only interest that is taken to matter is the one reflected in the judgement reached. To show equality and obtain legitimacy, Bellamy argues, citizens must be included in the process used to make political decisions.[[362]](#footnote-362)

Indeed, as others such as Patchen Markell have noted, formal control over decision-making is insufficient to have non-arbitrary power as political ‘involvement’ is also a necessary condition of non-domination.[[363]](#footnote-363) Instead of depoliticising decisions a higher standard of inclusiveness is required for minorities in the democratic political process to secure their involvement – one that gives minorities the chance of winning, which the conditions of normal politics often do not. This is the basic stipulation of the second condition of republican self-determination.

For Bellamy, this means subjecting political decisions to stringent negotiation and compromise, amongst a range of political representatives in electoral democracy.[[364]](#footnote-364) For example, on an issue such as abortion, one side will necessarily win, constituting a defeat for the other, but by including all sides in the process, the outcome does not need to be *winner-take-all*, as Bellamy contends is the case when the decision is taken by mechanisms such as judicial review. Bellamy contends, anti-abortion campaigners and pro-abortion advocates can agree on limits such as up to what time in a woman’s pregnancy can abortions be performed, or agreement can be found on cases of exception, such as those of rape, incest, or fatal foetal abnormality. Bellamy argues, the negotiation and compromise of groups involved in this process will be framed also by contextual issues such as the social costs of abortion or the dangers associated with it happening anyway as an illegal practice.[[365]](#footnote-365)

Bellamy argues, when decisions are made in this way, through negotiation and compromise in representative democracies, legitimacy is gained by groups recognising the legitimacy of the political process, rather than placing emphasis on the outcomes reached such as in Pettit’s model.[[366]](#footnote-366) Under these conditions, Bellamy contends, enough *give-and-take* is possible to include minority groups in the representative political process.[[367]](#footnote-367)

In this disagreement between Pettit and Bellamy, I side with Bellamy. In attempting to solve the domination of democratic majoritarianism, Pettit has created a new form of domination that undermines the equality and inclusiveness he wants to protect. The challenge remains, however, to see how Bellamy’s model can overcome the domination of minorities in the representative process. There are two versions of Bellamy’s account that can do this – only the second can meet this challenge for all groups. The first is a stronger reading of Bellamy’s argument.

The stronger reading argues in contrast to Pettit that majoritarian democracy is sufficient to protect minorities’ interests, so long as the system is one that has vigorous electoral competition gained by a highly proportional electoral system, so that minorities can become part of wider interest-group coalitions. This reading contends, under the correct conditions, minorities’ votes would become necessary for any *mainstream* group to gain power and would, therefore, have a strong incentive to include minorities’ interests in their electoral platform, and giving them concessions once they had achieved power.[[368]](#footnote-368)

The problem with this reading is that there are examples of minority groups failing to be occasional winners even under the proportional conditions outlined. These include groups that are subject to forms of arbitrary social and cultural power – which I will discuss at length in the next section – or those that have been subject to other political and moral wrongs such as discrimination, exploitation, and violence. To overcome this domination, minority groups who cannot be easily included, instead, should be able to make claims for self-determination to have their own political statuses and procedures as a means for them to gain equal democratic participation.[[369]](#footnote-369)

The strong reading may cover a number of cases, particularly those that have discrete issue-specific interests, which once rectified effectively make the group part of the majority because their objective has been achieved – for example, groups that have successfully campaigned for homosexual rights.[[370]](#footnote-370) However, for others such as indigenous peoples, subject to arbitrary social and cultural power, or national and regional minorities – whose comprehensive political interests cannot be easily reconciled to the interests of the majority – this is not likely to be the case.

The weaker reading of Bellamy’s argument addresses this concern. The weaker reading argues in contrast to Pettit’s position that not *less* but *more* democracy of a *different kind* is required to make sure minorities’ interests figure in the public interest. This different kind of democracy is achieved by groups gaining new statuses of self-determination that entitle them to their own democratic procedures. The procedures won from the status of self-determination provides institutional mechanisms for these types of groups’ participatory political inclusion.

For example, in some societies special procedures may be required to force negotiation and compromise to make representative democracy work, because of a background of conflict, mistrust, discrimination or other moral and political wrongs. For example, in Northern Ireland, because of the nationally divided allegiances of the population – no matter how proportional the electoral system could have been made to be – when emerging from conflict and with a background of sectarian division, the numerical majority of British-identifying Unionists over Irish-identifying Nationalists would have lead in all likelihood to the permanent exclusion of the latter group in any restored majoritarian system of representative democracy, as had been the case in the first fifty years of the state. For societies such as Northern Ireland, therefore, non-majoritarian forms of democracy are required.[[371]](#footnote-371)

Neither Pettit’s nor the strong reading of Bellamy’s emphasis on reform is sufficient to deal with the domination faced by groups such as Catholics/Irish Nationalists in Northern Ireland.[[372]](#footnote-372) Therefore, claims for political status are required to give these types of groups the power to assert their interests on an equal footing with the political majority.[[373]](#footnote-373) These are substantive claims for self-determination. By contrast, Pettit’s account can only ground weak claims for self-determination. For Pettit, self-determination would only be justified when the procedures for contestation lack sufficient impartiality in political practice. This is because minorities would never be able to receive any political recourse.[[374]](#footnote-374)

Furthermore, the stronger reading of Bellamy does not justify claims to self-determination because of its constitutional emphasis on political reform. However, simple electoral reform is insufficient for some minority groups’ participatory inclusion. It is these groups that should be able to make claims for self-determination as a mechanism to allow for their civic inclusion. Only the weaker reading of Bellamy can achieve this because it makes the argument that not all uniform models of representative democracy are reformable in every society, as for example in Northern Ireland.

Self-determination would mean minority groups having their own political statuses and procedures. These statuses would become part of an existing state’s political architecture, either as regional authorities or as modes of special representation, such as through consociational power-sharing. In other cases self-determination can take the form of secession – which is most justifiably claimed in contexts were the aforementioned institutional forms have failed and civic equality is not easily achieved or possible with majority groups.[[375]](#footnote-375) By having separate political statuses as part of the political architecture of a state, majority groups will be formally required to register the interests of minorities in their decision-making, either because minorities are empowered to govern themselves on a number of issues or because minority groups have been empowered to force negotiation and compromise where it did not exist before.[[376]](#footnote-376)

Through these statuses and their associated procedures Bellamy’s participatory politics of democratic negotiation and compromise can become a reality, because through them minorities can achieve the means to participate. However, the appropriateness of separation for which groups requires contextual consideration – as shown in the next section, often multicultural policy or a politics of redefining national/civic identity would be better to deal with the domination faced by some groups.

However, in general it is groups which are subject to exclusion on a *range of issues*, such as some regional or national minorities – rather than groups which are subject to exclusion on a discrete or specific sub-set of issues such as homosexual rights – that are the most appropriate candidates to make these claims. This is because these groups’ interests cannot be easily reconciled to the existing form of politics in which majorities also have a justifiable interest, in many cases, of maintaining – whereas the latter only requires modest or specific political reforms to enable their democratic participation.

Furthermore, it is important to stress the *remedial* character of this argument – groups’ unequal exclusion from democratic participation as justifying claims for self-determination, because this requirement prevents the right to self-determination being claimed when it creates exclusion itself. This is in contrast to the choice-based theory of self-determination. According to the choice account, any group – assuming it meets a basic set of requirements – is free to make claims for self-determination. The choice-based theory argues that all claims for self-determination are justified so long as all other individuals’ rights to self-determination are protected – this includes some claims that could exclude minority groups, by *leaving them behind*.

The choice-based theory deals with this criticism by arguing that those who exercise their rights to self-determination accept that dissenters also have the right to make recursive claims for self-determination. This requirement is held in addition to the extra stipulation that the political associations formed and left-behind by claims to self-determination can uphold their basic functions in terms of administration and upholding the basic welfare of its subjects.

However, the protection of dissenters’ recursive rights to self-determination is insufficient to prevent the domination of all groups. Whilst recursive self-determination may prevent the domination of dissenting sub-minorities – assuming this right is practically exercisable, which in some cases it may not be because sub-minorities are not able to fulfil the necessary administrative or welfare functions of a state themselves – the choice-based theory cannot protect left-behind or excluded minorities, when majority groups choose to form new political associations.

Whilst an excluded group would be left with the ability to fulfil its most basic administrative and welfare functions, it is extremely unlikely that any group placed in such a predicament would want to be in this situation. The quality of the excluded group’s collective life, therefore, would be placed at the discretion of the seceding majority. The majority group would have it within its power to make a political decision that profoundly effects the minority’s collective life, over which the minority has no control or recourse – making the excluded minority group dominated.

However, under the remedial justification of the republican theory this possibility does not exist. This is because the remedial requirement of the republican theory stipulates that the bounds of political obligation can only be broken when the wrong of domination becomes manifest for groups. Individuals, therefore, are secure in their expectation that the quality of their collective life cannot be arbitrarily altered by their compatriots. As a remedial account of self-determination, the republican theory sets out a series of political and social conditions in its two conditions to protect individuals and groups from arbitrary power. It is only when these conditions are not fulfilled that individuals and groups can become dominated and claims for self-determination become justified.

**5.2.4.) Laborde and Domination as Civic Misrecognition**

Political control is the first condition of republican self-determination that individuals and groups subject to a political authority must fulfil to be protected against political domination. However, political control is insufficient to protect individuals and groups against domination as they also need to be substantively involved in defining the direction of political power. Therefore, self-government – which involves both the control and the direction of political power – is required to fulfil the second condition of republican self-determination.

In political practice equal democratic-citizenship – defined by the first condition – is often insufficient to protect individuals and groups from being subject to arbitrary power. This is because not all individuals and groups with the formal status of citizenship are necessarily included in the process of substantively defining the content of a state’s rules and procedures – and thus in turn the interests that are reflected in the law. Some individuals and groups can be excluded from the process of equal self-government, whilst still having the formal status of equal democratic-citizenship, when they are subject to forms of arbitrary *social and cultural power*. These groups are dominated, despite having the first condition of republican self-determination fulfilled, because they fail to fulfil the second condition. In this section I will discuss how groups that are subject to arbitrary social and cultural power can fail to fulfil the second condition of republican self-determination.

Arbitrary social and cultural power is a long established idea in the critical tradition of political theory, from Marx to Foucault, and is often referred to *structural power.*[[377]](#footnote-377) Social and cultural power is the power of social and cultural norms that can act upon agents to define and curtail their actions. For Cécile Laborde, engagement with this type of power is contended to be fruitful for republican political thinking because it provides republicans with the resources to analyse a source of power not captured by other republican accounts of domination. For Laborde this opens up the possibility of ‘Critical Republicanism’ as a methodological approach for republicans to have a wider understanding of domination.[[378]](#footnote-378) This is a form republican politics that has a broader and less strictly *intentional* view of what constitutes domination.

However, reconstructing domination to include the power of social and cultural norms as a source of arbitrary power has faced criticism from other republican theorists of domination. Lovett, for instance, has made an argument similar to his critique of procedures being a source of domination and has argued that social and cultural norms cannot dominate because they have no will.[[379]](#footnote-379) For theorists such as Lovett, pervasive attitudes in society such as *heteronormativity* – the default position of assuming heterosexuality to be the social norm – or any other of the normative biases that pervade individuals’ day-to-day thinking and interactions, it is claimed, are too indeterminate to be a source of domination. This is because no specific agents can be held responsible for these norms, as nearly everyone – if not everyone – is responsible for reproducing them.[[380]](#footnote-380)

Laborde and others reject this conclusion, arguing that in certain contexts these forms of power can be sources of domination. This is because it would be a negation of responsibility on the part of the state in not taking the burden of dealing with these forms of power when there are no specific agents to hold to account.[[381]](#footnote-381) Laborde and others argue that this is necessary because social and cultural forms of power generate norms that: (a) get agents to self-censor and possibly even fail to think of themselves as agents at all, and (b) interact with how political decisions are made – both (a) and (b) pushing groups outside of the equal, participatory, and collective exercise of citizenship. It is the interaction of these norms with political decision-making and who comes to make these decisions that makes social and cultural power a source of domination.[[382]](#footnote-382)

The context of social and cultural pluralism is often the source of these forms of power, particularly in cases where decisions are made by ethno-cultural majorities that affect non-*mainstream* or minority groups. Therefore, Laborde argues, symbolism is of real significance, as often in context symbols come to define who is perceived as part of the political community – those who define the substantive content of rules and procedures beyond the formal status of citizenship.[[383]](#footnote-383)

Laborde explores this concern through the case of the Hijab ban in contemporary French schools. Laborde argues the republican state ideology in contemporary France – expressed through the separation of church and state and the state doctrine of *laïcité* in education – has created an emphasis on *difference-blindness* and *neutrality* as strategies for governing the public sphere.[[384]](#footnote-384) However, there is a problem with expressing the French state ideology in this way, Laborde argues, because in political practice there are no aspects of public life that are not touched by the power of social and cultural norms. Laborde contends that the French state has conflated its commitment to the normative idea of a secular state with the actual existence of one.

Laborde argues that the French state, like any other, fails to live up to the idea of neutrality. Its institutions and practices on issues of multicultural cohesion purport to be neutral, when this neutral position is in fact implicitly culturally Gallic, socially post-Christian, and ethnically white. Because the alleged neutrality of the state is in reality heavily value-laden, when the French state prevented female Muslim citizens from wearing headscarves in schools – and now subsequently in public places – its alleged neutrality was not reflecting secularism but the majority culture’s identity and values. The rules and procedures because they were created in a biased value-laden fashion in fact constituted the domination of headscarf-wearing citizens.[[385]](#footnote-385)

For Laborde, the republican end of a common public with a shared civic identity is important but she argues that it is naive to believe that there can ever be value-free rules and procedures.[[386]](#footnote-386) Rules and procedures always reflect interests. This is why inclusion is a necessary requirement of a democratic state so that these interests can be defined in a manner that does not reflect the interests of just one group. Because there are no value-free rules and procedures this makes *consequentialist neutrality* – the idea that the state ought to be neutral with regards to the consequences of its decisions – impossible. For example, having a public holiday on one date precludes the holiday from being held on another date. The fact that winter holidays are held over Christmas in European countries precludes it from being held during other religious or cultural festivals.

This does not invalidate, however, the idea of *justificatory neutrality* – the idea that officials should make public decisions that do not benefit the interests or identities of any particular group. Instead, it demands a much higher standard to be fulfilled when making public decisions by including consideration of social and cultural norms. This is achieved by disassociating justificatory neutrality with difference blindness.[[387]](#footnote-387) The problem with the association of these ideas is evidenced by the example of French state officials in the Hijab controversy. These officials believed themselves to be making a neutral law with the headscarf ban, when in fact they were applying their own socially and culturally specific biases in creating the law.

The non-neutrality of the purportedly neutral public sphere made female French Muslim citizens choose between two interests, both of which they should have been able to exercise – their interest in political participation and their interest in religious expression. The headscarf ban placed these citizens in the position of either having to give up on their faith to participate in education – and the public sphere more generally – or give up on participating in public life to adhere to their faith. This constituted a form of misrecognition by the French state, equating adherence to the Muslim faith as equivalent to non-allegiance to the state. This misrecognition was a form of domination because it constituted a denial of the participatory exercise of French Muslim women’s citizenship. This group’s ability to participate in politics was held at the discretion of the French ethno-cultural majority *–* which because it was conditioned by the power of social and cultural norms defined the terms of how one is able to participate in politics.

Therefore, struggles for recognition, Laborde argues, are struggles for political voice. Often groups are *essentialised* and misrecognised as *cultural groups* when they make *political* claims for inclusion in non-neutral political contexts.[[388]](#footnote-388) James Tully has noted that this is an aspect of imperialist politics, particularly in neo-colonial societies. Tully argues neo-colonial societies often disaggregate culture and politics when they react to claims for recognition – particularly those of indigenous peoples – because the dominant ethno-cultural group, which ultimately makes the decision on whether or not to recognise these claims, has a monopoly on defining what is political and does so in a normative language that reflects its own intellectual traditions.[[389]](#footnote-389)

In the case of colonised peoples this misrecognition arises from imperial and settler groups wrongly construing indigenous and colonised peoples’ forms of political organisation as apolitical cultural practices – as they fail to meet the standard of what is understood as *political* in the European intellectual language of sovereignty and law. This gave settlers licence *to bring politics* and *civilisation* where it had not existed before, usurping groups’ existing statuses of self-determination, because these statuses were not recognised by the European colonists as being statuses of self-determination to begin with.[[390]](#footnote-390)

Similarly, in the case of indigenous peoples in post-colonial societies, although in most cases these groups accept the present-day existence of states such as Canada, New Zealand, and the United States, these groups generally wish for their self-government to be supplemented with the re-establishment of their wrongly usurped statuses of self-determination lost in colonial period and with recognition given to this wrong.[[391]](#footnote-391) The just-cause, choice-based, and nationalist theories of self-determination fail to satisfactorily capture these claims.

For instance, although the choice-based theory is likely to contend that colonialism is a violation of a group of individuals’ choice to live together on their own terms, the choice theory does not capture a concern for arbitrary social and cultural power, giving colonialists no reason to argue – as they did – that non-European peoples do not have the capacity for choice and that benevolent European tutelage is required for non-European peoples to develop this capacity.[[392]](#footnote-392) Whilst the choice-based theory certainly does not want to encourage colonialism there are no critical tools within the choice-based theory of self-determination that can counter these types of justification for colonialism.

Likewise, the nationalist theory of self-determination can be similarly uncritical of a colonial usurpation of political statuses. The nationalist theory is likely to contend that colonialism is a violation of colonised groups’ distinct identity. However, colonialism can be constitutive of some groups’ identities. For example, British colonists in India in the 19th and 20th centuries had an interest in maintaining the British Empire because it was constitutive of their imperial British identity. The nationalist account could argue that a compromise can be found between identities, by maintaining the empire with intra-imperial recognition of local identities. But this fails to see the wrong of colonial political relationships to begin with – that they unjustifiably usurp pre-existing statuses of self-determination, even if only partially. Therefore, nationalism despite it emerging historically as a critique of imperialism does not have a reason to deny a certain version of colonialism.[[393]](#footnote-393)

Finally, the just-cause theory of self-determination is susceptible to a *civilising* politics of colonialism. In its basic form, where human rights are the value to be maintained, the just-cause theory is compatible with a benevolent colonialism that upholds these rights, when they do not mirror the list of human rights it defines – overturning local and often culturally specific statuses of self-determination. A substantive version of this theory is also subject to the same problem. If the just-cause theory was to include self-government as an aspect of justice that legitimate states must maintain, it gives groups licence to impose democracy globally – this is particularly problematic if it is a form of self-government that is not captured in the language of western legal and political norms.

Furthermore, the just-cause, choice-based, and nationalist theories of self-determination have insufficient normative resources to capture the usurpation of post-colonial groups’ statuses of self-determination. For the choice theory, any group is free to make claims for self-determination. However, because all groups are equally entitled to make these claims, choice-based claims for self-determination do not give recognition to the past wrong of indigenous groups’ previous status of self-determination being usurped by European colonisers. The choice theory treats indigenous peoples’ claims for self-determination like any other and therefore ignores the wrong of colonialism, which many of these groups require to have politically recognised.[[394]](#footnote-394)

The nationalist theory of self-determination is subject to the same problem. Whilst the nationalist theory can recognise that indigenous peoples in post-colonial states have *nested identities* – for example being both Canadian and Cree or American and Cherokee – the recognition it gives to indigenous peoples is a new status of self-determination, not the restoration of the one usurped by a colonial politics. The nationalist theory, therefore, also fails to recognise the wrong groups such as these were subject to by colonialism.

In principle the just-cause theory of self-determination should be able to justify the claims of post-colonial groups on the grounds of historical usurpation.[[395]](#footnote-395) However, in practice no sovereignty was violated when colonial powers usurped the self-determining statuses of post-colonial groups. For example, in Allen Buchanan’s account of self-determination international law is supposed to act as a guide for which groups have had their political status usurped.[[396]](#footnote-396) In the case of indigenous peoples this is not likely to justify their claims as there is no *paper-trail* in the U.N. or evidence in timeworn international treaties to show the usurpation of these groups’ self-determination.[[397]](#footnote-397)

The just-cause theory, therefore, lack the normative resources to show why the usurpation of indigenous peoples’ statuses of self-determination is of the same species of violation as the invasion of a sovereign state. As such, when indigenous peoples make claims for self-determination it remains at the discretion of the post-colonial settler majority to accept or deny their claims for self-determination that they ought to be able to make by right.

However, the republican theory is sensitive to these claims because it recognises the arbitrary social and cultural power that warps this process. The republican theory, therefore, justifies indigenous peoples’ claims for self-determination. These claims do not have to take the form of statehood – this in any case assumes a western sovereigntist paradigm – but it can justify claims for regional autonomy as in North America or more novel forms like special representation in parliament as is the case in New Zealand. The just-cause, nationalist, and choice theories of self-determination fail to capture these claims for self-determination because they cannot adequately articulate the cultural-based domination to which these types of groups are subject.

To deal with misrecognition as a source of domination, therefore, the social and cultural biases of a neo-colonial society should be tackled. This is a context-specific process that is different from case-to-case – from groups subject to the historical wrong of colonialism to the Hijab controversy Laborde discusses in France.

In the case of the Hijab controversy, Laborde argues, what is primarily needed to tackle these biases is not having *less* but *more* secularism.[[398]](#footnote-398) This is to purge the implicitly socially post-Christian, ethnically white, and culturally Gallic aspects of the French public sphere. However, when other goods are in play – goods over which difference is unavoidable, such as language – minority recognition can be claimed. This is separation for the means of inclusion.[[399]](#footnote-399) It is not the value of difference that is being recognised, but recognition is given to the fact that sometimes difference-blind policies are not a help but a hindrance for equal civic inclusion.[[400]](#footnote-400)

Claims made against the domination of non-neutral political decisions for civic recognition are claims for self-determination. They are claims for civic inclusion – a form of inclusion that is counter-intuitively achieved through the means of separate political statuses. These statuses give unequally excluded citizens the ability to participate in determining the substance of political decisions on an equal footing with other citizens. As a strategy of non-domination, therefore, recognition is not an end but a *means*.[[401]](#footnote-401)

As a means – depending on the goods and issues in play which have created these groups’ unequal political exclusion – the institutions and procedures created for civic recognition may not always have to be permanent measures. This is because a point may come when groups no longer require their own unique statusesto participate in politics, as the social and cultural norms that created the decisions contrary to groups’ interests have been successfully challenged.[[402]](#footnote-402) In this sense, recognition as non-domination can sometimes work as a form of affirmative action.[[403]](#footnote-403) However, this is not to claim that these measures in cases should always be temporary. For example, in the case of post-colonial groups, these groups should be able to have their own statuses of self-determination on a permanent basis for symbolic reasons – as recognition for the historical wrong of colonialism.

It is this emphasis on civic inclusion that makes the republican theory of self-determination distinct from the nationalist justification for the same statuses. In contrast to the nationalist theory of self-determination the republican justification does not see national identity as a good that requires status recognition in of itself, but rather as a good that only requires recognition through the means of separate political status when this identity is the product of unequal political participation. In other words, the republican justification for self-determination is not recognising identity but is recognising groups that are prevented from substantively participating in the collective exercise of their own self-government – who simply happen to have a separate identity. Indeed, often separate identities are sociological strategies of resistance implicitly constructed by these types of groups against the norm-based power of majority cultures and societies.[[404]](#footnote-404)

When groups have basic interests – such as female French Muslim citizens’ interest in wearing the Hijab as a form of religious expression – and maintaining these interests conflicts with the interest in political participation, these groups are entitled to political accommodation. This accommodation is not designed to recognise their identity, or even the goods associated with their basic interests as such, but is an attempt to reconcile the tension between their basic interests and interest in political participation. Minority linguistic groups, for example, have a basic interest in using their language and thus will not want to assimilate into using the vernacular of the majority group.[[405]](#footnote-405) When minorities refuse to assimilate, often majority groups – implicitly or explicitly – prevent minority groups from exercising their interest in political participation.

Unlike in Laborde’s Hijab case a more neutral environment cannot be created, because whatever languages are used are biased towards the interests of the groups whose languages they are. By using one language, or a set of languages, the state is favouring the languages of some political subjects and not others. State policy, therefore, is biased in the favour of some subjects’ interests and not others – as groups of individuals have an interest in their language being recognised. Therefore, minority linguistic groups are justified in making claims for self-determination to have their language recognised – assuming adherence to their language prevents them from participating on equal terms in political life.

This would exclude groups of individuals who have voluntary acquired second-languages for cultural reasons, because these groups are not excluded from politics because of their cultural proclivities.[[406]](#footnote-406) This is not to claim, however, that a republican polity should necessarily be hostile to cultural recognition in its wider view of social justice, but only that status recognition through self-determination – which these groups do not require to participate – should only be justified when groups are subject to political exclusion.[[407]](#footnote-407)

The republican theory does not give a comprehensive theory or exhaustive list of what should count as a basic interest but instead focuses on the forms of social and cultural power that exclude individuals and groups from equally exercising their democratic-citizenship and thus fulfilling the second condition of republican self-determination. It is in tracing these forms of power and their interactions with groups that what should count as basic interests will become apparent. Figuratively, the republican theory does not try to *build up* from basic interests to politics to know what interests should be recognised, but starts with unequal political exclusion and *moves down* to individuals and groups to trace what characteristics it is about them or practices they require that creates their unequal political exclusion. This process of tracing will highlight the basic interests they have that constitute their domination as civic misrecognition.

Furthermore, when identity is treated as an end that requires recognition in itself this can conflict with a group’s interest in equal participatory citizenship – the latter being something liberal-nationalists nominally support. When the recognition of identity is taken as an end in itself, nationalists – because they view identity as requiring recognition for this reason – are obliged to recognise the national identity claims of all groups. Not all of these claims, however, are *liberal.* Some nationalist groups – for example, some Afrikaner or Ulster *Third Way* nationalists – if politically recognised would not uphold a commitment to equality, possibly even in a formal sense, as these groups would deprive others of citizenship or engage in the most egregious forms of majoritarianism, creating laws that undermine minorities’ basic interests. In other words, they would not respect the first condition of republican self-determination.

Margaret Canovan has referred to this instability in the liberal-nationalist idea as the ‘paradox of the prowling cat’.[[408]](#footnote-408) Canovan refers to it in this way because like Aesop’s fable about the mice who decide they can live peacefully with a prowling cat so long as it wears a bell to alert them that it is coming, nationalism is encouraged to roam until it “endangers the liberal rights [nationalists] want to defend”.[[409]](#footnote-409) In other words liberal-nationalism gives with its nationalist hand in recognising identity but it takes back what it has given with its liberal hand to protect the other rights it wants to defend. This leaves a world that values national identity but with many groups who are resentful that only some can have their identities recognised.[[410]](#footnote-410) In contrast to the nationalist account, the republican theory recognises domination instead of identity and thus is not subject to this instability.

However, nationalists may contend that the republican theory of self-determination can only capture the claims of a limited number of nations – only those that value equal citizenship and require their own political statuses to be treated as equal participants in politics. This is because culturally distinct groups who are fully participating have no claims under this justification, because they are not dominated. This is a point the republican justification has to concede. However, it is one that the republican account does not have treat as problematic. If culturally distinct groups are fully participating, in all likelihood they will receive cultural and perhaps some weakly political form of recognition – such as self-administration – to satisfy their distinct interests from the normal day-to-day activity of politics.[[411]](#footnote-411) In essence, they have the second condition of self-determination fulfilled.

**5.2.5.) Bohman and Domination as Deliberative Exclusion**

Whilst domination as political exclusion can be constituted by civic misrecognition, arbitrary social and cultural power is not the only form of domination that can prevent groups from having the second condition of republican self-determination upheld. Domination as political exclusion can also take an institutional-based form distinct of civic misrecognition.[[412]](#footnote-412) For James Bohman, this is constituted by groups and individuals being excluded from deliberation on the political decisions that affect them.[[413]](#footnote-413)

For Bohman, deliberative political participation is a necessary condition for non-domination.[[414]](#footnote-414) This is because simply having citizenship can be an insufficient guarantee to protect individuals and groups against factions or majorities gaining the power to assert their interests as the interests of all. In other words, for Bohman, deliberation is required to make sure political outcomes are authored that are sufficiently satisfying for all those affected by them – and thus that a sub-set of those affected are not subject to the discretionary will of those whose interests are reflected in the political-decisions that get made into law. However, Bohman argues that in existing political circumstances, exclusion from equal and participatory deliberation is a predicament in which many individuals and groups find themselves.[[415]](#footnote-415)

For Bohman, under the conditions of *globalisation*, domination as political exclusion is an inherent feature of self-government, *by a* *single people in a single state*. This is because many of the political, economic, and social decisions that are made by agents of all kinds, spill over borders and into states under the conditions of global interconnectedness. The institutional context to inclusively control this power is fundamentally constrained, Bohman argues, by the fact that one has to be a member of the state in which a decision is made, to deliberate on whether or not that decision is sufficiently satisfying for that agent and if it reflects the common good. For Bohman, therefore, an inclusive deliberative politics is no longer possible within the institutional paradigm of *one state, one people*, but only across borders, between political associations and *dêmoi*.[[416]](#footnote-416)

Bohman argues globalisation affects everyone differently. This is because the decisions agents, corporate agents, and political authorities make have asymmetrical affects and unintended consequences globally.[[417]](#footnote-417) For example, when states make political decisions, their consequences often unintentionally spill over the borders in which this decision’s impact was supposed to be felt. Those who live beyond these borders took no part in making the decision that affected them, nor do they have any recourse in mitigating its effects.

For illustration Bohman writes, “the actions of a large multinational corporation or of institutions that regulate financial markets influence the life possibilities of indefinite others – as when, for example, decisions in China affect workers in many, but not all, locations.”[[418]](#footnote-418) In other words, under conditions of globalisation, who will be affected by decisions cannot be pre-defined, as the potential scope of decision effects is always *global.* Thus the bounds of political cooperation cannot be delineated by a ‘basic structure’ – be this within a state as it was for Rawls – or beyond it to a specified group of fellow participants.[[419]](#footnote-419)

Using Kant, Bohman argues that globalisation places distant others into indeterminate moral relationships with one another that ought to create political obligations. The relationships established by globalisation, Bohman contends, have the potential to violate the autonomy of distant persons, giving all individuals claims on others globally.[[420]](#footnote-420) Bohman argues, if these relationships lack a democratic component – which establishes formal equality and the entitlement to deliberate over decisions – arbitrary power is established between agents, as one group has at their discretion the capacity to affect others at a whim. Therefore, for Bohman, there is a duty to include agents subject to this type of power, so that they can add their own interests and concerns to the deliberation that precedes the decisions that affect them.[[421]](#footnote-421)

For Bohman, this necessarily involves democracy transforming its institutional form, as this is the only means through which non-citizens can be protected against the arbitrary power that affects them on a global basis. Democratic self-government, Bohman contends, must work across borders, between different political associations and but crucially also between *dêmoi*. Bohman argues freedom is not gained as a member of one state but by having the ability to deliberate in any political association throughout the world.[[422]](#footnote-422) This is the idea that an individual could live in one place and not be a citizen only there, but have the entitlement to use their normative powers of citizenship elsewhere in the world – when they deem it to be appropriate to enter into deliberations in other locations.

Bohman models this transformation of democracy’s institutional form on Kant’s global federalism detailed in the ‘Perpetual Peace’.[[423]](#footnote-423) Bohman argues for a cosmopolitan form of democratic-republicanism as the institutional order to embody non-domination in the contemporary world.[[424]](#footnote-424) Furthermore, under a cosmopolitan federalism, Bohman argues, the right to self-determination, itself, would be reconceived. It would change from the political status with the right to have jurisdictional non-interference in a group’s internal affairs to the political status with the right to jurisdictional non-domination in a group’s affairs.[[425]](#footnote-425) In other words, the right to self-determination would permit the non-arbitrary interference of non-residents in a political association’s nominally *internal* affairs*.*[[426]](#footnote-426)

The transformation of self-determination from a right of non-interference to a right of non-domination, complements for Bohman the transformation of democratic self-government from no longer involving a single *dêmos* but multiple *dêmoi*. Bohman writes, “[m]odern democratic theory has seen membership as a condition for the exercise of autonomy – for the capacity of people to control the circumstances of their lives. The difficulty here is that autonomy, or self-determination, is either too broad or too indeterminate. If it is thought of broadly, then it requires independence rather than interdependence, as is the case with the law of peoples or of states. When it is not tied to specific political communities, however, as is the case with most cosmopolitan theories, it becomes too indeterminate. The difficulty is then to see that what is demanded is not self-determination as such, but normative powers, the powers that citizens have to protect and change their normative statuses and powers.”[[427]](#footnote-427)

Therefore, Bohman’s account of collective freedom as self-government does not take the form of self-determination as such, but something more akin to *selves-*determination. Bohman maintains the idea of discrete political associations, but sees them not as authoritatively discrete – as under the Westphalian state model, on which most traditional accounts of democracy model its institutional form.[[428]](#footnote-428) However, in making this conceptual shift in the institutional form of democratic self-government, Bohman’s account does not give sufficient attention to who the discrete *selves* will be that can make up the collective *selves* in *selves*-determination.

Exclusion from deliberative participation is not just an extra-state process with the exclusion of non-citizens – it is also an intra-state phenomenon. Bohman does pay concern to resident non-citizens, adding to a compelling argument for the extension of citizenship or participation-rights to these groups, but these concerns can also be recognised in a sovereign state system.[[429]](#footnote-429) However, there are other groups who have formal citizenship rights but are nonetheless excluded from deliberative participation, regardless of globalisation. For Laborde and Pettit these groups are ascriptive minorities, yet there are other dominated groups which Bohman’s account of domination as deliberative exclusion is highly conducive for capturing.

These are non-ascriptive *political* groups who are placed beyond deliberation. They are groups that have political interests that are informally locked out of discussion because they are divergent from the mainstream political consensus. Bohman’s emphasis on deliberation as a necessary condition of one’s non-domination opens up claims for these types of groups. Political minorities are those groups in democracies who are not – or not only – subject to arbitrary social and cultural power, and can be ascriptively similar to the political majority, but have divergent views on substantive political issues – for example, they could advocate a non-mainstream model of political economy. In majoritarian electoral democracies these types of groups are often locked out of adding their divergent vision of the public interest to the political discussion by mainstream political representatives by implicitly and explicitly maintaining between themselves a fixed or fairly inflexible *political agenda*.[[430]](#footnote-430)

This happens when mainstream political representatives: (i) refuse to represent issues themselves. For example, when political parties refuse to take on issues that their grassroots supporters and hinterland would like to see advanced, such as nuclear disarmament or steeper corporate taxation for the left/centre-left. Or because (ii) mainstream representatives refuse to participate with the representatives of divergent political views in governing coalitions or other types of political agreements that are formed through discursive compromise.

The basic requirement of deliberation is that groups ought to hear what the other side has to say.[[431]](#footnote-431) When groups are informally excluded in the aforementioned ways this requirement is not fulfilled. These groups are not given the opportunity to convince others of their position – and the mainstream political position is allowed to pass critically untested. In some cases electoral reform will be sufficient to overcome these forms of arbitrary power that exclude divergent voices.[[432]](#footnote-432) However, in others deliberative exclusion can justify claims for self-determination.

For instance, regionally concentrated political minorities are justified in making claims for self-determination. When groups such as this are prevented from deliberatively participating in the decisions that affect them, the laws and procedures they are subject to reflect the values and interests of other citizens and not of themselves. For example, throughout the 1980s and most of the 1990s Scotland and Wales were ruled by a U.K. Conservative Party government that had been elected by England and not in these parts of Britain. Scotland and Wales had a justified claim after eighteen years of being voiceless regions in the United Kingdom to have their own regional governments, which they achieved by referendum in 1997 and became a reality by 1999.

When sustained represented interests fail to take part in deliberative discussions over what interests are reflected in the law, this does not constitute normal *losing at the polls*,it constitutes domination. The possibility continually exists for these groups to be subject to indefinitely long periods where the citizens of other regions define the content of the laws they live under, even if they are not permanent minorities in the proper sense. [[433]](#footnote-433)

Separation is not the only strategy to deal with this failure to fulfil the second condition of republican self-determination, reformist strategies are also possible. To continue with the example of Scotland, despite an intervening thirteen years of Labour government between 1997 and 2010, which was overwhelmingly endorsed in Scotland, a similar argument was made for Scottish independence in 2014. Pro-independence campaigners made the case that devolution in 1999 had been insufficient to create participatory parity with the (southern) English electorate and that secession was required for effective self-government.[[434]](#footnote-434)

Many anti-independence voters in the 2014 referendum voted ‘no’ because they believed reform would be on the political agenda. In principle the United Kingdom could be reformed to make sure citizens’ – particularly those in Scotland – interests are sufficiently included in the U.K. deliberative political agenda. How realistic this is, however, is debatable. The reforms which have been made to the U.K. constitution, as for example English Votes for English Laws, do not seem to widen participatory deliberation, but narrow it. Recent events now suggest that the goodwill that could have been seized from ‘no’ voters has now been squandered.

As a remedial theory, how the second condition of republican self-determination is fulfilled matters less than it not being fulfilled at all. If states reform themselves then groups do not have a justified separatist right to self-determination, because they are self-determining as members of the democratic people constituted by the reformed state.[[435]](#footnote-435) It is simply the case in politics that constitutional states often fail to uphold the second condition of republican self-determination and have little interest in governing in a spirit of civic inclusion because they can *get away with it*.

Indeed, taking the United Kingdom for the purposes of illustration, it also needs to be noted how the total of the unequally excluded citizenry from deliberation is not identical with, for example, the population of Scotland. There are citizens outside of Scotland whose interests do not figure on the political agenda, for example, voters of minority political parties in England and Wales, and arguably all of Northern Ireland. However, for the U.K. to fulfil the second condition of republican self-determination the reforms that need to be made are different for each excluded group. Voters of minority political parties in England, and to a lesser extent in Wales are more likely to have their interests gauged through means such as electoral reform, whereas the citizenry of Scotland are more likely to gain this through the federalisation of the U.K. as a whole, including the regions of England.[[436]](#footnote-436)

Therefore, if reform fails, the citizenry of Scotland, for example, can be gathered together, as opposed to all U.K. citizens who are unequally excluded from registering their interests on the political agenda, for the purposes of making a justified separatist claim for self-determination, simply because separation is possible for them and that being denied this possibility prohibits the group from being free through the fulfilment of the second condition of republican self-determination. There may be historical reasons why certain groups of people should be taken together or other instrumental criterion in making this decision.

Indeed, it is also often said in response to those who make democratic separatist claims for self-determination that sub-minorities within the separatist group who are supportive of the *status quo* are wronged in some way by this process. For the republican theory they are not. Even though they might support the *status quo* they are not dominated by the new dispensation. What is of significance, instead, is that citizens have the two conditions of republican self-determination fulfilled. When reform is not possible or likely, separation fulfils these conditions, whereas the *status quo* jeopardises the second condition for the dominated party. Separation can only be justifiably prevented in cases where it can be shown how sub-minorities would be dominated in the new dispensation, rather than them simply preferring not to be subject to it.

Furthermore, with regards to Bohman’s global political proposals, it is because of this type of domination as deliberative exclusion and the forms of unequal democratic participation discussed in previous sections, that there is every reason to believe that unequal political exclusion could happen just as much under transnational federalism as it could under statist democracy. Therefore global federalism may not be the immediate solution to the relationships of arbitrary power created by globalisation – like-minded groups across the world could just as easily maintain a fixed political agenda as elite actors within contemporary states do now.[[437]](#footnote-437) The strategy, for now, may simply be to get self-determination where it is justified, and can be got, to counter against arbitrary power.

Indeed, James Tully has remarked that existing claims for self-determination, and future claims for this right – particularly those at the sub-state level – are beginning to and have the potential to destabilise the sovereign state paradigm.[[438]](#footnote-438) Tully contends that it may be through discrete claims for self-determination that transnational federalism may begin to emerge. This is also likely to be in part because claims for self-determination diffuse power between political sites necessitating more cooperation between political associations to get movement or traction on *big projects* of mutual concern. These could include, for example, relatively mundane ventures such as building a continental system of flood protection, to projects such as creating cross-border regulations on tax evasion and indeed avoidance. Smaller political units would be required to cooperate because as individual components they would not be sufficiently powerful to complete projects of these kinds by themselves.[[439]](#footnote-439)

For Bohman, the European Union figures as the model for proto-republican-federalism in this regard.[[440]](#footnote-440) However, the success of the E.U. in recent times has been at threat from the bigger European powers – particularly Germany, France, and the United Kingdom – either (i) setting the terms for the whole union – creating a backlash from smaller member states – or (ii) attempting to withdraw powers from the E.U. in an attempt to stall *ever greater union*. Through the recognition of self-determining autonomous regional political associations as new loci of democracy by institutions such as the E.U., transnational democracy may still become a reality. As a union of diffuse regions – and not states as such – the E.U. as including Catalonia, Scotland, Wallonia, or Bavaria, for example, as independent states or substantively empowered regions could advance transnational democracy not as an elite major-power driven project, but as that which would involve cross-border cooperation as a matter of necessity.

Furthermore, with domination as unequal democratic participation understood as being placed beyond deliberation or being subject to arbitrary social and cultural power – or both as might be the case for some groups – the republican theory of self-determination captures a set of claims that the just-cause theory does not. For the just-cause theory, self-determination is justified only when individuals have their human or social rights violated. However, for the republican theory one can be dominated in the absence of any such violations. Domination can exist when one is deprived of collective control and involvement in the process of determining what the rights and duties that will govern a society ought to be.

In its basic form – that requires only a standard of basic human rights to be upheld – the just-cause theory, for example, cannot justify the claims of groups subject to a benevolent colonialism that would uphold these rights. And in its substantive form – where the rights that must be upheld includes distributive and political rights – the just-cause theory also fails to capture the claims of groups whose domination consists in exclusion beyond a formal violation of citizenship rights. This includes some minority regionalist/nationalist groups, such as Scotland and Wales in the aforementioned example, or others such as Catalonia, which in 2010 had aspects of its statute of autonomy discretionarily revoked by the Spanish Constitutional Court.

The basic version of the just-cause theory, therefore, fails to account for the basic interest all individuals have in their own self-government, whilst the substantive version of the theory fails to account for the fact that political claims for self-determination are not only generated by the formal deprivation of political rights but also by the informal constraints that are placed upon political rights in democratic practice. This generates a range of remedial domination-based claims for self-determination that can be made against liberal-democratic political associations that the other theories of self-determination do not capture. In what follows I will discuss the two conditions of republican self-determination.

**5.3.) The Two Conditions of Republican Self-Determination**

In the previous section I argued that *domination as unequal democratic participation* should be sufficient to justify claims for self-determination. I argued that non-domination should consist in individuals having the political status of democratic-citizenship and being able to exercise the powers inherent in that status in full and equal participation with other citizens. This argument can be summarised in two conditions:

1. That there is equal formal democratic-citizenship amongst all the subjects of a political authority, and
2. That there is sufficiently equal democratic participation of all citizens in the collective exercise of their democratic-citizenship.

I argued throughout the course of the last section that if these conditions fail to be upheld, certain individuals and groups are subject to domination and have justified claims for self-determination. In what follows I will detail the two conditions of republican self-determination, beginning with the first condition.

**5.3.1.) Condition One**

Political membership is the first condition of republican self-determination – *that there is equal formal democratic-citizenship amongst all the subjects of a political authority*. This is an idea that has historical pedigree in the republican tradition. As was shown in the first section of this chapter, the element of republican freedom that makes it a distinct idea of liberty from modern negative conceptions of freedom is its emphasis on political status – that one can only be *free as a member of a free state*.[[441]](#footnote-441) In classical republican thought this idea was reflected by a distinction between two types of person, between *liber homo* and *servus* – or free man and slave.[[442]](#footnote-442)

In the classical republican tradition this distinction structured whether or not one was a citizen of the Roman Republic. For the Romans free men were people who were free *sui juris*, or in their own right, because they were not slaves – slaves being individuals who were subject to the discretionary will of a master or *dominus*. The category of slaves included not only people who were owned as property and were often used for labour, but also women, children and foreigners – anyone who was not recognised as being a free person in their own right.[[443]](#footnote-443) A free man, however, was a citizen of Rome – someone who was entitled to rights and protections in the law by virtue of being a citizen. This was compared to slaves whose rights and protections – if indeed they had any – which were given at the discretion of their master. Any rights and protections slaves did have were not had by right because they could easily be withdrawn.[[444]](#footnote-444)

In the discussion of Lovett’s procedural account of non-arbitrary power in the second section of the chapter I argued that this idea of membership should take the form of equal democratic-citizenship. This is because when a group of political subjects has the formal right to control political power and others do not, those who have this right subject their compatriots to a relationship of arbitrary power – just as between a master and slave.

Formal democratic-citizenship expresses for all political subjects an idea of equality that each citizen matters as much as another citizen.[[445]](#footnote-445) Furthermore, it protects against arbitrary power because it is not at any particular group of citizens’ discretion to decide what the collective terms of political life – that all have to live under – should be. This should be a distinctly *democratic* idea of citizenship because laws and other political obligations are always created by agents in political life. This means that they can only be accepted as legitimate by subjects of political authority when they are authored by the same people that have to live under these laws.[[446]](#footnote-446)

In other words, for the first condition of republican self-determination, the law is not arbitrarily imposed if it is self-authored. It is because human beings necessarily have to live collective lives as interdependent individuals that this should take the form of collective self-authorship, so that the laws that all political subjects have to live under are not arbitrarily imposed by a sub-section of members of a political association. A non-democratic idea of political membership, I argued in the discussion of Pettit’s account of non-arbitrary power, fails to reflect this idea of equality and thus creates further domination, as citizens cannot accept political decisions that they had no involvement in making as legitimate. This is because they will not see the interests these decisions reflect as their own – even if decision-makers contend these are objective interests that benefit all, regardless of citizens’ appreciation of this fact.[[447]](#footnote-447)

Furthermore, the republican theory of self-determination understands citizenship in democratic terms because it does not consider citizenship to be *just another general right*. Rather the republican self-determination views citizenship as ‘the right to have rights’ – and thus the right that takes normative precedence over all others.[[448]](#footnote-448) For the republican theory being a citizen is to be someone who has the status of having rights *by right* and not as a matter of discretion – it is to be someone who has the power and the entitlement to control and direct rights’ political creation and content.[[449]](#footnote-449)

As I will discuss in the next chapter the first condition can be fulfilled individually, as for example when resident non-citizens become citizens of the state where they reside, which is itself a claim for self-determination – albeit one that takes place by becoming a member of an already self-determining political community. However, as with the cases Lovett discussed of apartheid South Africa or pre-civil rights America, claims to fulfil the first condition of republican self-determination can be made collectively when a group is formally denied democratic-citizenship on equal terms.

As with resident non-citizens, this can take the form of inclusion into an already self-determining people, or can take the form of separation. For many groups separation is not possible because they are not a geographically located group, nor is it desirable because their claims for self-determination are claims for equality and not claims for different political outcomes as such. In other words, they want to be citizens, but not necessarily to be citizens to vote for anything substantially different in terms of the content of the law that already exists.[[450]](#footnote-450) However, for others this is the case, such as for colonised groups or groups who have been annexed following a conflict. These groups have also been subject to the additional wrong of usurpation – they have had their previous statuses of self-determination violated.

Groups who fail to have the first condition of republican self-determination fulfilled have to decide if they choose to self-determine through separation or inclusion. This is a contextual judgement, which is likely to overlap with other wrongs such as rights violations or usurpation. However, the first condition by itself can be insufficient to protect groups and their members against political domination, as domination can exist under formal equal democratic-citizenship. Indeed, the likelihood of failing to fulfil the second condition of republican self-determination is a relevant consideration for groups who fail to fulfil first consideration when they are taking account of how to exercise their right to self-determination.

**5.3.2.) Condition Two**

The second condition of republican self-determination states that there should be *sufficiently equal democratic participation of all citizens in the collective exercise of their democratic-citizenship*. When this condition fails to be upheld citizens who are not equally participating in the exercise of their democratic-citizenship are subject to the arbitrary power of other citizens – those who are substantively participating in the exercise of their democratic-citizenship. Unequally participating citizens are subject to laws which they were not substantively included in creating – laws that were created by other citizens. Therefore, the self-governing people – those who are included in the process of creating the law – are a sub-set of the whole citizenry.

This is an idea that has pedigree in the republican tradition of political thought, defining for classical republican thinkers whether or not citizens lived in a free or a dominating state. For the Romans and subsequent neo-Roman thinkers, a free state was one where citizens were in a relationship of formal political equality with one another.[[451]](#footnote-451) As soon as this equality is offended, they argued, the state ceased to be free. If a citizen gained a political office that elevated that citizen formally higher than the rest of the citizenry, the relationship between the general citizenry and this citizen became one that was no different to the relationship between master and slave.[[452]](#footnote-452) This is because the rights and protections held by the general citizenry ceased to be had by right and were placed instead at the discretion of a political *usurper* – such as when Caesar refused to relinquish the dictatorship entrusted to him by the Roman Senate on a temporary basis.

This historical contrast is relevant for how self-determination should be perceived in contemporary politics, such as when groups of citizens are subject to domination as civic misrecognition or deliberative exclusion as the discussion of Laborde and Bohman’s conceptions of domination showed. It offers a way to reconceive the jurisdictional boundaries of a self-determining people. There is often an assumption that the people who make up a self-determining group are the citizens, or sometimes simply the residents, who reside within the formal jurisdictional boundaries of states or administrative regions – for example, the population of Spain or the population of Catalonia as being self-determining groups.

However, according to the republican theory of self-determination, if the second condition is not fulfilled, one may be a formal citizen of Spain or Catalonia, without necessarily being part of the self-determining Spanish or Catalonian people. Despite having citizenship, groups and individuals can be deprived of participatory equality in self-government and thus are forced, albeit informally, outside of the self-determining people. This is a form of usurpation – that one group of citizens have elevated themselves above other citizens, subjecting their compatriots to their will. Furthermore, usurpation must necessarily be an unequal process because *all* citizens are excluded from self-government in representative democracies, as decision-making is typically in the hands of politicians or other elite actors. It is only when some citizens are substantively self-governing and others are not that usurpation exists.

It is on this point that the second condition of republican self-determination is in agreement with a small number of theorists who debate the issue of boundaries and what constitutes a democratic people.[[453]](#footnote-453) This is in contrast to the well-established view in political theory that democracy has nothing to say about the issue of boundaries. This is because democracy a non-ascriptive theory of self-government that is said to only capture what ought to legitimise the use of political power but not for *whom* it can be collectively legitimised.[[454]](#footnote-454)

Democracy is justified by the principle of ‘public equality’.[[455]](#footnote-455) In political practice democracy reflects public equality by allowing individuals and groups, who necessarily have to live together, to advance their interests on equal terms. This is publically affirmed so that when citizens disagree about what interests should be politically advanced, they can see that their interests have been given equal weight and consideration.[[456]](#footnote-456)

However, when democracies fail to uphold the value of public equality by not including all citizens in the process, it makes the political authority exercised over these excluded citizens illegitimate.[[457]](#footnote-457) When democratic legitimacy exists this defines the bounds of the political people – it is those who are participating in the process of self-government. However, when democratic legitimacy evaporates, or is never established in the first place, the bounds of the political people change making it less than all of the formal citizenry. This means the bounds of the people are not necessarily synonymous with the formal jurisdictional boundaries of a state or administrative region, when the second condition is not fulfilled. It is those who are not included that are justified claimants of self-determination.[[458]](#footnote-458)

Failure to express this idea of public equality is defined in terms of *sufficiently* equal democratic participation because absolute equal participation is too high a standard too maintain. This is because in a healthy democracy some groups of citizens will have their interests registered on the political agenda more than others. This in itself is not problematic, so long as these are not the only interests that are registered. If groups fall below a threshold, however, they are not sufficiently participating – they do not get a sufficient amount of their interests registered on the political agenda.

This is an outcome-based approach – although one that is not defined by the content of the democratic outcomes, but by assessing if citizens can see the political process as legitimate by having a sufficient amount of their interests reflected in the political agenda from time-to-time. The second condition of republican self-determination is not defined in terms of equality of opportunity because of this. The republican theory is principally designed to assess if claims that are made for self-determination are justified – it does not exist to theorise potential groups who do not use their *opportunity* to democratically participate. It focuses on outcomes as a means of gauging if groups should accept the political decisions they live under as legitimate, rather than if groups of citizens were afforded the opportunity to use their democratic-citizenship.

Potential groups that do not use their citizenship rights do not require assessment.[[459]](#footnote-459) By making equality of opportunity the criterion of the second condition, this would narrow the range of claims the republican account could capture, especially in terms of deliberative exclusion, because formal citizenship does provide the opportunity for participation. However, as the discussion of Laborde and Bohman’s conceptions of domination showed, the formal provision of the opportunity to participate is often insufficient to protect against arbitrary power, because it does not connect or is compatible with other citizens’ interests in the definition of the content the law.

Therefore, without ever, or rarely defining the content of the law groups are dominated and the opportunity to define this content may prove insufficient without reforms of the democratic procedures or with distinct statuses of self-determination. Equality of opportunity in terms of formal citizenship, therefore, can often perpetuate, rather than protect against domination.

Furthermore, the precise threshold under which groups need to fall is an empirically-determined issue, albeit one for which political theory can provide guidelines. It will need to be *time-sensitive* so that groups cannot make justified claims for self-determination when they simply happen to lose at the polls. As such, a sustained period of interest-exclusion is required to show how the bounds of civic equality have substantially loosened or have been broken altogether.

It may also in cases require that justified claimants of self-determination be excluded on a *range of issues*. This is because there are always groups of citizens with discrete interests that do not make it onto the political agenda, but for whom participation is not prevented on a significant range of other issues – indeed, it could be possible that they are the democratic political majority for most issues. Many conservative anti-abortion activists, for example, meet this description in the United States.

Getting definitive answers to the time and range of issues that define the threshold under which the second condition is fulfilled will be controversial but my contention is simply that the principle behind these issues – that groups can fail to be self-governing equals under conditions of formal equality – should be sufficient to provide grounds for groups to have justified claims for self-determination. This is something the just-cause, nationalist, and choice theories fail to capture, or only capture on problematic political grounds.

**5.4.) Conclusion**

In this chapter I have detailed a republican theory of self-determination. I have argued that subjection to domination, when understood as unequal exclusion from participatory self-government is sufficient to justify claims for self-determination. This is a remedial justification for claims to self-determination that is distinct from the violation of rights stipulated by the just-cause theory, and one that is compatible with versions of the primary-right nationalist and choice-based theories, but provides a more compelling justification that does not open the door to undesirable claims for self-determination.

I have argued in this chapter that on balance the republican account provides a more satisfying political framework to assess the claims for self-determination over those of rival theories. It has not been my contention that the republican theory is a bulletproof account of self-determination, because like any other political theory it has its inevitable shortcomings. In balance, however, my claim has been that the framework developed by the republican account is the most plausible among rivals.

In this chapter I detailed the republican idea of non-domination and showed how non-domination should be understood as a political status making it a compelling justification for self-determination. I then proceeded to discuss four accounts of what should be taken to constitute non-arbitrary power and showed how an appropriate understanding of non-domination, first, comes to support the two conditions of republican self-determination, and second, highlights the forms of arbitrary power that can come to undermine the second condition of republican self-determination. I then detailed the two conditions to illustrate the coherence of a republican theory of self-determination. In the next chapter I will discuss some of the political implications of the republican theory of self-determination and will further defend the claim that this theory provides the most satisfying justificatory framework to assess claims for self-determination.

**Chapter Six: The Politics of Self-Determination: A Republican Reappraisal**

In the previous chapter I set out the theoretical case for a republican theory of self-determination. I argued that groups which are subject to relationships of domination have sufficient justification for their claims to this right. In the proceeding chapter I made the argument that groups are dominated when they are unequal participants in their exercise of their right to democratic self-government, either because (i) they are subject to sources of deliberative political exclusion, or (ii) that they are subject to relationships of what I termed arbitrary social and cultural power. When groups are unequal participants in the exercise of their democratic self-government, I argued, this constitutes a failure on the part of existing political associations to manifest the second of the two conditions of republican self-determination.

In the previous chapter, I argued that the republican theory of self-determination – with its two conditions of what is required for groups to be free from arbitrary political power: 1) the right of democratic-citizenship for all of a political authority’s subjects, and 2) equal participation in the exercise of this right – provides the theoretical basis for a more satisfying justificatory framework to assess claims for self-determination in comparison to the justifications given by the just-cause, nationalist, and choice-based accounts. In this chapter, I will discuss a number of the political implications of the republican theory of self-determination.

This will take the form of a discussion of a number of the distinct claims that the republican theory justifies in comparison to the three other accounts. This is in addition to a discussion of an institutional proposal – the constitutionalisation of procedures for claims to self-determination – which I will argue serves to promote the greater fulfilment of the two conditions of republican self-determination in political practice.

I begin, however, by discussing a number of the distinct claims that the republican theory of self-determination captures. This will take the form of a discussion of separatist and non-separatist claims for self-determination. I will detail how the republican theory captures a set of claims that are not typically thought as claims for self-determination by the three rival accounts of this right – these are *non-separatist* claims for self-determination. This will then be followed by a discussion of the distinct separatist claims for self-determination that the republican account captures and that the other three theories of self-determination either fail to capture on remedial terms or problematically justify on the basis of a primary right.

**6.1.) Republican Claims for Self-Determination**

In political practice the idea of republican self-determination is ensured by fulfilling the theory’s two conditions. As such, the republican theory of self-determination does not necessarily favour separatism or the *status quo* to fulfil these conditions – what is important is only that the two conditions are fulfilled. If the *status quo* is reformed, or made more generally inclusive, it can fulfil the two conditions of republican self-determination.[[460]](#footnote-460) In other words, the *status quo* can be reformed to fulfil the two conditions of republican self-determination and assert the existing political authority’s legitimacy over all of its subjects. This means that no more remedial claims for self-determination can be justifiably made against it. Incumbent political authorities, however, rarely make these changes voluntarily, but only do so after being subject to pressure or scrutiny, after which they only tend to reform themselves with reluctance.

These reluctant changes, from the point of view of the incumbent political authority – or more strictly speaking its present governors and supporters – take the form, and are the result of, *non-separatist* *claims for self-determination*. Non-separatist claims either take the form of (i) inclusion-based, or (ii) reform-based claims for self-determination. Inclusion-based claims are those that involve non-citizens becoming members of an already self-determining political community, whereas reform-based claims involve the creation of sufficiently equal democratic participation for all the citizens of an existing political association. In other words, inclusion-based claims involve the fulfilment of the first condition of republican self-determination, whereas reform-based claims involve groups who already have the first condition fulfilled fulfilling the second condition.[[461]](#footnote-461)

However, when states fail to uphold the two conditions of republican self-determination – in a fairly consistent manner, over a reasonable period of time – existing political authorities lose their legitimacy over subjects for whom these requirements are not fulfilled, allowing those groups to make justified *separatist claims for self-determination*. For some groups reform is not *on the table* nor can it be realistically achieved and therefore separation provides for them the most plausible means to have the two conditions of self-determination fulfilled. These separatist claims can in cases take the form of secession, however, in others they may take a less drastic form, such as federalism or regional autonomy.

Before I proceed to give a discussion of both non-separatist and separatist claims for self-determination, however, I want to turn to address a potential criticism involving the admission of the category of non-separatist claims into the republican theory. The criticism is as follows: as a remedial theory of self-determination – those that take existing states to have *prima facie* legitimacy – the republican theory has an in-built bias for the *status quo*. This criticism suggests that because of the category of non-separatist claims for self-determination and the *prima facie* legitimacy of existing political associations, at best all the republican theory of self-determination can offer is a programme of reform for the *status quo*.

This is not the case. This would be a valid criticism of the republican theory if the second condition of republican self-determination – that all citizens are sufficiently equal participants in the exercise of their democratic-citizenship – was widely recognised as a necessary condition for states to hold political legitimacy over all of their subjects in the contemporary political world. But in the contemporary political world it is not. Many democratic states in contemporary political practice fail to uphold the second condition of republican self-determination, and so the republican theory can withstand the criticism that it is biased in favour of the *status quo* and that it is only able to offer a programme of institutional reform.[[462]](#footnote-462)

Furthermore, few existing democratic political associations actually show any sign of reforming themselves, or give recognition to the fact there is a problem – that sufficiently equal democratic participation does not exist in contemporary democracies. It is because of this that the republican theory contends that there are a number of justified separatist claims for self-determination in the present political circumstances. The theory, therefore, does not demand that all claims for self-determination continue to reflect the political statuses and identities of the *status quo*. In what follows I will discuss how the republican theory justifies a number of non-separatist claims for self-determination, before proceeding to discuss the unique separatist claims it captures in comparison to the just-cause, nationalist, and choice-based theories of self-determination.

**6.1.1.) Non-Separatist Inclusion-Based Claims for Self-Determination**

Distinct to the republican theory of self-determination is the category of non-separatist claims for this right. This category is unique to the republican theory because making claims for self-determination is an idea that is generally associated with the politics of *separatism*. Self-determination is mainly connected in the popular imagination with the politics of independence movements and the idea of secession. However, whilst this is certainly the case, claims for political independence are only one expression of the idea of self-determination – they are not exhaustive of its claims. Most theoretical accounts of self-determination, for example, agree that the idea of self-determination is not reducible to claims for sovereign statehood, and argue in many cases that regional autonomy, federalism, or other territorially-based forms of political status give suitable expression to claims for this idea.[[463]](#footnote-463)

However, what few, if any, of the versions of the existing theories of self-determination argue is that there are non-separatist claims for this right. In other words, that making claims to be admitted into an already self-determining group are also claims for self-determination. With its emphasis on the importance of democratic-citizenship, the republican theory of self-determination justifies a number of non-separatist claims for individuals and groups to be admitted into already self-determining groups, for them fulfilling the first, and in turn the second conditions of republican self-determination. These are *inclusion-based* non-separatist claims for self-determination.

Inclusion-based non-separatist claims for self-determination involve resident non-citizens making claims to be members of the political community that occupies the same space where they reside. In other words, inclusion-based claims involve resident non-citizens gaining citizenship. These claims involve resident non-citizens becoming fully equal members of an already-existing self-determining democratic political community – meaning that they are no longer subject to the arbitrary power of those who make the rules that govern the space where they reside.

In a number of cases inclusion-based claims for self-determination overlap with more general injustices, such as the cases discussed in the previous chapter of pre-civil rights America and apartheid South Africa. These claims involve an expansion of the *demos* by including groups who are not newcomers to a political territory, but are groups who have been formally excluded from membership of the citizenry that governs the space where they reside, because of an injustice and an ideology that supports this.[[464]](#footnote-464) The same is true in cases where the injustice and ideology that supports it takes a different form, such as the exclusion of women from the *demos*. In other words, for the republican theory claims for women’s suffrage are claims for self-determination.

These claims can also exist, however, in the absence of less extreme injustices or injustices altogether. For example, the lowering of the voting age involves the inclusion of a number of resident non-citizens into the *demos* and qualifies as a republican claim for self-determination. The same can also be true of prisoners and people who are deemed to be *incompetent* because of disability or mental illness.[[465]](#footnote-465)

The same is also true, in less strictly inclusion-based forms, for individuals with disabilities, or those who are homeless or elderly, or have substantial commitments in terms of care, or who are in poverty and have significant constraints upon their time, who are citizens – and thus have the first condition of republican self-determination fulfilled – but are not able to exercise this right in any significant way, because the democratic system they live under privileges a particular idea of a citizen being an able-bodied, of working age, domicile-residing, often male, dominant-culture identifying, sufficient income earning individual. Substantial reforms of the democratic system are required to make these individuals feel like they even are members of the *demos* to begin with – these reforms are for *inclusion*, because membership of the *demos* comes prior to the issue of whether or not their democratic-citizenship will actually pay-off in terms of any particular political outcomes.[[466]](#footnote-466)

What I will discuss in more detail now, however, are the claims of migrants and denizens to become formal members of the political association, which has authority over the space where they reside. I will discuss what the republican account has to say on the case of these groups in comparison to the just-cause, nationalist, and choice-based of self-determination.

When resident non-citizens make claims for citizenship they are making claims for self-determination, because they are making claims to join an already self-determining group. For example, if a person who grew up in Ireland emigrates to Australia, and is resident there for a reasonable period of time – showing a basic commitment to living in Australian society – and makes an a claim for Australian citizenship, that person is making a claim to become part of the self-determining Australian people.

Therefore, for the republican theory of self-determination, claims for citizenship cannot be reduced to claims for a bundle of personal rights or even individual rights to self-government.[[467]](#footnote-467) This is because they are necessarily claims to be part of a collective group – a group who have it within their power to define the terms of the rights and protections of those subject to its political control. Membership of groups, therefore, is what is important, as one needs to be a member of a specific group – relative to one’s residency – to be free from domination. For the republican theory, therefore, migrants and denizens have justified claims for inclusion-based self-determination.[[468]](#footnote-468) The rival choice-based, nationalist, and just-cause theories, however, struggle to accommodate these claims.

First, the choice-based theory cannot justify migrants’ inclusion-based claims for self-determination, because it can only capture the claims of groups as standard claims for political separation. For the choice-based theory, the claims of migrants are not distinct from any other claims to self-determination. Any group of freely contracting individuals are able to come together and remove their consent from the political association they are subject to. This is the same if one is a citizen or not. The choice-based theory, therefore, could justify the claims of a collection of migrants amassed in one particular region of a political association to exercise their primary right to self-determination taking territory and some of the pre-residing population of that region with them into their own political association.[[469]](#footnote-469)

Following the previous example, if a sufficient number of people emigrated from Ireland to a particular region of Australia, they could make a claim for self-determination to secede from Australia and form a new political association. This, however, is a deeply unjustified claim that undermines the self-determination of existing groups. The choice theory, therefore, cannot capture inclusion-based claims for self-determination because it ascribes little, if any, value to collective democratic-citizenship in the first place.

The nationalist theory agrees with the implausibility and problematic justification of migrants’ right to make separatist claims for self-determination. However, the nationalist theory also fails to justify migrants’ inclusion-based claims for self-determination. Most nationalist theories argue that resident non-citizens, such as immigrants, can be naturalised as members of states. Nationalist theories argue that immigrants can become citizens on the condition that they integrate into the existing national culture of that nation-state.[[470]](#footnote-470)

For the republican theory the process of naturalisation and its associated condition of cultural integration are problematic. First, the condition of cultural integration takes the issue of national culture off the democratic political agenda, when it should be an issue that should be up for political discussion amongst citizens. The condition of having to integrate into the existing national culture could create arbitrary social and cultural power, as there may be aspects of the existing national culture that are problematic for immigrants and there may be aspects of their personal identity, from the national culture in which they grew up, that they have a justifiable interest in maintaining and having formally recognised.[[471]](#footnote-471) In other words, the nationalist theory can capture the first condition of republican self-determination, but it cannot capture the second.

Second, for the republican theory, immigrants’ claims for democratic-citizenship should be had by right and not given on a discretionary basis as through the process of naturalisation. Although naturalisation procedures are well-established and impartially implemented processes in many democratic states, the fact that they are subject to political control places those who apply for citizenship under the discretion of those who have it in their power to change the criterion under which citizenship can be granted. In other words, there is always the threat of *shifting the goalposts*.

However, if claims for citizenship are conceived as claims for self-determination, as opposed to something that is discretionarily granted through naturalisation laws and procedures, they should be conceived of as something that is demanded by right. If citizenship is had by right it gives resident non-citizens an equal stake, once they have won their citizenship, in challenging the arbitrary social and cultural power to which they may be subject from the existing national identity, rather than treating acceptance of its existence as a prerequisite for citizenship – and as a limit on citizenship’s exercise.[[472]](#footnote-472) The nationalist theory of self-determination, therefore, cannot justify inclusion-based claims for self-determination on the appropriate basis.

By contrast, the just-cause theory of self-determination may or may not diagnose a wrong with resident non-citizens being deprived of democratic-citizenship. A basic version of the just-cause theory that only requires that human rights are upheld does not justify resident non-citizens claims for self-determination, because a deprivation of this right does not constitute a remedial wrong. By contrast, a substantive version of the just-cause theory that includes citizenship rights as a requirement for the standard of justice legitimate political associations should uphold, could justify migrants’ claims for citizenship.

However, these claims for citizenship, like that of the nationalist theory, may not be justified as a matter of self-determination. It remains a possibility for a substantive version of the just-cause theory to argue that because citizenship is a *civil* and not a *human* right, the *voluntary movement* of migrants could be taken as a relevant consideration to place limits on migrants’ claims for citizenship.[[473]](#footnote-473) A version of this theory could argue that because democratic-citizenship is not a human right that it is justifiable to take the position that this right does not have to *follow* individuals wherever they are in the world.

The theory could argue that migrants voluntarily voided their political rights elsewhere and therefore that they should not be automatically entitled to citizenship in a new political association.[[474]](#footnote-474) A version of the just-cause theory could argue that the citizenship rights they are obliged to uphold are only those of existing citizens, who have not voluntarily voided their democratic-citizenship. Therefore, the just-cause theory of self-determination, like the nationalist theory, could argue for a naturalisation policy to deal with the issue of resident non-citizens’ political rights. Unlike the republican account, the just-cause theory would not find the discretionary aspect of this process problematic, because it has no normative concern for domination.

However, the voluntary movement of migrants cannot be taken as a relevant criterion to count against inclusion-based claims for self-determination according to the republican theory. This is because, for the republican theory, what is of relevance is subjection to arbitrary power. For the republican theory the issue that is of significance is that resident non-citizens are subject to the power of the law in the same way as citizens, yet the former group lacks the latter’s control to direct the law, nor do they have the latter’s power to shape the law’s normative content.

Nevertheless, a more sophisticated just-cause theory of self-determination could respond with an account of the adaptive preferences that structure migrants’ choices, making their decision to migrate non-voluntary. However, whilst it is the case that many migrants’ decision to move is a reluctant one, there are enough cases of genuinely voluntary migrants, such as people who move to take high-powered jobs that give them influence, wealth and prestige that have not been forced to migrate by their circumstances.[[475]](#footnote-475)

As such, only the republican account is discriminating enough in rejecting the process of naturalisation as a mechanism to make claims for citizenship. For the republican account, migrants’ claims for democratic-citizenship must necessarily be claims for self-determination. For the republican theory, even high powered resident non-citizens like highly mobile financers, senior academics, or other beneficiaries of globalisation, should be able to make inclusion-based claims for self-determination, so as to be included in the process that makes the law to which they are subject. Therefore, only the republican theory clearly justifies inclusion-based claims for self-determination in comparison to the three other accounts.

**6.1.2.) Non-Separatist Reform-Based Claims for Self-Determination**

It is also the case, however, that existing citizens can be dominated when they do not have the second condition of republican self-determination fulfilled. As discussed in the previous chapter this occurs when groups are subject to domination as unequal political exclusion. This can come from the sources of arbitrary social and cultural power or domination as deliberative exclusion. In what follows I will discuss the justified claims groups subject to domination as political exclusion have for democratic institutional reform.

I make the distinction between territorially-located and non-territorially-located groups in this discussion. This distinction serves to reflect that non-territorially-located groups are limited to being able to make non-separatist reformist claims for self-determination, in normal political circumstances. As discussed in the previous chapter, in exceptional circumstances, where groups have been subject to additional wrongs, such as oppression – as in the case of Northern Ireland Catholics/Irish Nationalists – special claims are justified for reformist measures, such as consociationalism, which have a quasi-separatist component.

The same is true of postcolonial groups who have been subject to the historical wrong of the usurpation of their status of self-determination. These groups can be entitled to quasi-separatist reformist measures, such as special representation in legislatures. Indeed, non-territorially-located groups subject to usurpation are nearly always synonymous with those subject to arbitrary social and cultural power. However, there are groups subject to arbitrary social and cultural power whose domination does not overlap with usurpation. If these groups cannot overcome their domination through normal democratic dialogues, they can have justified claims for self-determination, through means such as special representation in legislatures to empower them in democratic dialogues to ensure that they are properly engaged with.

Furthermore, the reason non-territorially-located groups cannot make separatist claims for self-determination is not simply because of practicality, but also relates to a criticism raised in the second chapter of this thesis – that individuals need to have political authority govern their interpersonal relations. A non-territorial idea of political authority where individuals with different political statuses exist within the same physical space would leave interpersonal relations ungoverned making individuals vulnerable to *dominium* – the domination between agents in their personal, professional, and other non-government-specific relations.[[476]](#footnote-476) Therefore, reform of the system, whilst all maintain the same status, is appropriate for some groups’ claims for self-determination, especially if they are subject to domination as political exclusion.

When non-territorially-located groups are subject to domination as deliberative exclusion it is appropriate that their claims for self-determination take the form of electoral reform. These non-territorially-concentrated groups, whose interests are informally excluded from the democratic political agenda by dominant political actors, have justified claims for electoral reform.

The U.K. and German political systems provide examples of such groups. Traditionally in the United Kingdom, the interests of non-voters of the two major parties, such as Liberal Democrat, U.K.I.P. (United Kingdom Independence Party), *Plaid Cymru* (Party of Wales), S.N.P. (Scottish National Party), and Green Party voters, have been vastly under-represented in a plurality or first-past-the-post electoral system that is biased towards political parties whose vote can be targeted to specific electoral constituencies. This has excluded those whose vote is only significant on a state-wide level from deliberative participation in the construction of the U.K. political agenda.[[477]](#footnote-477)

Similarly in Germany in the 2013 Federal Election, voters of the F.D.P. (Free Democratic Party) and A.f.D. (Alternative for Germany) parties were not represented in the parliament because each got 4.8 and 4.7 percent of the national vote, respectively, in an electoral system that requires parties to reach a 5 percent electoral threshold to enter parliament. As with voters of the non-two-major political parties in the U.K. this excluded the interests of F.D.P. and A.f.D. voters from the construction of the post-2013 German political agenda. Similarly, voters of *Die Linke* (The Left) in Germany are excluded on an informal basis because the mainstream C.D.U/C.S.U. (Christian Democratic Union/Christian Social Union) and S.P.D. (Social-Democratic Party of Germany) parties refuse to cooperate with them in coalitions and often more generally in other political deals, excluding their voters’ interests from the political agenda.

For the republican theory, these groups are justified claimants of self-determination. The citizens that vote for these political parties are excluded from political deliberation – they do not have the second condition of republican self-determination fulfilled. By making claims for electoral reform these groups are making claims for self-determination to be substantively included as part of the self-governing people. These groups’ claims are justified because under a different or reformed electoral system the political parties these citizens vote for would be relevant political players with the ability to influence the political agenda. In this sense they are not simply normal *losers at the polls*, but their unique and sustained represented interests are excluded by dominant political actors’ refusal to reform the electoral system.[[478]](#footnote-478)

Only the republican theory of self-determination captures these claims.[[479]](#footnote-479) The just-cause theory of self-determination fails to capture these claims because there is no formal violation of rights in these groups’ unequal democratic participation. The just-cause theory, therefore, fails to diagnose the gap that can emerge between the citizenry and the substantively self-governing people, who have arbitrary power over the part of the citizenry that do not have the second condition of republican self-determination fulfilled.

Similarly the choice-based theory fails to capture these claims because as an individualistic account of self-determination, claims cannot be made against the terms of the collective life of a voluntarily-constituted political authority – these terms are set by voluntarily contracting individuals. For the choice-based theory, individuals either agree to the terms or if they do not like them, they are free to leave. Thus the only claims the choice-based theory justifies are separatist claims for self-determination.

Finally, the nationalist theory also fails to capture these claims because they are the claims of non-ascriptive groups, who are not making identity-based claims for self-determination. The claims of unequally excluded groups from democratic participation fail to come onto the radar of the nationalist theory, because of its non-political understanding of who the legitimate candidates for self-determination are. Some liberal-nationalists may of course be in favour of electoral reform, but this is as liberals and not as nationalists, and therefore not as claims for self-determination.

For the nationalist theory, claims for self-determination are necessarily about the recognition of identity. The nationalist theory may only come close to justifying claims for electoral reform when those who represent distinct national identities are unequally excluded in some form. For example, claims that would benefit the representation of the Catalonian, Basque, or Galician identities in the Spanish parliament. Nonetheless, such a justification is not based on the value of protecting against unequal political exclusion, nor does it capture the idea of civic inclusion that ought to be at the heart of the idea of electoral reform and its associated claims for self-determination. Therefore, the republican account provides a more satisfying justificatory framework to assess claims for self-determination, because it captures a set of justified non-separatist claims for this right.

**6.1.3.) Separatist Claims for Self-Determination**

In contrast, territorially-located groups have justified *separatist* claims for republican self-determination. This is both if their domination as unequal political exclusion comes from the source of arbitrary social and cultural power or deliberative political exclusion – however, often territorially-located groups such as national minorities are subject to both sources of domination. In what follows, I will discuss groups that are simply subject to domination as deliberative exclusion.

However, as with non-territorially-located groups subject to arbitrary social and cultural power, if groups subject to arbitrary social and cultural are territorially-located, such as in the case of post-colonial indigenous peoples, their claims for self-determination are justified in taking territorial form, as for example with the *reservations* systems that exists in North America. Furthermore, it also needs to be noted if territorially-located groups decide that they want political reform instead of separation it is their prerogative to decide how they want their claims for self-determination to take form.

In the previous chapter, I discussed the case of the Scottish citizenry during the 1980s and 1990s as an example of a group subject to domination as deliberative political exclusion.[[480]](#footnote-480) I argued that during the period of Conservative rule from 1979-1997 the interests of the Scottish electorate could not make it onto the U.K. political agenda as elections were won and lost in England during this period. I argued this was not simply unique to Scotland but was also relevant to other regions of the U.K. and for voters of non-mainstream political parties in England and Wales, and Northern Ireland as a whole. I contended if the two conditions of republican self-determination were not fulfilled there was no reason to deny groups’ claims for self-determination, even if they did not correspond to the total of the unequally politically excluded population of a political association as a whole.

The claim-making aspect of this argument is important. This is because if groups make claims – as happened in Scotland from the campaign of *Scotland Voted Yes* in the aftermath of the 1978 devolution referendum to the end of the campaign for devolution in 1997 – claims should not be denied if the group in question fails to fulfil the two conditions. Furthermore, groups being nations, administrative regions, or having other relevant criteria can provide instrumental reasons to take groups together when claims are made.

This is in addition to the fact that it is possible to disaggregate the experiences of domination as unequal political exclusion between collections of citizens who make-up the total of the unequally democratically excluded of a political association – the experiences of the 1980s Labour voters in Glasgow, for example, was qualitatively different from the experiences of 1980s Labour voters in Essex. This is because Glasgow Labour voters never had their vote pursued by the Conservative Party in the same way as Labour voters in Essex did during the period. During this time, for instance, the shipyards closed on the Clyde, despite significant protest, whilst Basildon and similar places in Essex became more prosperous, even though the average Labour voter in Essex would have preferred that that prosperity had been shared in a more egalitarian manner.

In other words, Labour voters in Essex were being politically engaged with in a manner that the average voter in the west of Scotland was not. Therefore, rigidly aligning the claims of groups within the total of the unequally democratically excluded citizenry of a political association is problematic and at worst dominating – as claimants’ collective freedom is held at the expense of solidarity for excluded others and a form of political reform that in many cases may never come.

For the just-cause theory, in both its basic and substantive forms, dominated national groups – such as the Scottish citizenry during the 1980s – do not have justified claims for self-determination, because none of their rights are formally violated. In the case of Scotland, the U.K. government never violated the rights of its Scottish political subjects and thus Scotland had no claim for self-determination. Therefore, the claims against democratic states that the republican theory captures with states’ failure to uphold the second condition are unique to this theory on remedial grounds.

The choice-based theory of self-determination, however, can capture these claims, but on problematic non-remedial terms. Whilst the choice-based theory of self-determination justifies the claims of national groups, such as Scotland during the 1980s and 1990s, it justifies the claims of any national group, or any other would-be political association, regardless of them having been excluded from the equal participatory exercise of their democratic-citizenship. Scottish claims for self-determination would have been justified according to the choice-based theory in this period, but so too would have been the claims of the few Conservative government-supporting areas of Scotland, had they made them. Therefore, the choice-based theory cannot capture the significance of the distinction between groups that only have the first, and those that have the first *and* the second conditions of republican self-determination fulfilled, and the relevance that this has for democracy. This is because democracy is a mode of collective governance that dominates when factions or groups gain a position of dominance within it.[[481]](#footnote-481)

Nonetheless, the choice-based theory could respond that rather than solving this problem it has dissolved it as an issue altogether. However, the choice-based theory of self-determination is not an anti-democratic theory of politics – as was noted in the choice-based chapter, some choice-based theories contend to be democratic theories of self-determination.[[482]](#footnote-482) By dissolving the problem of unequal democratic participation the choice-based theory runs the risk of giving up on democracy as a political value altogether. This is because making democratic claims for self-determination provides a way of having a collective way of life that is reconcilable with political freedom. To dissolve this problem, therefore, is to concede that there is no real attractive collective vision of democratic life at all.

As such, the motivating impulse behind the idea of self-determination is not voluntarism but the idea of having a collective life that individuals can reconcile themselves to – a collective life that is consistent with freedom.[[483]](#footnote-483) This is why few are nonchalant about self-determination and why passions run so high when claims for it are made. For example, in the 2014 Scottish Independence Referendum – which many pro-secession campaigners argued was required to deal with the unequal political participation that had not significantly disappeared since the 1980s – passions flared over whether the United Kingdom or an independent Scotland was the best manifestation of a collective life that is consistent with the participatory exercise of democratic-citizenship for Scottish citizens.[[484]](#footnote-484)

By contrast, the nationalist theory agrees that claims for self-determination are valuable because they reflect a concern for collective life, albeit a different concern for collective life than the republican account of self-determination. The nationalist account justifies the claims of politically excluded nations such as Scotland, but as was detailed in previous chapters, this theory is not discriminating enough because it justifies the claims not only of excluded but also *excluding* nations.

This is because the nationalist theory has a pre-political understanding of what constitutes a people. The nationalist theory contends that a people are a cultural or social group with the same identity that ought to be politically recognised. Therefore, for the nationalist theory, citizenship ought to reflect cultural identity.[[485]](#footnote-485) However, because the nationalist theory has a pre-political understanding of a people for it the first and the second conditions of republican self-determination, cannot obviously come apart, as citizenship is not principally conceptualised as reflecting the right to self-government, but rather groups’ identities.

Therefore, the nationalist account of self-determination is insensitive to the domination of unequal political exclusion. Whilst the nationalist account might not necessarily deny the relevance of unequal political exclusion, its theory obfuscates rather than clarifies this wrong. For example, Scottishness’ political pertinence for the nationalist theory is as an identity rather than as a democratic expression of unequal political exclusion within the U.K., as it is for the republican account. This is worth noting as the language of nationalism is often an imperfect attempt for many real-world nationalists to voice the unequal political exclusion to which they are subject.[[486]](#footnote-486)

However, unequal political exclusion is a central concern for the republican theory of self-determination. In the case of Scotland this was an expression of deliberative political exclusion, when law was discretionarily imposed on one part of the United Kingdom by another. For the republican theory, however, in contrast to other accounts, the claim for self-determination made in Scotland did not necessarily have to take a separatist form. Electoral reform of the United Kingdom as a whole could have created a more inclusive U.K. politics. However, there was little appetite for this from the Conservative and Labour parties who would have had to support this at the time. Separatist self-determination, therefore, was the only realistic option. This took the form of devolution in 1999.[[487]](#footnote-487) However, other methods are appropriate for these types of claims for self-determination. This includes the constitutionalisation of rights for self-determination, in the form of a secession-clause or by creating political procedures for new federal or sub-state units. It is this that I will discuss now.

**6.2.) Constitutional Procedures for Self-Determination**

In what follows I will discuss an institutional proposal – the constitutionalisation of procedures for self-determination – which are designed to create the greater fulfilment of the two conditions of republican self-determination in political practice. This is the idea that having procedures for groups to claim the right of self-determination should be written into democratic political constitutions, giving specific groups secession rights, or rights to other territorial forms of self-determination if they can meet certain procedural criteria.

This is not an entirely abstract idea as secession rights have existed in a number of states’ constitutions – the present constitution of the Caribbean archipelago state of St Kitts and Nevis contains this right, as does the current Ethiopian constitution.[[488]](#footnote-488) Every member state of the European Union also has the right – to secede from this supra-national organisation. Furthermore, secession rights also existed in the former Soviet Union and Burma’s 1947 constitutions – although in practice these rights were not exercisable. Moreover, the present Austrian, Singaporean, and Swiss constitutions have provisions to allow for secession – although these procedures also require the consent of central government.[[489]](#footnote-489) Additionally, in Canada and the United Kingdom, it has been argued secession rights also exist – particularly in the case of the United Kingdom, as the 1998 Good Friday Agreement recognises that Northern Ireland should only remain part of the U.K. if a majority of its population continue to affirm that this should be the case.[[490]](#footnote-490)

For the republican theory, because the right to self-determination is a remedial right, certain procedural criteria should be fulfilled by claimants for groups to pass the test for having successful claims for self-determination. Once these criteria are fulfilled groups do not win the right to self-determination as such, but the right to have a binding referendum – the outcome of which should be respected by all parties. The constitutionalisation of procedures for self-determination is not envisaged to be appropriate for all states, but only for some – particularly those that have had a history of regional grievances or for states in which the potential for democratic remedial wrongs to emerge is thought to be a possibility.

For the republican theory, however, the value of having constitutional procedures for self-determination is that they can act as a *conditioning mechanism* to prevent the non-fulfilment of the second condition of republican self-determination by existing states. This is because in contemporary democratic politics dominant political actors often informally constrain certain groups of citizens’ ability to exercise their rights of democratic-citizenship on equal terms, through practices such as political agenda-setting.

However, when groups have constitutional procedures for self-determination available to them, not only does this give them the means to condition dominant political actors with the threat of exit, but it also gives them the option of actually leaving the political association if dominant political actors do not desist from their informal practices. As such, the value of constitutional procedures for self-determination is that it gives groups a way to test in political practice if their fulfilment of the second condition of republican self-determination should be achieved through separatist or non-separatist means.

Indeed, this idea has pedigree in the republican tradition. Machiavelli discussed the case of the Aventine secession in the ‘Discourses on Livy’. He discussed how in the early days of the Roman Republic the plebeian class of Rome physically seceded from the city *en masse*, in the manner of a contemporary general strike, demanding that if reforms were not made to protect them from the discretionary political treatment of the *Decemvirate* that they would not return. This would have left Rome without the sufficient social, economic, and military basis to survive as a city. The *Decemvirate* ceded to the plebeians’ demands and following this the *Tribune of the People* was re-established – this being one of the three central pillars of the Rome’s republican constitution. For Machiavelli, the lesson of this episode was that a groups’ political freedom has to be argued for and demanded – Machiavelli argued freedom is something that is never granted or conceded willingly as powerful political actors are reluctant to give away their power.[[491]](#footnote-491)

For the republican theory of self-determination, the constitutionalisation of procedures for this right is not designed to address the political domination of all groups – as it is only those who are subject to domination as deliberative exclusion and are territorially-located that can benefit from them.[[492]](#footnote-492) However, this is not necessarily a problem for the republican theory as these procedures are only envisaged to be part of an arsenal of institutional methods to have the two condition of republican self-determination more widely fulfilled in contemporary politics.

Furthermore, although constitutional procedures for self-determination may often take the form of a secession right, they are not reducible to this. For some states it may be more appropriate that constitutional procedures take the form of intra-state methods of self-determination, such as for groups to become federal or autonomous regions, or indeed for already existing administrative regions to gain further powers from central government. Even more novel claims, such as that claims for self-determination take confederal as opposed to strictly secessionist form, can be appropriate.

Indeed, there is no reason why the constitution of any particular state could not contain procedures for a number of different democratic institutional forms. However, I will now discuss the republican idea of constitutional procedures for self-determination in more detail, before proceeding to discuss some of the issues this idea raises and defend the idea of such procedures against a recurring criticism.

For the republican theory, constitutional procedures for self-determination are envisaged as a means to create the greater fulfilment of the two condition of republican self-determination in contemporary democratic politics. However, more generally the value of these procedures is that they provide a means for creating greater cognisance of the second condition, which in particular is something that has little, if any, general appreciation in contemporary democratic politics.

The central republican concern that animates having constitutional procedures for self-determination within states is that dominant political actors engage in informal practices of domination, such as political agenda-setting, that excludes the interests of certain groups – meaning that they are no longer civic equals. For the republican theory, constitutional procedures for self-determination act as a mechanism to recondition dominant political actors’ behaviour so that certain groups of citizens’ civic equality is not jeopardised and that their interests are registered on the political agenda. This idea of conditioning is central to the republican defence of constitutional procedures for self-determination because the fulfilment of the second condition of republican self-determination is only possible when dominant political actors change their informal behaviour of their own accord.

This is because the failure to fulfil the second condition is established in the first place because dominant political actors know that they can *get away* with not engaging with certain groups of citizens and their interests. Democratic politics leaves, and necessarily requires, a space for free un-proscribed action, where interests are organised in movements, where political parties can construct electoral packages, and where the other more general activities of the public sphere can take place. Therefore, proscribing rules in this domain would constitute a more general problem for democracy. As such, to stop dominant actors thinking that they can *get away* with not having to involve themselves in this type of political engagement, general procedural rules are more appropriate, because they do not limit free action within this proscribed democratic domain. Rather, what they do is condition dominant actors’ behaviour, making them change how they play the game of democratic politics of their own accord.[[493]](#footnote-493)

In this sense constitutional procedures for self-determination recondition dominant political actors from thinking that they can *get away with it* and creates a context where it is in their interest to play the game of democratic politics in a manner that involves them engaging with groups of citizens and their interests, which under other political circumstances would not be part of their winning electoral coalition. Therefore, constitutional procedures for self-determination are a way for groups whose interests are being ignored, and thus are having their civic equality undermined, to increase their democratic voice with the threat of political exit.[[494]](#footnote-494) It gives them a means to be engaged with on equal terms and quite simply be taken more seriously.

For the republican theory, the advantage of this type of procedure to fulfil the two conditions of republican self-determination is that constitutional procedures for self-determination neither favour reform or the *status quo* – it treats these two options as co-equal. If groups are dominated by the failure to have the two conditions of republican self-determination fulfilled, constitutional procedures for self-determination either gives dominated groups the means to force reforms through the threat of political exit or gives them the means to actually leave the political association they are subject to if reforms are not made. Therefore, in either situation the two conditions are ultimately fulfilled, albeit in different ways. As such, constitutional procedures for self-determination work both as a reforming mechanism and as a safety valve for dominated groups.

It is in this sense that the justification for having constitutional procedures for self-determination in democratic states is behavioural or sociological, in addition to it being normatively justified.[[495]](#footnote-495) In other words, its value is as much derived from the incentives it engenders as much as the consequences it creates. This sociological or behavioural aspect is important as it highlights why a republican theory of self-determination should favour this over other institutional means to fulfil the two conditions of republican self-determination.

The obvious solution for overcoming relationships of unequal regional-specific democratic participation is to federalise a state or grant regional autonomy outright.[[496]](#footnote-496) However, these solutions have a problematic assumption, namely, that once these forms have been instituted the problem is solved forthwith, when in fact it is not. This is because the initial reason why any group does not have the two conditions of republican self-determination fulfilled is because of the informal action of dominant political actors. These are *fluid* on-going processes that happen over time.

The problem with federalism or regional-autonomy being granted outright as the definitive solution to the non-fulfilment of the two conditions is that they are *static* solutions. As static solutions they allow new informal dominating forms of political action to emerge – albeit types that are different to the dominating action which existed before. Constitutional procedures for self-determination, by contrast, give groups that are unequally excluded from processes of democratic participation a way to play the game of politics as equal players which at present in most democratic states they are not. This is not to claim, however, that the republican theory of self-determination is necessarily anti-federalist or opposed to regional autonomy, but only that these solutions are not by themselves sufficient.[[497]](#footnote-497)

Furthermore, the emphasis on behaviouralism and fluidity as being necessary for dominated political actors to successfully respond to their domination makes the republican idea of constitutional procedures for self-determination unique from other versions of this idea. Versions of all three of the other theories of self-determination have defended these procedures, but on different terms. Moreover, only remedial theories emphasise the reforming characteristic such procedures can have.

For the choice-based theory the idea of such procedures are implicit in the right to self-determination – self-constituting groups are free to hold a referendum and secede.[[498]](#footnote-498) For the choice-based theory constitutional procedures for self-determination are not considered as a means to affect change within existing political associations, as one either accepts the terms one lives under or one leaves. The same is true of nationalist theories as constitutional procedures for self-determination are a way for nations to gain political recognition if they decide that a multinational federation does not serve their cultural interests.[[499]](#footnote-499)

Whereas for the just-cause theory, although constitutional procedures are envisaged as a way to condition political actors’ behaviour, for this theory the value of these procedures is not that they encourage political engagement, as it is for the republican theory, but they are thought of as a way for making living together simply possible, because of the continual spectre of political violence.[[500]](#footnote-500) For the republican theory, however, constitutional procedures for self-determination are thought of as a mechanism to perfect the collective democratic political life of citizens.

Furthermore, another advantage for the republican theory of having constitutional procedures for self-determination is that it overcomes the problem of the *biased judge* when claims for self-determination are made.[[501]](#footnote-501) At present, when democratic claims for self-determination are made, they have to be negotiated between claimants and central government – the latter being the party, which has nearly always created the claimants’ domination. As there is no parity in these negotiations, central governments often either (i) offer referendums on bad terms, predetermining the outcome in favour of the *status quo*, such as when the terms of the 1978 Scottish Devolution Referendum were amended so that it could not pass with a simple majority, or (ii) that central government denies groups’ claims outright, as has been Catalonia’s recent experience in its negotiations with the Spanish central government.

Indeed, often central governments only discretionarily permit referenda when they are confident they will win them, as was the case when the U.K. government permitted the Scottish Independence Referendum in 2014 – which produced a much narrower result than was comfortable for most anti-independence Westminster politicians. Moreover, constitutional procedures have another advantage for the republican theory because they prevent the continued domination of groups with a remedial claim – they act as a safety valve for groups, so that they are able to secede by right, rather than having to wait until it is discretionarily granted by central government, if indeed this right is granted at all.

By having constitutional procedures for self-determination, these problems of discretion and the decision-bias can be overcome. Constitutional procedures for self-determination pre-commit both parties – central government and potential seceders – to a set of terms that do not represent implicit or explicit advantages for either side. In this sense, the self-determination referenda that result from the successful claims groups make should be thought of as no different to other elections – that they should take place on fair terms, where the *goalposts* cannot be shifted, and where the result is respected by both parties.[[502]](#footnote-502)

Indeed, this also settles the issue of recursive secession as it predefines the group that the referendum will be authoritative over. In the previous chapter I argued that there was no domination in requiring citizens who voted to affirm the *status quo* to accept the outcome of such referenda. I argued this was because those who voted to affirm the *status quo* would not be dominated under the new political regime, but that many of their fellow group-members were dominated under their present predicament, and that the fulfilment of the two conditions of republican self-determination for all the members of a group trump the sub-minority’s preference for affirming the political *status quo*. This, I argued, was a requirement of the state’s constitution proceduralising a *remedial* right to self-determination.

The decision of how to gauge who the pre-defined groups are – those who can make procedural claims for self-determination – is a significant issue. Predefined groups are necessary as leaving groups undefined makes candidacy an issue that has to be politically or judicially decided upon. This can be problematic as both *status quo* political and judicial decisions can be dominating. Political decisions, which involve an entire state deciding who the relevant candidates are, can result in gerrymandering. This can create candidates that include a sufficient number of individuals who will always affirm the *status quo*.[[503]](#footnote-503) Whereas, if groups were allowed to self-constitute they would also gerrymander the boundaries to guarantee their success.[[504]](#footnote-504)

However, by contrast, judicial decisions would create a different form of domination. A number of individuals bound by the decision would not accept the group that they are contended to be part of as legitimate. No procedure was involved that took their input into consideration.[[505]](#footnote-505) How groups should come to be predefined, therefore, must involve non-*status quo* political procedures. This can be done in different ways. One method specific to federal states is to make all or some of a state’s federal units candidates who can justifiably make procedural claims for self-determination.[[506]](#footnote-506) The same can be true of nations in multinational political associations. However, for the republican account neither of these solutions are completely satisfactory, because domination can exist outside of the neat confines of administrative or federal units.

One contrasting possibility is to create a two tiered process modelled on the Swiss constitutional idea of *rolling cantonisation*. Rolling cantonisation is a procedure in the Swiss constitution that exists for the creation of new cantons. Rolling cantonisation is itself a constitutional procedure for self-determination – albeit one that is used for the creation of federal units and not secession. It works by municipalities voting to remove themselves from existing cantons to make their own federal region, providing they do so in sufficient numbers and by meeting a number of other procedural criteria.[[507]](#footnote-507) The procedure has been used once when the canton of Jura was formed in 1979 after a number of municipalities seceded from the canton of Bern. Rolling cantonisation, however, can be adapted more generally. It is conceivable to have one system of underlying claims to form units that are recognised as candidates for self-determination, which sits underneath the actual claim-making process for self-determination itself.[[508]](#footnote-508)

Indeed, this idea connects more generally with some of the practical issues involved in creating constitutional procedures for self-determination – namely, how to make the normative concerns of the republican theory connect with the procedures that have to be fulfilled for groups to be able to exercise this right. There are different models for doing this. The first is a *substantive* or moralised model, which attempts to most perfectly embody the moral right, or wrong, in play.[[509]](#footnote-509) This, however, poses the same problem as the issue surrounding candidacy – a judicial decision would be required to rule on this. It is very unlikely that these decisions would ever be accepted as legitimate by the side that does not gain its desired outcome.

The second is a *procedural* model, which operates by groups fulfilling a defined set of criteria, designed to reflect the normative idea of the right to self-determination – albeit imperfectly.[[510]](#footnote-510) This, however, is not without problems – particularly problems of interpretation. It may become a *bone of contention* between claimants and the state about what constitutes failure to fulfil the defined criteria – this in a worst case scenario could lead to judicial interpretation and decision-making.

As such, a simpler model may be more desirable – that groups win the right of candidacy through political battles or are determined to have this right due to the history of how groups have related to one another in a particular state. For example, that after a failed referendum or as part of an on-going process of constitutional reform candidates are defined for self-determination. There would be little or no criteria on the exercise of this right as having it would be historically determined – as it was deemed appropriate to grant this at one point in the history of a political community.

The problem with this model, however, is that the domination the group may have once been subject to could disappear as a result of sufficient institutional reform. This would mean that the group, morally speaking, would no longer have the right, whilst legally they would. I do not attempt to settle the issue of which model should be used to institute these procedures here, but simply note that the latter two are likely to provide better forms than the substantive model, and that a mixture of the latter two models might in fact provide the optimum means of instituting these procedures.[[511]](#footnote-511)

However, the concern about groups losing the moral right to self-determination, but legally retaining a procedural one, is a worry that connects to a recurring criticism of the idea of states having constitutional procedures for self-determination. This is that having such procedures gives groups the ability to hold democratic political associations to *ransom*. This is a criticism that Cass Sunstein has forcefully made against constitutional procedures for self-determination – arguing himself from within the broad republican paradigm.[[512]](#footnote-512)

Sunstein argues that having constitutional procedures for self-determination would undermine the anti-factionalist ideal of *Madisonian* democracy. For Sunstein democratic government requires a strategy of *pre-commitment* to take certain issues off the political agenda. This applies to issues that will encourage partisanship, making it less likely for consensus decision-making to be possible. Sunstein argues that democratic constitutions need to take the option of exit off the table so that factions cannot form around these options and use them to extract concessions from central government and other groups.[[513]](#footnote-513)

Sunstein argues constitutions need to be depoliticised for this type of consensus-centred politics to work, as it is only by doing this that the constitutional issue of the bounds of the political community will not plague the discussions of day-to-day politics. If political exit is a live issue, Sunstein argues, then citizens would not be pre-committed to authoring political consensuses with one another, because they would always know that they could do otherwise. Even if they had no real desire to make genuine claims for self-determination, Sunstein argues, they could use this option as a trump and not be committed to finding a consensus on many, if not all political issues.[[514]](#footnote-514)

However, Sunstein over-emphasises the value of consensus in contemporary politics. Whilst ideally consensus-driven politics is desirable, often this is not how contemporary democracies work. Democratic systems are generally biased towards particular regions, interests, and actors in how they informally, and even formally, operate. In this sense, most existing democracies, even without constitutional procedures for self-determination, are factionalist. They are already playing out the worries Sunstein believes the constitutionalisation of procedures for self-determination would raise.

However, for many republicans – indeed arguably including Madison – the role of conflict in politics was thought of as being a good thing. In the Roman constitution, for example, the fact that the three pillars of the constitution – the consulate, the senate, and the tribune of the people – were in conflict was what kept Rome free.[[515]](#footnote-515) In other words, agreement in decision-making does not come from the depoliticisation of issues, it comes from the productive value of conflict in politics, as people who disagree are forced to find a way to agree through negotiation and compromise, rather than this coming from citizens’ positive inclination to create consensus on all or most issues.[[516]](#footnote-516)

In this sense it is necessary to turn factional politics against itself. Dominant political actors have to be forced to stop playing the game of politics in the way that they do. Dominant actors have to be forced to engage with the concerns of other groups of citizens, and for it to be their interests to do so. Constitutional procedures for self-determination fulfils this very function. They translate dominated groups’ grievances into a productive form of equal participatory decision-making. Without the threat of exit these groups would not be empowered to re-condition the political agenda and would not be able to make claims for political reform.

Yet Sunstein and proponents of his view may still contend that groups could still use such procedures to cynically extract concessions for themselves. However, this is less of a concern than Sunstein claims. In the game of day-to-day politics it is actually very hard for cynical claimants to convince others that they genuinely would secede when they have no real intention of doing so. These types of claimants would be likely to back down if concessions are not made to them, exposing the fact they have no real intention of leaving.[[517]](#footnote-517) This will matter as it will not be until the stakes get very high that political concessions will actually be negotiated. It is only groups that are genuinely dominated who would follow through with their threats, because for them the *status quo* is not a tenable place to be. As such, sincerity could well become a primary political virtue with this type of constitutional politics.

**6.3.) Conclusion: The Centrality of Self-Determination to Political Thought and Practice**

In this chapter I have argued that the republican theory of self-determination captures a range of claims that the three rival theories of self-determination fail to accommodate, in addition to also discussing and defending an institutional proposal – that certain states should adopt constitutional procedures for certain groups to be able to formally make claims for self-determination. I argued that such procedures would serve to promote the greater fulfilment of the two conditions of republican self-determination.

The republican theory has shown that many political claims that are not obviously thought of claims for self-determination in fact are claims for this right. The republican theory can thus capture a wider set of claims than the other three theories of self-determination. Therefore, self-determination understood in republican terms, together with its associated politics, should have more of a central place in contemporary thinking about politics.

In this chapter and throughout the thesis as a whole – particularly in its second half – I have shown how issues of self-determination are basic issues of political legitimation, which figure as part of the day-to-day workings of politics. In essence I have argued that being part of a self-determining people is necessary to have a freedom-consistent type of politics, in a world where political obligation is involuntary. I have shown that questions of self-determination are not simply questions that prefigure the activity of politics. A group does not declare itself to be self-determining and then engages in the normal activity of politics. Instead, questions of self-determination should themselves be part of the normal activity of politics.

This is because it is only when the two conditions of republican self-determination are upheld in politics that self-determination actually exists. As such, self-determination is something that can be lost and needs to be rebuilt, or indeed constructed *from scratch*, in the activity of day-to-day politics. I have argued that having self-determination should be thought of as on-going process in daily politics, even when the individuals subject to a political association are themselves reconciled to that association.

As such, questions of self-determination should not simply be thought of as questions of political foundations, but rather as continual questions that need to be asked to ascertain whether or not a political association, despite its nominal configuration as a liberal-democracy, is in fact living up to its own democratic principles and standards. If a political authority ceases to uphold these standards, despite continuing to have nominal procedures of self-government, then it is no longer a democracy.[[518]](#footnote-518) This is something worth keeping in mind in contemporary politics where the democratic project is often contended to be fulfilled. This concern for the aligning the principle of democracy with its real-life political practice, therefore, is what a republican theory of self-determination captures. In what follows I will conclude this thesis by providing a summary of its arguments, discussing avenues for future research, and listing the research contributions made in this study.

**Chapter Seven: Conclusion**

This thesis has discussed which political theory provides the best justificatory framework to assess claims for self-determination. It has argued that republicanism provides the best justificatory framework to assess groups’ claims for self-determination. Specifically, my thesis has been that groups have sufficient justification for their claims to self-determination when the individuals that form them do not have the right to self-government or when their rights to self-government are constrained whilst others exercise this right. I have argued that the absence or the unequal constraint of rights to self-government justifies claims for self-determination because being subject to this type of relationship constitutes political domination. In what follows I will give a summary of this thesis, followed by a discussion of avenues for future research, and a note on the research contributions provided by this work.

**7.1.) Summary of Thesis**

Part one of this thesis was a critical examination of the three existing theories of self-determination. This began in chapter two with an examination of the choice-based theory of self-determination. Three versions of this theory were assessed: (2.1.) the strong associative; (2.2.) the weak associative; and (2.3.) the democratic-choice-based accounts of self-determination. I argued that all three versions of this theory have problems in providing a satisfactory justificatory framework to assess claims for self-determination – this is because of their account of political obligation, associated with their understanding of self-determination as a primary right. I argued that each account can create domination and that this constrains individuals’ ability to choose their own political identity and status, in addition to this account justifying the claims of groups, such as cynical micro-seceders, whose claims for self-determination should remain unjustified.

(2.1.) I argued the strong associative account justifies anarchic forms of political association under which there is no protection for individuals against interpersonal forms of domination – this, I argued, constrains individuals ability to exercise choice over how they wish to self-determine, as the choice-based theory contends is valuable. (2.2.) By contrast, the weak associative account overcomes this problem, but fails to protect against political domination – similarly constraining individuals’ ability to choose how they wish to self-determine. This is because for a political authority to be legitimate, for the weak associative account, it does not have to be democratic. This means that political authorities can hold legitimacy without giving their subjects sufficient political control over the power they are subject to. This makes their subjects dominated and unable to exercise their individual rights to self-determination.

(2.3.) Finally, I argued that the democratic-choice-based account of self-determination has a problematic account of political obligation that fails to account for how individuals can freely break the obligations imposed upon them in the democratic process. I argued that political obligations should only be able to be broken when self-determination is understood as a remedial right and unequal conditions of democratic political control pertain.

Chapter three examined the nationalist theory of self-determination. Four versions of this theory were examined: (3.1.) the special obligations; (3.2.) autonomy-based; (3.3.) instrumental; and (3.4.) fairness-based accounts of self-determination. I argued that all four versions of the nationalist theory have problems in providing a satisfactory justificatory framework to assess claims for self-determination. I argued, it is not nationhood that should justify claims for national self-determination, but the domination to which nations can be subject.

(3.1.) I argued the special obligation account of national self-determination biases claims for this right to nations that are already embodied in states. This is because its account of what is involved in special obligations conflates the pre-political obligations of nationhood with the political obligations of citizenship. I argued that only the latter can create special obligations – therefore biasing nationhood-based claims for self-determination to nationalist groups already embodied in states. I argued this can subject nations not embodied in states to the domination of those who are embodied when controversies arise between new claimants and already-embodied groups.

(3.2.) By contrast, I argued, that the autonomy-based account of national self-determination is problematic because it can justify claims for self-determination that create territorial fragmentation – undermining the nationalist idea of self-determination in a unified homeland. This is the case because a number of non-nations meet the autonomy-based account’s standard of what is required to be justified claimant for self-determination. Therefore, these groups have claims over portions of nations’ territorial homeland. I argued, instead, that a political justification is required to justify claims for national self-determination. The (3.3.) instrumental and (3.4.) fairness-based accounts were assessed as political justifications for self-determination, but I argued that these accounts provided the wrong political justification for the right to redefine one’s political identity and status.

(3.3.) Two instrumental accounts were examined: (3.3.1.) the justice-promoting and (3.3.2.) democracy-supporting accounts of national self-determination. (3.3.1.) I argued that the justice-promoting account provides too sectarian a basis to justify claims for self-determination, (3.3.2.) whereas the democracy-supporting account can justify a politics of assimilation, as much as it can justify claims for self-determination. I argued that it is not nations that should be thought of as benefitting democracy, but that it is democracy that benefits the members of nations, because democratic-citizenship gives individuals the right to challenge and oppose cultural assimilation.

(3.4.) Finally, I argued that the fairness-based account is problematic as a justificatory framework to assess claims for self-determination because it conceptualises unfairness in terms of the unfairness nations are subject to – however, non-nations can also be subject similar wrongs. I argued, instead, that national groups are justified in making claims for self-determination not because they are nations that have had their culture treated badly, but because they are subject to poor political treatment more generally – the same problematic treatment to which non-nations can be subject.

Chapter four examined the just-cause theory of self-determination. Two versions of this theory were discussed: (4.1.) the basic and (4.2.) substantive just-cause accounts of self-determination. I argued both are problematic because the violation of human and economic or cultural rights are not exhaustive of remedial claims for self-determination. I argued that remedial wrongs can exist in the absence or the constraint of rights to self-government.

(4.1.) The basic account is problematic because its account of political legitimacy – based in the maintenance of human rights – captures no concern for who is upholding these rights. I argued that the basic account is compatible with a benevolent form of colonialism that would uphold these rights, but nonetheless would constitute a dominating form of political rule, against which claims for self-determination would be denied. Furthermore, under this type of rule, because there are no rights to self-government to begin with, these rights cannot be violated at a later time.

(4.2.) By contrast, the substantive account suffers from not being able to diagnose how rights can be constrained. I examined (4.2.1.) economic and (4.2.2.) cultural groups subject to this type of domination and argued that these groups are subject to a remedial wrong – that they cannot have their interests figure in the law that has authority over them because they are informally constrained from exercising their rights to self-government in the democratic process.

Part two of the thesis offered a constructive alternative to the three existing theories of self-determination. This began in chapter five where I discussed and defended the republican theory of self-determination. (5.1.) This chapter showed that within the republican tradition there is a central concern for free individuals and groups having their own political status – this, I showed, makes individuals and groups politically free as a matter of right and not at someone else’s discretion. I argued that this republican idea of groups and individuals having non-dominating political statuses is how self-determination should be conceptualised.

(5.2.) Four accounts of what should be taken as constituting relationships of domination were examined. I argued that it is only those that conceptualise domination in terms of an absence of sufficiently equal democratic self-government that give a satisfactory justification for claims to self-determination. (5.2.2.) I argued Frank Lovett’s procedural account of non-domination is an insufficient account of non-arbitrary power because it fails to capture the necessary concern for how the rules individuals and groups are subject to are created. I argued this was compatible with domination.

(5.2.3.) Secondly, I argued that Philip Pettit’s account of domination as the tyranny of the majority misdiagnosed the problems of majoritarian democracy. Rather than constraining democracy for the purposes of protecting minorities, I argued that the non-domination of minority groups should not consist in less but more of a different kind of democracy, because participatory self-government is necessary for republican freedom. These different kinds of democracy, I argued, should take the form of claims for self-determination, because non-democratic forms of ascertaining what the interests that should substantively define non-domination are subject to profound disagreement in political practice.

(5.2.4.) Third, I discussed Cécile Laborde’s account of domination as civic misrecognition. I argued that this account successfully justified the claims of groups subject to arbitrary social and cultural power. This is because arbitrary social and cultural power constrains groups and their members in their ability to exercise their rights of self-government. A similar conclusion was reached in the fourth and final discussion of what constitutes non-arbitrary power. (5.2.5.) Lastly, I examined James Bohman’s account of domination as deliberative exclusion. I argued that this account also justified the claims of groups who are constrained from exercising their rights to self-government. I argued when groups are subject to informal political practices within the democratic process that prevent them from having their political interests figure in the deliberatively constructed political agenda, they are dominated. I concluded that it is the failure to uphold sufficiently equal participatory access to democratic self-government that should justify claims for self-determination. Following this (5.3.) I summarised the preceding discussion with a defence of two conditions for republican self-determination, which I argued existing political authorities should uphold to stop claims for self-determination being justified against them.

(6.1.) In the final chapter I discussed some of the political implications of the republican theory of self-determination. These included the distinct non-separatist claims for self-determination that the republican theory captures – both (6.1.1.) inclusion-based and (6.1.2.) reform-based claims for self-determination. These either involve resident non-citizens (6.1.1.) becoming members of an already self-determining political community or (6.1.2.) reforming the democratic system of an existing political authority to create greater equality in the democratic participation of political subjects in the creation of the involuntary law.

Furthermore, in chapter six (6.1.3.) I also discussed the distinct separatist claims that the republican theory of self-determination captured – remedial claims for sufficiently equal participation in self-government against right-upholding, but nonetheless dominating political authorities. The claims discussed in this section, I argued, made the republican theory a more satisfying justificatory framework to assess claims for self-determination.

In chapter six (6.2.) I also discussed an institutional proposal designed to create the greater fulfilment of the two conditions of republican self-determination – the constitutionalisation of procedures for self-determination. I argued that such procedures, if appropriately constituted, could act as a conditioning mechanism to change the behaviour of dominant political actors in democratic political systems and encourage them to engage with groups of citizens and their interests, which under other circumstances they would not. I argued that such procedures would in themselves create greater cognisance of the two conditions of republican self-determination, which at present are not widely appreciated conditions for existing political authorities to have legitimacy over all of their subjects.

**7.2.) Avenues for Future Research**

There are at least three topics of future research related to the issues and ideas explored in this thesis. These are: (i) the institutionalisation of claims for self-determination, (ii) the political phenomenology of self-determination, and (iii) an exploration of non-domination’s connection to the politics and the idea of recognition. I will discuss each of these areas of research in turn.

**7.2.1.) The Institutionalisation of Claims for Self-Determination**

This thesis has been primarily interested in ascertaining which values should justify claims for self-determination and in turn which groups have a right to change their political identity and status. What this thesis has left underexplored, however, is how the normative theory it has developed, particularly in chapter five, can be applied in political practice. Although discussed in part in chapter six, this involves researching *the institutionalisation of claims for self-determination*.

Researching the institutionalisation of claims for self-determination would involve ascertaining the appropriate site where claims for self-determination should be made – in the *international* or *domestic* political arenas. Indeed, this may not necessarily be a dichotomy, because the claims in question could involve an appropriate division of labour between the international and domestic political contexts.[[519]](#footnote-519)

The theory developed in this thesis is particularly conducive for researching domestic political claims for self-determination and their place within democratic constitutions, because it is concerned with forms of political conduct that contract the *demos*. An appropriate institutionalisation of mechanisms to make claims for self-determination can help expand the *demos* – in light of the formalised and informal forms of power that create unequal democratic political exclusion.

Therefore, future research would involve expanding upon this concern for the contracting nature of the people in the modern democratic state to provide policies and other practical measures to lessen or prevent this practice’s occurrence. In chapter six I highlighted a number of the relevant concerns and solutions essential for this research topic, including the *constitutionalisation of procedures for self-determination*.

In this chapter I noted how claims for self-determination could take form in democratic constitutions, by including them, for example, as secession rights, or rights to create a federal or regional political unit. Further exploration of these procedures would open up a fruitful area of research for the politics of self-determination in terms of the philosophy of public policy, ascertaining what would be the best way to institutionalise claims for self-determination and how they could be used to expand the *demos.*[[520]](#footnote-520)

This would involve considering the normative ideas developed in this thesis in detailed consideration of empirical facts about aspects of the law – both domestic and international – that would govern these claims, as well as, crucially, considering the political sociology that the institutionalisation of such procedures would create. Furthermore, such a research agenda would also involve the normative examination of types of government in terms of the normative concerns and commitments highlighted in this thesis and their assessment as forms of self-determination to expand the *demos*. This could involve giving a normative assessment of devolution and federalism, as well transnational democracy – discussed at various places in thesis – in terms of non-domination.

Indeed, such research could also involve an examination of the politics of secession from the normative theory developed in this thesis. One neglected aspect of the politics of secession is the normative significance between secession as it is understood in international law – as part of a state becoming a state in its own right leaving a remainder state behind as the internationally recognised successor to the previous political association – and *separation*, which is when a state dissolves and two or more new states are formed as a result. This distinction is important because when claims for independence are made, secessionists and those they are seceding from often disagree about *who gets what* – such as the use of currency, membership of international organisations, or the distribution of wealth and debt.

When claims for self-determination take the form of secession, secessionists have little power over these terms, whereas when claims take the form of separation, there are no formal entitlements by either party giving them the upper hand in these negotiations. Normative analysis of groups having a remedial or a primary right to self-determination should be relevant in determining if their state-based claims for self-determination should take the form of secession or separation. The theory developed in this thesis may provide an argument for claims to take the form of separation when groups have remedial claims for self-determination.

Furthermore, in chapter five I discussed consociational power-sharing as a form of self-determination. At present, there is little normative literature on consociationalism, and none on power-sharing as a form of self-determination.[[521]](#footnote-521) Such future research could involve considering the merits of consociationalism as a form of self-determination and as a form of republican government – especially in political contexts where the political sociology and historical context is not that of standard liberal-democracies, but rather one that relates to a history of political violence or some form of societal division, and one where other institutional alternatives are not possible or would be likely to lead to new or renewed political exclusion.

This is in addition to the issue of non-separatist claims for self-determination – those discussed in chapter six – such as claims for electoral reform and resident non-citizens’ inclusion-based claims for citizenship, as being types of self-determination. These concerns need further detailing in future research to show how these claims, which are not typically understood as claims for self-determination, in fact are, because they are claims for inclusion in a self-determining *demos*. Further examination of these types of groups and their concerns as claims for self-determination are required to highlight the democratic exclusion that takes place in contemporary constitutional states and how specific policy responses are required to secure these groups’ freedom and make sure the state they are subject to lives up to its own democratic principles.

For example, this could have implications for the politics of immigration, because it may suggest that once individuals are resident in states they should be entitled to have citizenship by right – this could also have implications for the interpersonal domination migrants often face. Citizenship could protect against the pressures leading to taking low wage jobs and having few legal protections. It would also mean that states would have to reassess how their economies function if mandatory citizenship was a requirement, because it would lack a pool of cheap labour, exempt from social protections.

**7.2.2.) The Political Phenomenology of Self-Determination**

The concern for the political sociology of self-determination highlighted by the institutionalisation of claims for its idea leads to a second but related area of future research – *the political phenomenology of self-determination*. As discussed in the introduction to this thesis, in political practice groups assume that they have the right to self-determination, even if they are morally or legally unjustified in making claims for this ideal.[[522]](#footnote-522) As such, the justification of claims for self-determination cannot help to understand why groups claim they have this right in political practice.

Research into why this is the case is required to better understand the idea of self-determination and related political concepts and these values’ pragmatic use and ideological existence in politics. This could provide ways to politically respond to their demands and to design institutions to mediate, incentivise, or discourage forms of political behaviour associated with the pursuit or maintenance of relevant normative ends.

Examining the political phenomenology of self-determination would involve researching the experience and understanding individuals and groups have of this idea *from* and *within* the political conditions of modern societies. This would involve research into the use and understanding of concepts such as statehood, nationhood, independence, and self-government to determine the ideological role they play in how and why groups make claims for self-determination in the way they do and its importance for them in understanding themselves as groups.[[523]](#footnote-523)

Such research would give a better account of the political sociology of self-determination, because it would not be simply constructed from empirical observation of how people have behaved when claims for self-determination have been made, but would also include important normative sources – which are also valuable in their own right for giving a better understanding of the concepts themselves.

**7.2.3.) Non-Domination and Recognition**

The third area of future research does not apply to the politics of self-determination directly but to the ongoing development of republican political theory and the idea of non-domination. One under-developed part of republican political theory is non-domination’s connection to the politics and the idea of *recognition*. This area of republicanism requires further research.[[524]](#footnote-524) This thesis in its discussion of arbitrary social and cultural power – particularly in chapter five – has begun to provide some of the theoretical resources for this activity.

In chapter five I discussed how non-domination should be understood as a *status* – specifically, the status of being a citizen. Democratic-citizenship, I argued, should secure protection against sources of arbitrary power for individuals. One of these forms of power is *misrecognition*. Future research into this idea could attempt to develop a more systematic account of what it means to be subject to misrecognition, humiliation, or disrespect in terms of domination.

This would be a more *political* account of recognition than most other theories of this idea and one, unlike other political accounts of recognition, which places a greater emphasis upon *power* in conceptualising what is involved in misrecognition, and why politically alleviating it is important – this may touch upon the politics of self-determination, but is likely to involve a wider discussion of other political mechanisms, such as policies of distributive justice, as ways to tackle misrecognition and create the republican idea of a society of free civic equals.

**7.3.) Research Contributions**

This thesis has addressed the subject of self-determination from the perspective of normative political theory. Despite a number of notable works on the subject, which have been discussed in this thesis, self-determination remains an under-examined concept in contemporary political theory. This thesis has contributed to the normative understanding of self-determination and has taken self-determination’s role seriously as a basic and necessary precondition for a free and desirable form of politics. There are three aspects of this research that are of significance as contributions to the field of contemporary political enquiry.

First, this thesis has provided a fourth normative account of self-determination with republican political theory, arguing that claims to redefine a group’s political identity and status should be justified by domination. This is in contrast to the pre-existing field of study, which was generally accepted as involving three accounts based in the justifications of freedom to choose one’s political identity and status, nationhood, and the violation of human or social rights. This fourth account serves as a challenge to the three existing theories of self-determination and contends that on consideration of the comparative advantages and disadvantages of each theory, republicanism provides the best justificatory framework to assess claims for self-determination.

Furthermore, the republican theory developed in this thesis is significant as a fourth normative account of self-determination, because it reconceptualises what a remedial right to self-determination can involve – and thus captures a broader set of claims for groups to redefine their political identity and status. In the existing literature on self-determination it is assumed that the violation of human or social rights constitutes the only remedial claims for groups to redefine their political identity and status. The republican theory of self-determination, however, reconceptualises remedial claims in terms of the absence or the constraint of the equal participatory exercise in rights of self-government.

This reconceptualisation of the remedial right to self-determination is significant because it offers a rapprochement with primary right theories of self-determination, particularly liberal-nationalism, which the remedial theory, when conceptualised as human or social rights violations, fails to provide. The republican theory’s reconceptualisation of the remedial right to self-determination means that it can capture many of the real-world claims for self-determination that are made in the imperfect language of nationalism – those that involve legitimate political grievances that justify groups’ claims to redefine their political identity and status – without having the bad consequences of primary rights theories.

This should provide normative resources for those researching both the normative and empirical aspects of the politics of self-determination. For example, it provides an interpretation of certain forms of nationalism that is much more sympathetic to nation-based claims for self-determination than is often the case – as nationalist groups are often treated as irrational and illiberal in political practice. It demystifies some of the ideology involved in the treatment of nationalist groups – and indeed in their own claims. It can show, for instance, how their claims are for equal and effective self-government and how those who deny their claims often rely on nationalist claims themselves.

Second, this thesis has provided a conceptual map of the justificatory arguments that are contended to ground claims for self-determination. Again, despite a modest literature on this subject there presently exists no work that systematically works through the existing literature on self-determination, categorising it in terms of theories and specific arguments.[[525]](#footnote-525) Therefore, this is a valuable research contribution because it provides a reference resource for anyone who wishes to study the normative aspects of the politics of self-determination.

Furthermore, the thesis is the only work to systematically detail the accounts of political obligation and legitimacy that underwrite each of the theories of self-determination. This thesis has made the conceptual differences involved in each of these accounts of political obligation and legitimacy explicit, especially in discussion of the two primary right theories of self-determination. Although these aspects of the politics of self-determination have been discussed in certain works on the subject, none have given any sustained or critical analysis to these ideas that are crucial to understand how self-determination should be conceptualised as a right and which groups have justified claims for it in political practice.

Third, this thesis has provided an interpretation of the republican idea of non-domination that is different from other conceptions of this concept, in that it argues that self-determination is a necessary condition for freedom. It has argued that self-determination is one necessary form of political status required to secure individuals’ freedom as members of political groups. In chapter five, this thesis provided a critical review of the existing interpretations of what constitutes *imperium* – or in other words, political domination. It argued that democratic interpretations of non-domination are broadly correct, however, they miss an extra concern for the unequal political exclusion certain individuals and groups experience in constitutional-democracies that can be captured by the idea of self-determination.

The requirement of self-determination for non-domination has brought republican political theory together with the recent literature on *the people* in democratic theory.[[526]](#footnote-526) In this thesis the issue of the people has been conceptualised as the gap existing between groups that fulfil the first and the second conditions of republican self-determination. This is an important research contribution because by bringing non-domination together with the concern for who the people are in democratic politics, issues of peoplehood do not have to be thought of as purely conceptual but can create normative claims – claims for self-determination.

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1. Bartkus, V. O. (1999) *The Dynamic of Secession.* Cambridge: Cambridge University Press, p.4. [↑](#footnote-ref-1)
2. Pettit, P. (1999b) [1997] *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press; Skinner, Q. (1998) *Liberty before Liberalism*. Cambridge: Cambridge University Press. [↑](#footnote-ref-2)
3. The possible exceptions being: Buchanan, A. (1997a) ‘Theories of Secession’, *Philosophy and Public Affairs,* Vol. 26 (1), pp. 31-61; Buchanan, A. (2004) *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press. However, the typology of claims given in this thesis is more detailed. Margaret Moore also deals with all of the relevant literature, however, in a less systematic way: Moore, M. (2001) *The Ethics of Nationalism*. Oxford: Oxford University Press. [↑](#footnote-ref-3)
4. Canovan, M. (2005) *The People.* Cambridge: Polity; Connolly, W. (1995) *The Ethos of Pluralisation*. Minneapolis, Minnesota: University of Minnesota Press; Frank, J. (2009) *Constituent Moments: Enacting the People in Post-Revolutionary America*. Durham, North Carolina: Duke University Press; Honig, B. (2007) ‘Between Decision and Deliberation: Political Paradox in Democratic Theory’, *American Political Science Review*, pp.1-17; Näsström, S. (2007) ‘The Legitimacy of the People’, *Political Theory,* Vol. 35 (5), pp.624-658; Ochoa Espejo, P. (2011) *The Time of Popular Sovereignty: Process and the Democratic State*. University Park, Pennsylvania: Penn State Press; Smith, R. M. (2003) *Stories of Peoplehood: The Politics and Morals of Political Membership*. Cambridge: Cambridge University Press. [↑](#footnote-ref-4)
5. Pettit (1999b), chapter six. [↑](#footnote-ref-5)
6. On the distinction between concept and conception, see: Rawls, J. (1999a) [1971] *A Theory of Justice*. Cambridge: Massachusetts: Harvard University Press, p.5. [↑](#footnote-ref-6)
7. Oxford English Dictionary Online (2015) ‘Self-Determination, n’. Oxford: Oxford University Press. (Accessed September 01, 2015) <http://www.oed.com/view/Entry/175207?redirectedFrom=self-determination>. [↑](#footnote-ref-7)
8. Weller, M. (2008) *Escaping the Self-Determination Trap.* Leiden: Martinus Nijhoff Publishers, p.23. [↑](#footnote-ref-8)
9. Cassese, A. (1995) *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge: Cambridge University Press, chapter two. [↑](#footnote-ref-9)
10. Pocock, J. G. A. (1975) *The Machiavellian Moment: Florentine Political Theory and the Atlantic Republican Tradition.* Princeton, New Jersey: Princeton University Press; Skinner, Q. (1978) *The Foundations of Modern Political Though, Volumes I & II*. Cambridge: Cambridge University Press. [↑](#footnote-ref-10)
11. Kedourie, E. (1974) *Nationalism*. London: Hutchinson University Library. [↑](#footnote-ref-11)
12. Examples include: Fichte, J. G. (2009) [1808] *Addresses to the German Nation,* (Eds) G. Moore. Cambridge: Cambridge University Press; Herder, J. G. (2002) *Philosophical Writings*, (Eds) M. N. Forster. Cambridge: Cambridge University Press. For Herder, unlike Fichte, the life of the nation was connected to the cause of liberal-democracy. [↑](#footnote-ref-12)
13. Giuseppe Mazzini discussed national self-determination in this manner: Mazzini, G. (1907) [1860] ‘The Duties of Man’ in *The Duties of Man and Other Essays.* London: J. M. Dent & Sons. [↑](#footnote-ref-13)
14. Hannum, H. (1990) *Autonomy, Sovereignty, and Self-Determination.* Philadelphia, Pennsylvania: University of Philadelphia Press, chapter three. [↑](#footnote-ref-14)
15. Kedourie (1974), chapter five. [↑](#footnote-ref-15)
16. Hannum, H. (1993) ‘Rethinking Self-Determination’, *Virginia Journal of International Law*, Vol. 34 (1), pp.1-69. [↑](#footnote-ref-16)
17. Hannum, H. (2006) ‘Self-Determination in the Twenty-First Century’, in H. Hannum & E. Babbitt (Eds), *Negotiating Self-Determination.* Lanham, Maryland: Lexington Books. [↑](#footnote-ref-17)
18. For example, see: Moore, M. (1998a) ‘Introduction’, in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press. [↑](#footnote-ref-18)
19. Accounts that are representative of the choice theory include: Beran, H. (1987) *The Consent Theory of Political Obligation.* New York: Croom Helm; Philpott, D. (1995) ‘In Defence of Self-Determination’, *Ethics,* Vol. 105 (2), pp.352-85; Wellman, C. (2005) *A Theory of Secession.* Cambridge: Cambridge University Press. [↑](#footnote-ref-19)
20. Accounts that are representative of nationalist theory include: Margalit, A. & Raz, J. (2001) ‘National Self-Determination’, in J. Raz (Eds), *Ethics in the Public Domain: Essays in the Morality of Law and Politics*. Oxford: Clarendon Press; Miller, D. (1995) *On Nationality*. Oxford: Oxford University Press; Moore, M. (2001) *The Ethics of Nationalism*. Oxford: Oxford University Press. [↑](#footnote-ref-20)
21. On the disjuncture between academic and real-world nationalism, see: Canovan, M. (1996) *Nationhood and Political Theory*. Cheltenham: Edward Elgar, chapter ten. [↑](#footnote-ref-21)
22. Buchanan (1997a). [↑](#footnote-ref-22)
23. Ibid, p.38-39. [↑](#footnote-ref-23)
24. Ibid, p.35-38. [↑](#footnote-ref-24)
25. Buchanan (2004), p.350-360 & 370-374. [↑](#footnote-ref-25)
26. Lehning, P. B. (1998) ‘Theories of Secession: An Introduction’, in P. B. Lehning (Eds), *Theories of Secession.* London: Routledge. [↑](#footnote-ref-26)
27. Accounts that are representative of the just-cause theory include: Buchanan, A. (1991) *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder, Colorado: Westview; Buchanan (2004); Norman, W. (2006) *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State.* Oxford: Oxford University Press. [↑](#footnote-ref-27)
28. Buchanan (1991), p.27-28. [↑](#footnote-ref-28)
29. Tully, J. (2008) *Public Philosophy in a New Key.* Cambridge: Cambridge University Press, volume one, p.150-154. [↑](#footnote-ref-29)
30. Wellman, C. (2005) *A Theory of Secession.* Cambridge: Cambridge University Press, p.36-38. [↑](#footnote-ref-30)
31. Gilbert, P. (1998) *The Philosophy of Nationalism*. Boulder, Colorado: Westview, p.8-12. [↑](#footnote-ref-31)
32. Frank, J. (2009) *Constituent Moments: Enacting the People in Post-Revolutionary America*. Durham, North Carolina: Duke University Press; Honig, B. (1991) ‘Declarations of Independence: Arendt and Derrida on the Problem of Founding of a Republic’, *The American Political Science Review,* Vol. 85 (1), pp.97-113. [↑](#footnote-ref-32)
33. For a number of examples, which are by no means exhaustive of this literature, see: Bartkus (1999); Buchheit, L. C. (1978) *Secession: The Legitimacy of Self-Determination.* New Haven, Connecticut: Yale University Press; Cabestan, J-P. & Pavković, A. (2013) (eds.) *Secession and Separatism in Europe and Asia: To Have a State of One’s Own.* London: Routledge; Cassese (1995); Coppieters, B. & Sakwa, R. (2003) (eds.) *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press; Hannum (1990); Hannum (1993); Babbitt, E. & Hannum, H. (2006) (eds.) *Negotiating Self-Determination.* Lanham, Maryland: Lexington Books; Pavković, A. & Radan, P. (2008) (eds.) On the Way to Statehood: Secession and Globalisation. Aldershot: Ashgate; Pavković, A. & Radan, P. (2011) (eds.) *The Ashgate Research Companion to Secession.* Aldershot: Ashgate; Roepstorff, K. (2013) *The Politics of Self-Determination: Beyond the Decolonisation Process*. London: Routledge; Sterio, M. (2013) *The Right to Self-Determination under International Law: ‘Selfistans’, Secession, and the Rule of the Great Powers*. London: Routledge; Weller (2008). [↑](#footnote-ref-33)
34. Swift, A (2008) ‘The Value of Philosophy in Non-Ideal Circumstances’, *Social Theory and Practice,* Vol. 34 (3): pp.363-387. [↑](#footnote-ref-34)
35. Swift, A. & White, S. (2008) ‘Political Theory, Social Science and Real Politics’, in D. Leopold & M. Stears (Eds), *Political Theory: Methods and Approaches*. Oxford: Oxford University Press. [↑](#footnote-ref-35)
36. On this see: McGarry, J. (1998) ‘Orphans of Secession: National Pluralism in Secessionist Regions and Post-Secessionist States’, in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press. [↑](#footnote-ref-36)
37. Laborde, C. (2013) ‘Republicanism’, in M. Freeden, L. T. Sargent, & M. Stears (Eds), *The Oxford Handbook of Political Ideologies.* Oxford: Oxford University Press, p.529-531. [↑](#footnote-ref-37)
38. For a discussion of related issues: Beiner, R. (1998) ‘National Self-Determination: Some Cautionary Remarks Regarding Rights’, in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press. [↑](#footnote-ref-38)
39. Buchanan (1997a), p.41-55. [↑](#footnote-ref-39)
40. Beran, H. (1984) ‘A Liberal Theory of Secession’, *Political Studies*, Vol. 32 (1), pp. 21-31; Beran, H. (1987) *The Consent Theory of Political Obligation.* New York: Croom Helm; Beran, H. (1998) ‘A Democratic Theory of Political Self-Determination for a New World Order’, in P. B. Lehning (Eds), *Theories of Secession*. London: Routledge. [↑](#footnote-ref-40)
41. Beran (1987), p. 22. [↑](#footnote-ref-41)
42. Ibid, p.37-39. [↑](#footnote-ref-42)
43. Ibid, p.28. [↑](#footnote-ref-43)
44. Ibid, p.31-36. [↑](#footnote-ref-44)
45. Ibid, p.29. [↑](#footnote-ref-45)
46. For example: Nozick, R. (1974) *Anarchy, State, and Utopia.* Oxford: Blackwell. [↑](#footnote-ref-46)
47. On the idea of rights and duties being natural but sometimes overlapping with civil law, see: Simmons, A. J. (1979) *Moral Principles and Political Obligations.* Princeton, New Jersey: Princeton University Press, conclusion. [↑](#footnote-ref-47)
48. This also has the advantage of receiving minimal protection of one’s negative rights from non-moral agents who might violate these rights in the absence of political authority. This may involve a very minimal contribution of taxation to in effect *pay for these services.* For those of an anti-government pro-market disposition this purchase-of-goods-like exchange is not likely to be objected to. [↑](#footnote-ref-48)
49. In the Ottoman Empire, an analogous system of government and political obligation existed where groups were not obliged to the state as such but had autonomy within their own religious confessions. Individuals obeyed the law of their confession. However, when conflicts emerged between members of different religious groups, imperial Islamic law took precedent over the law of members’ confessions. See: Kymlicka, W. (1992) ‘Two Models of Pluralism and Tolerance’, *Analyse & Kritik,* Vol. 13 (1), pp.33-56. [↑](#footnote-ref-49)
50. For example see: Hayek, F. A. (1976) *The Constitution of Liberty.* London: Routledge, p.205-213. On this see: Ryan, A. (1984) *Property and Political Theory.* Oxford: Oxford University Press; Waldron, J. (1988) *The Right to Private Property.* Oxford: Clarendon Press. [↑](#footnote-ref-50)
51. For an example of a pro-market libertarian justification for self-determination of this kind, see: McGee, R. (1994) ‘Secession Reconsidered’, *Journal of Libertarian Studies,* Vol. 11 (1), pp.11-33. [↑](#footnote-ref-51)
52. For example, see: Wolff, R. P. (1970) *In Defence of Anarchism.* New York: Harper Touchbook. [↑](#footnote-ref-52)
53. Henry David Thoreau advocated political disengagement in this manner, arguing that a political union that promoted the wrong of slavery could not receive the obligation of conscientious individuals: Thoreau, H. D. (2013) [1849] *Civil Disobedience: Resistance to Civil Government*. Madison, Wisconsin: Cricket House Books. [↑](#footnote-ref-53)
54. There may indeed be other types of groups, perhaps some religious and cultural groups, who are also reluctantly forced out of wider social participation. [↑](#footnote-ref-54)
55. For an example of an avowedly anarchist (and free market) account of self-determination, see: Rothbard, M. (1994) ‘Nations by Consent: Decomposing the Nation-State’, *Journal of Libertarian Studies,* Vol. 11 (1), pp.1-10. And for an example from the anarchist-left see: King, P. (1982) *Federalism and Federations.* London: Croom Helm, especially chapters four & eight. [↑](#footnote-ref-55)
56. Hobbes, T. (2003) [1651] *Leviathan*, (Eds) R. Tuck. Cambridge: Cambridge University Press, p.90. [↑](#footnote-ref-56)
57. Pettit, P. (1999b) [1997] *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press; Skinner, Q. (1998) *Liberty before Liberalism*. Cambridge: Cambridge University Press. [↑](#footnote-ref-57)
58. Pettit (1999b), chapter two. [↑](#footnote-ref-58)
59. Strictly speaking this is not how Pettit conceptualises republican freedom. I will discuss this issue further in chapter five. [↑](#footnote-ref-59)
60. Pettit (1999b), chapter five. [↑](#footnote-ref-60)
61. Ibid, p.61-63. [↑](#footnote-ref-61)
62. Ibid, p.35-41. [↑](#footnote-ref-62)
63. Beran (1987), p.125. [↑](#footnote-ref-63)
64. Locke, J. (1991) [1689] *Two Treatises of Government,* (Eds) P. Laslett. Cambridge: Cambridge University Press, Second Treatise, chapter five: ‘Of Property’. [↑](#footnote-ref-64)
65. Locke’s assumption was of course underwritten by his European ethnocentrism – in thinking that the Americas were unoccupied his account gave justification to the colonial domination of America’s indigenous peoples. See: Tully, J. (1995) *Strange Multiplicity: Constitutionalism in an age of Diversity*. Cambridge: Cambridge University Press, p.70-79. [↑](#footnote-ref-65)
66. Wellman, C. (2005) *A Theory of Secession.* Cambridge: Cambridge University Press. [↑](#footnote-ref-66)
67. Ibid, p.16-17. [↑](#footnote-ref-67)
68. Ibid, p.11-15. [↑](#footnote-ref-68)
69. Ibid, p.32. [↑](#footnote-ref-69)
70. Ibid, p.34-35. [↑](#footnote-ref-70)
71. Ibid, p.36-38. See also: Gauthier, D. (1994) ‘Breaking Up: An Essay on Secession’, *Canadian Journal of Philosophy*, Vol. 24 (3), pp.357-373. [↑](#footnote-ref-71)
72. Altman, A. & Wellman, C. (2009) *A Liberal Theory of International Justice.* Oxford: Oxford University Press, p.4. [↑](#footnote-ref-72)
73. Ibid, p.45. [↑](#footnote-ref-73)
74. Beran notes a similar list of conditions for the permissibility of secession: Beran (1984), p.30. [↑](#footnote-ref-74)
75. Glaser, D. J. (2003) ‘The Right to Secession: An Anti-Secessionist Defence’, *Political Studies,* Vol. 51 (2), pp.369-386. [↑](#footnote-ref-75)
76. Beran (1998), p.43. [↑](#footnote-ref-76)
77. Indeed, Wellman’s view, oddly enough, is to discourage all primary rights secessions and encourage, but not demand, political association under existing boundaries: Wellman (2005), p.2 &183-184. [↑](#footnote-ref-77)
78. Ibid, p.38-58. See also: Leftowitz, D. (2008) ‘On the Foundation of Rights to Political Self-Determination: Secession, Non-intervention, and Democratic Self-governance’, *Journal of Social Philosophy,* Vol. 39 (4), pp.492-510. [↑](#footnote-ref-78)
79. Wellman (2005), p.45. [↑](#footnote-ref-79)
80. Ibid, p.54. [↑](#footnote-ref-80)
81. On referenda see: Ibid, p.61-63. [↑](#footnote-ref-81)
82. It is not necessarily the case that political authority should take the form of the rule of law for weak associative accounts of self-determination, however, I will assume this to be the case for the purposes of this argument. [↑](#footnote-ref-82)
83. Pettit, P. (2012) *On the People’s Terms: A Republican Theory and Model of Democracy.* Cambridge: Cambridge University Press. However, as will be shown in chapter five, the account being developed here is more amenable to stronger democratic interpretations of republican freedom, such as: Bellamy, R. (2007) *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy.* Cambridge: Cambridge University Press; Bohman, J. (2007) *Democracy Across Borders: From Dêmos to Dêmoi.* Cambridge, Massachusetts: M.I.T. Press; Richardson, H. (2002) *Democratic Autonomy: Public Reasoning about the Ends of Policy.* Oxford: Oxford University Press. [↑](#footnote-ref-83)
84. Rousseau, J-J. (2003) [1792] ‘The Social Contract’ in *The Social Contract and Other Later Political Writings,* (Eds) V. Gourevitch. Cambridge: Cambridge University Press. [↑](#footnote-ref-84)
85. Again, this is spelled out in greater detail in chapter five. [↑](#footnote-ref-85)
86. Wollheim, R. (1969) ‘A Paradox in the Theory of Democracy’, in P. Laslett & W. G. Runciman (Eds), *Philosophy, Politics, and Society (2nd series)*. Oxford: Blackwell. [↑](#footnote-ref-86)
87. Huysseune, M. (2003) ‘A Nation Confronting a Secessionist Claim: Italy and the *Lega Nord*’, in B. Coppieters & R. Sakwa (Eds), *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press. [↑](#footnote-ref-87)
88. The creation of Singapore happened in this way when it was expelled from the Malaysian Federation in 1965. [↑](#footnote-ref-88)
89. Catala, A. (2013) ‘Remedial Theories of Secession and Territorial Justification’, *Journal of Social Philosophy,* Vol. 44 (1), pp.74-94. [↑](#footnote-ref-89)
90. See also: Buchheit, L. C. (1978) *Secession: The Legitimacy of Self-Determination.* New Haven, Connecticut: Yale University Press. For Buchheit, groups are *free to go* for the instrumental reason that their secession would cause little, if any, political disruption. [↑](#footnote-ref-90)
91. This is not to suggest that secessions like the break-up of Belgium are never permissible, but only that if a state like Belgium was to split, it could not take place on terms where the Flemish majority decide secession is desirable, whilst the Wallonian and German-speaking minorities are not involved in this decision. This would not be the case, however, if it was the Wallonian and German minorities collectively attempting to secede from Flanders on a remedial basis. [↑](#footnote-ref-91)
92. This is let alone the fact how sectarian substantive justice is as a requirement that could be generally recognised as a criterion for self-determination between individuals, groups, and states with differing moral and political views of justice, see: Buchanan, A. (2004) *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press, p.396-400. [↑](#footnote-ref-92)
93. Altman & Wellman (2009), chapter two. [↑](#footnote-ref-93)
94. Beran (1998), p.38; Wellman (2005), p.58-63. [↑](#footnote-ref-94)
95. Such as Beran’s problematic emigration/immigration proposal. [↑](#footnote-ref-95)
96. How domination specifically constitutes a remedial wrong will be discussed at length in chapter five. [↑](#footnote-ref-96)
97. Philpott, D. (1995) ‘In Defence of Self-Determination’, *Ethics,* Vol. 105 (2), pp.352-85. [↑](#footnote-ref-97)
98. Kant, I. (2003) [1785] *Groundwork for the Metaphysics of Morals*, (Eds) M. Gregor. Cambridge: Cambridge University Press. [↑](#footnote-ref-98)
99. Philpott (1995), p.356-358. [↑](#footnote-ref-99)
100. Ibid, p.360-361. I will also examine the cultural context for autonomy as a nationalist argument for self-determination in the next chapter. [↑](#footnote-ref-100)
101. Ibid, p.363. [↑](#footnote-ref-101)
102. Ibid, p.371-373. [↑](#footnote-ref-102)
103. Wolff (1970). [↑](#footnote-ref-103)
104. Ibid, p.28-33 & 38-58. [↑](#footnote-ref-104)
105. Ibid, p.23-27. [↑](#footnote-ref-105)
106. Habermas, J. (1990) *Moral Consciousness and Communicative Action*. Cambridge, Massachusetts: M.I.T. Press. [↑](#footnote-ref-106)
107. On the point about negotiation and compromise see: Bellamy, R. (1999) *Liberalism and Pluralism: Towards a Politics of Compromise*. London: Routledge. [↑](#footnote-ref-107)
108. Wolff (1970), chapter three. [↑](#footnote-ref-108)
109. Strictly speaking it was based in *non-dependence* for Rousseau, but unlike some republicans I take these to be the same. [↑](#footnote-ref-109)
110. Pettit (1999), p.65-66. [↑](#footnote-ref-110)
111. Bellamy (2007); Bohman (2007); Pettit (2012); Richardson (2012). [↑](#footnote-ref-111)
112. Copp, D. (1997) ‘Democracy and Communal Self-Determination’, in R. McKim & J. McMahan (Eds), *The Morality of Nationalism*. Oxford: Oxford University Press. [↑](#footnote-ref-112)
113. Ibid, p.279 & 292. [↑](#footnote-ref-113)
114. On this see: Christiano, T. (1996) *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, Colorado: Westview Press. [↑](#footnote-ref-114)
115. Copp (1997), p. 280. Although unlike Philpott, Copp specifies no conditions of distributive justice. [↑](#footnote-ref-115)
116. Ibid, p.290. [↑](#footnote-ref-116)
117. Ibid, p.289. [↑](#footnote-ref-117)
118. Ibid, p.291. [↑](#footnote-ref-118)
119. Unless in the peculiar circumstance where a state did not want to affirm its own self-determination. Belgium might provide an example of an existing state where dissolution is a live issue and this could be the case. [↑](#footnote-ref-119)
120. I will discuss this in detail as the justificatory basis for the republican theory of self-determination in chapter five. [↑](#footnote-ref-120)
121. Gilbert, P. (1998) *The Philosophy of Nationalism*. Boulder, Colorado: Westview, chapter one. [↑](#footnote-ref-121)
122. Miller, D. (1995) *On Nationality*. Oxford: Oxford University Press. [↑](#footnote-ref-122)
123. Ibid, introduction. [↑](#footnote-ref-123)
124. Ibid, p.49-54. [↑](#footnote-ref-124)
125. Ibid, p.58. [↑](#footnote-ref-125)
126. Ibid, p.55-57. [↑](#footnote-ref-126)
127. Ibid, p.62-64. For an example of this functionalist view, see: Goodin, R. E. (1988) ‘What’s So Special about Our Fellow Countrymen?’, *Ethics*, Vol. 98 (4), pp.663-686. [↑](#footnote-ref-127)
128. Ibid, p.65-67. [↑](#footnote-ref-128)
129. Ibid, p.69. For a detailed discussion of this deliberative process, see: Soutphommasane, T. (2012) *The Virtuous Citizen: Patriotism in a Multicultural Society.* Cambridge: Cambridge University Press. [↑](#footnote-ref-129)
130. Miller (1995), p.70. [↑](#footnote-ref-130)
131. Ibid, p.82-84. [↑](#footnote-ref-131)
132. In addition to this argument Miller also contends there are autonomy-based and instrumental justifications for national self-determination. I have disaggregated these elements and will explore each in the next two sections of this chapter. See: Ibid, p.85-90. [↑](#footnote-ref-132)
133. See also: Hurka, T. (1997) ‘The Justification of Nationalist Partiality’, in R. McKim & J. McMahan (Eds), *The Morality of Nationalism.* Oxford: Oxford University Press. [↑](#footnote-ref-133)
134. On the conflation of state and nation, see: Connor, W. (1994) *Ethnonationalism: A Quest for Understanding*. Princeton, New Jersey: Princeton University Press. [↑](#footnote-ref-134)
135. Ibid. [↑](#footnote-ref-135)
136. Note that the Kurdish nation is also subject to the political authority of the Iraqi, Syrian, and Iranian states. On the Turkish state’s policy of national assimilation, see: Cagaptay, S. (2005) *Islam, Secularism, and Nationalism in Modern Turkey: Who is a Turk?* London: Routledge. [↑](#footnote-ref-136)
137. For an example of this type cosmopolitan view about identity, see: Waldron, J. (1995) ‘Minority Cultures and the Cosmopolitan Alternative’, in W. Kymlicka (Eds), *The Rights of Minority Cultures*. Oxford: Oxford University Press. [↑](#footnote-ref-137)
138. Even then, evidence shows many, if not most, national groups simply refuse to assimilate. See: Brubaker, R. (1998) ‘Myths and Misconceptions in the Study of Nationalism’, in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press. [↑](#footnote-ref-138)
139. I will leave aside the issue of whether or not publically reflecting nationhood on liberal terms is a good or bad thing, because at this point I simply want to show what is required for national duties to be consistent with liberalism. [↑](#footnote-ref-139)
140. Miller (1995), p.108-117. [↑](#footnote-ref-140)
141. Miller, D. (1998) ‘Secession and the Principle of Nationality’, in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press. [↑](#footnote-ref-141)
142. Miller, D. (2000) *Citizenship and National Identity*. Cambridge: Polity, essay eight: ‘Nationality in Divided Societies’, p.137-138. Note that this essay was written well over a decade before the current rise in Scottish nationalism and thus belies the reality of the terms on which the 2014 independence referendum took place. Furthermore, Miller also denies the existence of a distinct English nation in this same passage. The non-reality of English nationhood *raises the stakes* for Miller because Scottish independence would undermine the singular British nation, necessary for the identity of the people of England. For a contrary, and in my estimation more plausible view, see: Kenny, M. (2014) *The Politics of English Nationhood*. Oxford: Oxford University Press. [↑](#footnote-ref-142)
143. In chapters five and six I will show why I consider Scotland to be a nation with a remedial claim to self-determination. [↑](#footnote-ref-143)
144. Furthermore, this could be problematic if Scotland voted to stay in the United Kingdom but England, Wales, and Northern Ireland voted for it to leave, creating political exclusion. Practically, however, nationalists might respond that the rest of the U.K. could be given a different ballot paper – one that only gives them the ability to prevent Scotland leaving, not an affirmative pro-independence option which would only be open to Scottish electors. However, this is a secondary concern from the primary issue of domination above. [↑](#footnote-ref-144)
145. For Miller’s discussion of the nexus of his view and the republican ideal, see: Miller, D. (2008) ‘Republicanism, National Identity, and Europe’, in C. Laborde & J. Maynor (Eds), *Republicanism and Political Theory.* Oxford: Blackwell. [↑](#footnote-ref-145)
146. Miller (2000), p.139. [↑](#footnote-ref-146)
147. Indeed, contra Miller, I suspect Northern Ireland means more to Irish nationalists in, for example, Dublin, Monaghan, or Kilkenny than it does to British nationalists in London, Swansea, or Carlisle. [↑](#footnote-ref-147)
148. Reunification is still, however, officially an *aspiration* in the Irish constitution. [↑](#footnote-ref-148)
149. The same would be true of including the population of the Republic of Ireland in an island-wide referendum on Northern Ireland’s constitutional status. Indeed, this was the position many Irish nationalists – the Provisional I.R.A. and *Sinn Féin* in particular – took prior to the agreement. Winning what has become to be known as the *principle of consent* for the residents of Northern Ireland to exclusively determine the region’s constitutional status was one of the major concessions hard-line Irish nationalists had to make in the peace process. See: MacGinty, R., Wilford, R., Dowds, L, & Robinson, G. (2003) ‘Consenting Adults: The Principle of Consent and Northern Ireland's Constitutional Future’, *Government and Opposition*, Vol. 36 (4), pp.472-492. [↑](#footnote-ref-149)
150. This is also withstanding the non-resident members of the nation being able to vote in an independence referendum. Miller would presumably claim, for example, that Scots living outside of Scotland should have a vote because it is relevant to their identity. I disagree, however, as it should only be those who are Scottish political subjects that should have the vote. Indeed, this should also include those who have non-Scottish national identities but nonetheless are Scottish political subjects. Indeed, this is the franchise that the 2014 Scottish Independence Referendum was conducted on. Miller would probably give liberal reasons to include these same people. However, on purely national identity-based grounds there is a case to exclude these individuals. [↑](#footnote-ref-150)
151. Margalit, A. & Raz, J. (2001) [1990] ‘National Self-Determination’, in J. Raz (Eds), *Ethics in the Public Domain: Essays in the Morality of Law and Politics*. Oxford: Clarendon Press. [↑](#footnote-ref-151)
152. Ibid, p.129. [↑](#footnote-ref-152)
153. Ibid, p.133. [↑](#footnote-ref-153)
154. Ibid, p.134. [↑](#footnote-ref-154)
155. Ibid, p.135-136. For complementary accounts see: MacCormick, N. (1991) ‘Is Nationalism Philosophically Credible?’, in W. Twining (Eds), *Issues in Self-Determination*. Aberdeen: Aberdeen University Press; Nielsen, K. (1998) ‘Liberal Nationalism and Secession’ in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press; Patten, A. (2002) ‘Democratic Secession from a Multinational State’, *Ethics*, Vol. 112 (3), pp. 558-586. See also: MacCormick, N. (1982) *Legal Right and Social Democracy.* Oxford: Clarendon Press, chapter thirteen; MacCormick, N. (1999) *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. Oxford: Oxford University Press, chapter eleven. And for complementary accounts that are discussed in other sections, see: Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, chapter five; Miller (1995), p.85-88. [↑](#footnote-ref-155)
156. Margalit & Raz (2001), p.137. [↑](#footnote-ref-156)
157. Ibid, p.139. [↑](#footnote-ref-157)
158. Ibid, p.138. [↑](#footnote-ref-158)
159. On territory and for a discussion of nationalist theories of it, see: Kolers, A. (2009) Land, Conflict, and Justice: A Political Theory of Territory. Cambridge: Cambridge University Press; Meisels, T. (2005) *Territorial Rights*. New York: Springer; Miller, D. (2012) ‘Territorial Rights: Concept and Justification’, *Political Studies*, Vol. 60 (2), p.252-268; Moore, M. (1998b) ‘The Territorial Dimension to Self-Determination’, in M. Moore (Eds), National *Self-Determination and Secession*. Oxford: Oxford University Press; Moore, M. (2015) *A Political Theory of Territory*. Oxford: Oxford University Press; Nine, C. (2012) *Global Justice and Territory.* Oxford: Oxford University Press; Simmons, A. J. (2001) ‘On the Territorial Rights of States’, *Philosophical Issues,* Vol. 11 (1), pp.300-326; Steiner, H. (1998) ‘Territorial Justice’, in P. B. Lehning (Eds), *Theories of Secession*. London: Routledge; Stilz, A. (2011) ‘Nations, States, and Territory’, *Ethics,* Vol. 121 (3), pp.572-601. See also: Buchanan, A. & Moore, M. (2003) (eds.) *States, Nations, and Borders.* Cambridge: Cambridge University Press. [↑](#footnote-ref-159)
160. Kymlicka (1995), p.95-97. [↑](#footnote-ref-160)
161. I will not discuss whether or not integration is actually a good thing here – as for some integration is simply the late 20th and 21st century equivalent of the 19th century idea of assimilation, because it problematically assumes that the host culture does not also have to change. [↑](#footnote-ref-161)
162. Levy, J. T. (2000) *The Multiculturalism of Fear*. Oxford: Oxford University Press, p.148. [↑](#footnote-ref-162)
163. On the millet system see: Kymlicka, W. (1992) ‘Two Models of Pluralism and Tolerance’, *Analyse & Kritik,* Vol. 13 (1), pp.33-56. [↑](#footnote-ref-163)
164. The Austro-Marxist tradition provides an example of a millet-like system for more contemporary political purposes, see: Bauer, O. (2000) [1924] *The Question of Nationalities and Social Democracy*, (Eds) E. J. Nimni. Minneapolis, Minnesota: University of Minnesota Press; Renner, K. (2005) [1899] ‘State and Nation’, in E. J. Nimni (Eds), *National Cultural Autonomy and its Contemporary Critics*. London: Routledge. [↑](#footnote-ref-164)
165. For a nationalist critique of multiculturalism, see: Miller (1995), p.132-140. [↑](#footnote-ref-165)
166. On this see: Margalit & Raz (2001), p.135. It is hard to see in practice, however, how this type of threat would not overlap with other more fundamental remedial violations, such as human rights abuses. As such, it would not be a nationalist justification of self-determination. This is discussed again in the following chapter. [↑](#footnote-ref-166)
167. Tamir, Y. (1993) *Liberal Nationalism*. Princeton, New Jersey: Princeton University Press. [↑](#footnote-ref-167)
168. Ibid, chapter three. [↑](#footnote-ref-168)
169. Ibid, p.58. [↑](#footnote-ref-169)
170. See also: Kymlicka (1995). Note that this does not necessarily rule out territorial-based solutions, such as minority linguistic groups’ self-administering their own province for some issues. In other words, it may contingently overlap with the politics of self-determination but it is not self-determination itself. [↑](#footnote-ref-170)
171. De-Shalit, A. (1996) ‘National Self-Determination: Political, Not Cultural’, *Political Studies*, Vol. 46 (5), pp.906-920. [↑](#footnote-ref-171)
172. Ibid, p.911-913. I will discuss this further in chapter five. [↑](#footnote-ref-172)
173. Miller (1995), p.90-98; Nagel, T. (1991) *Equality and Partiality.* Oxford: Oxford University Press, chapter fifteen. For related but not strictly nationalist accounts, see: Dagger, R. (1997) *Civic Virtues: Rights, Citizenship and Republican Liberalism.* Oxford: Oxford University Press; Galston, W. (1991) *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State.* Cambridge: Cambridge University Press; Macedo, S. (1990) *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism.* Oxford: Clarendon Press. [↑](#footnote-ref-173)
174. Barry, B. (1989) *Democracy, Power, and Justice*. Oxford: Clarendon Press, essay six: ‘Self-Government Revisited’. Barry, however, later revised his view, arguing that individuals can be impartially motivated by arguments for justice itself, see: Barry, B. (1995) *Justice as Impartiality.* Oxford: Clarendon Press. [↑](#footnote-ref-174)
175. Barry (1989), p.165-166. [↑](#footnote-ref-175)
176. Dalberg-Acton, J. E. E. (1922) [1862] ‘Nationality’ in *The History of Freedom and Other Essays,* (Eds) J. N. Figgis & R. V. Lawrence*.* London: Macmillan. [↑](#footnote-ref-176)
177. Ibid, p.270-275. See also: Kedourie, E. (1974) *Nationalism*. London: Hutchinson University Library. [↑](#footnote-ref-177)
178. Dalberg-Acton (1922), p.288-289. [↑](#footnote-ref-178)
179. Barry (1989), p.174-175. See also: Canovan, M. (1996) *Nationhood and Political Theory*. Cheltenham: Edward Elgar, chapter four. [↑](#footnote-ref-179)
180. Hall, P. & Soskice, D. (2001) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press. [↑](#footnote-ref-180)
181. Brubaker (1998), p.248-251. [↑](#footnote-ref-181)
182. On this see, Miller (1995), chapter two. [↑](#footnote-ref-182)
183. On this egalitarian idea and *myth*, see: Hassan, G. (2014) *Independence of the Scottish Mind: Elite Narratives, Public Spaces, and the Making of a Modern Nation*. Basingstoke: Palgrave Macmillan. [↑](#footnote-ref-183)
184. Mill, J. S. (1998) [1861] ‘Considerations on Representative Government’ in *On Liberty and Other Essays*, (Eds) J. Gray. Oxford: Oxford University Press, chapter sixteen: ‘On Nationality, as Connected with Representative Government’. [↑](#footnote-ref-184)
185. Mill (1998), p.427-429. This is also similar to Rousseau’s argument for a civil religion, which was made in non-nationalist terms. For a Rousseauian version of a democracy-supporting account of self-determination, see: Caney, S. (1998) ‘National Self-Determination and National Secession: Individualist and Communitarian Approaches’, in P. B. Lehning (Eds), *Theories of Secession*. London: Routledge, p.170. [↑](#footnote-ref-185)
186. For Mill this was only independence for European peoples. Mill believed empire had a civilising role to play for ‘backwards populations’: Mill (1998), chapter eighteen: ‘Of the Government of Dependencies by a Free State’. For a similar anti-imperial argument see: Mazzini, G. (1907) [1860] ‘The Duties of Man’ in *The Duties of Man and Other Essays.* London: J. M. Dent & Sons. [↑](#footnote-ref-186)
187. Mill (1998), p.431-432. [↑](#footnote-ref-187)
188. Ibid, p.433-434. [↑](#footnote-ref-188)
189. Lenin, V. I. (1964) [1914] ‘The Right of Nations to Self-Determination’ in *Lenin’s Collected Works: Vol. 20,* (Eds) J. Katzer.Moscow: Progress Publishers. [↑](#footnote-ref-189)
190. Ibid, p.420-425. [↑](#footnote-ref-190)
191. For Lenin revolutionary self-determination would lead to class consciousness and then to socialist revolution: Ibid, p.412-415. [↑](#footnote-ref-191)
192. Kymlicka (1995), p.3 & Kymlicka, W. (2001) *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. Oxford: Oxford University Press, essay eleven: (with C. Straehle) ‘Cosmopolitanism, Nation-States, and Minority Nationalism’. [↑](#footnote-ref-192)
193. Moore, M. (2001) *The Ethics of Nationalism*. Oxford: Oxford University Press, p.1-3. [↑](#footnote-ref-193)
194. Ibid, chapters two, three, and four. Each of these chapters corresponds to the discussion in each of the sections of this chapter. See also: Moore, M. (1993) *Foundations of Liberalism.* Oxford: Clarendon Press, chapter seven. [↑](#footnote-ref-194)
195. Ibid, p.31. It is because of these three other concerns that the fairness-based account is not a straightforward remedial theory. It is only a quasi-remedial theory because it has a primary right nationalist account of what constitutes a relevant candidate for self-determination. [↑](#footnote-ref-195)
196. Moore, M. (1997) ‘On National Self-Determination’, *Political Studies*, Vol. 45 (5), pp.900-913. [↑](#footnote-ref-196)
197. Moore (2001), p.32-33. [↑](#footnote-ref-197)
198. Ibid, chapter five. On the unconscious promotion of the dominant national identity, see: Billig, M. (1995) *Banal Nationalism*. London: Sage. [↑](#footnote-ref-198)
199. Moore (2001), p.34-35. See also: Yack, B. (1999) ‘The Myth of the Civic Nation’, in R. Beiner (Eds), *Theorising Nationalism.* Albany, New York: State University of New York Press. [↑](#footnote-ref-199)
200. Ibid, p.47-51. [↑](#footnote-ref-200)
201. Kymlicka (1995) & (2001). [↑](#footnote-ref-201)
202. For Kymlicka’s autonomy argument see: Kymlicka, W. (1991) *Liberalism, Community, and Culture*. Oxford: Clarendon Press & Kymlicka (1995), chapter five. [↑](#footnote-ref-202)
203. Kymlicka (1995), p.109-117. [↑](#footnote-ref-203)
204. Ibid, p.124-125. See also: De Schutter, H. (2011) ‘Federalism as Fairness’, *The Journal of Political Philosophy,* Vol. 19 (2), pp.167-189. [↑](#footnote-ref-204)
205. Kymlicka (1995), p.27. [↑](#footnote-ref-205)
206. This does not necessarily mean that this separate status is only achieved through secession, it can be consistent with intra-state self-government arrangements, but even these arrangements make sub-state groups a different political group, at least over a specific set of issues. [↑](#footnote-ref-206)
207. Kymlicka also includes special representation in his typology of group differentiated rights. As will be discussed in chapter six, I contend that special representation can be a form of self-determination. [↑](#footnote-ref-207)
208. I will spell out the specific remedial concerns I have in chapter five. [↑](#footnote-ref-208)
209. There are forms of bad political treatment apart from unfairness, such as oppression and exploitation. Each of these forms, however, tend to be rarefied for particular wrongs. Oppression is mainly cultural and social and exploitation is mainly economic. In chapter five I will discuss why non-domination should be taken as the key value in conceptualising remedial wrongs. [↑](#footnote-ref-209)
210. I make this distinction to refer to the nature of the rights-based violation of justice that takes place. Basic violations are fundamental rights-based violations of justice, whereas substantive violations are violations of individuals’ less fundamental rights. [↑](#footnote-ref-210)
211. Buchanan, A. (1991) *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder, Colorado: Westview, p.10-11. [↑](#footnote-ref-211)
212. Buchanan, A. (2004) *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press, p.128. [↑](#footnote-ref-212)
213. Ibid, p.129. [↑](#footnote-ref-213)
214. Buchanan’s earlier and later work respectively reflect the substantive and basic accounts of the just-cause theory of self-determination. [↑](#footnote-ref-214)
215. Buchanan (2004). See also: Buchanan, A. (1997a) ‘Theories of Secession’, *Philosophy and Public Affairs,* Vol. 26 (1), pp. 31-61. [↑](#footnote-ref-215)
216. Buchanan (1997a), p.33-34. See also: Brilmayer, L. (1991) ‘Secession and Self-Determination: A Territorial Interpretation’, *Yale Journal of International Law*, Vol. 16, pp.177-202; Cobban, A. (1969) [1945] *The Nation-State and National Self-Determination.* London: Collins; Hannum, H. (1990) *Autonomy, Sovereignty, and Self-Determination.* Philadelphia, Pennsylvania: University of Philadelphia Press; Hannum, H. (1993) ‘Rethinking Self-Determination’, *Virginia Journal of International Law*, Vol. 34 (1), pp.1-69; Horowitz, D. L. (1998) ‘Self-Determination: Politics, Philosophy, and Law’, in M. Moore (Eds), *National Self-Determination and Secession*. Oxford: Oxford University Press; Norman, W. (1998) ‘The Ethics of Secession as the Regulation of Secessionist Politics’, in M. Moore (Eds), *National Self-Determination and Secession.* Oxford: Oxford University Press. [↑](#footnote-ref-216)
217. Buchanan (2004), p.24. See also: Sakwa, R. (2003) ‘Chechnya: A Just War Fought Unjustly?’, in B. Coppieters & R. Sakwa (Eds), *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press. [↑](#footnote-ref-217)
218. Buchanan (2004), chapter six. At least when the political form of self-determination is statehood. [↑](#footnote-ref-218)
219. Ibid, chapter five. [↑](#footnote-ref-219)
220. Ibid, p.57-63. [↑](#footnote-ref-220)
221. Buchanan does note, however, that he hopes that as a moralised regime of political legitimacy becomes globally entrenched and the idea of human rights becomes less controversial that a more expansive conception of human rights would come to define the moral standard states should respect: Ibid, chapter three. [↑](#footnote-ref-221)
222. Rawls. J. (1999b) *The Law of Peoples*. Cambridge, Massachusetts: Harvard University Press. See also: Buchanan, A. (2000) ‘Rawls’s Law of People: Rules for a Vanished Westphalian World’, *Ethics*, Vol. 110 (4), p.697-721. [↑](#footnote-ref-222)
223. On the territorial aspect of this right see: Buchanan, A. (2003) ‘The Making and Unmaking of Boundaries: What Liberalism has to say’, in A. Buchanan & M. Moore (Eds), *States, Nations, and Borders.* Cambridge: Cambridge University Press. [↑](#footnote-ref-223)
224. Ibid, p.263-264. This does not necessarily mean that states will deny all claims, but the denial of claims is more likely than not with this theory. Buchanan contends that claims for self-determination can still be made – especially in liberal-democratic states – when: 1) a right to secession is present in a state’s constitution; 2) when a group successfully negotiate its secession with central government; and 3) when a political association that was set up to achieve limited or specific goals has achieved its objectives. The international political community, however, is not obliged to enforce these types of claims. See: Buchanan (1997a), p.36. [↑](#footnote-ref-224)
225. Buchanan (2004), p.353. [↑](#footnote-ref-225)
226. For a discussion of the complex and related case of the dissolution of Yugoslavia, see: Detrez, R. (2003) ‘The Right to Self-Determination and Secession in Yugoslavia’, in B. Coppieters & R. Sakwa (Eds), *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press; Pavković, A. (2000) ‘Recursive Secessions in Former Yugoslavia: Too Hard a Case for Theories of Secession?’, *Political Studies*, Vol. 48 (3), pp.485-502. [↑](#footnote-ref-226)
227. Buchanan (2004), p.356-357. [↑](#footnote-ref-227)
228. This is assuming the annexation took place in living memory or more crucially if the territory is recognised in international law as being under occupation, as is the case, for example, with contemporary Western Sahara. Without these conditions in place, claims could be made regarding virtually every piece of territory on the planet. [↑](#footnote-ref-228)
229. Ibid, p.355. [↑](#footnote-ref-229)
230. Gunn, G. C. (2011) *Historical Dictionary of East Timor*. Lanham, Maryland: Scarecrow Press. [↑](#footnote-ref-230)
231. It is noted that in the previous examples human rights violations did take place. The claimants of self-determination used the argument that they were pre-empting violations, but the basic account would most likely argue that it was their illegitimate secession that ultimately created the conflicts that were the cause of these violations. This, for the basic account, is why prohibitions on these types of claims for self-determination are essential, see: Coppieters, B. (2003) ‘War and Secession: A Moral Analysis of the Georgian-Abkhaz Conflict’, in B. Coppieters & R. Sakwa (Eds), *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press. [↑](#footnote-ref-231)
232. Buchanan encourages them to come to intra-state autonomy agreements: Buchanan (2004), p.357-363. However, as I will discuss later in this chapter, this is problematic as groups such as these have no initial justification for claiming intra-state autonomy. [↑](#footnote-ref-232)
233. For example: Dalberg-Acton, J. E. E. (1922) [1862] ‘Nationality’ in *The History of Freedom and Other Essays,* (Eds) J. N. Figgis & R. V. Lawrence*.* London: Macmillan. See also: Plamenatz, J. (1960) *On Alien Rule and Self-Government.* London: Longmans, chapter three. [↑](#footnote-ref-233)
234. For a congenial argument, see: Ypi, L. (2013) ‘What’s Wrong with Colonialism’, *Philosophy and Public Affairs,* Vol. 41 (2), pp.158-191. [↑](#footnote-ref-234)
235. Making sense of the irony that a republican state engaged in this type of *republican-colonialism* is discussed in the following chapter with reference to the domination that can become constituted by ethno-cultural norms. [↑](#footnote-ref-235)
236. Stilz, A. (2011) ‘Nations, States, and Territory’, *Ethics,* Vol. 121 (3), pp.572-601. [↑](#footnote-ref-236)
237. On this see: Catala, A. (2013) ‘Remedial Theories of Secession and Territorial Justification’, *Journal of Social Philosophy,* Vol. 44 (1), pp.74-94. [↑](#footnote-ref-237)
238. Stilz (2011), p.590. [↑](#footnote-ref-238)
239. Indeed, arguably this is how the G.D.R. was formed. The Soviet Union took legitimate political control over the territory and population of eastern Germany by securing its population’s basic rights, and setting-up a satellite state in place of formal annexation. Of course, this is despite the fact that the U.S.S.R. was not actually a rights-upholding state – but nonetheless had the veneer of legitimacy in contrast to the previous Nazi regime. [↑](#footnote-ref-239)
240. This is not to contend that all annexations are prohibited – the creation of political unions can have value for those involved – but rather it is only to claim that for this process to be legitimate that it ought to be one over which individuals and groups have political control. See: Stilz (2011), p.591-593. [↑](#footnote-ref-240)
241. Indeed, this is something that Buchanan admits is the case: Buchanan (1991), p.10-11; Buchanan (2004), p.352. [↑](#footnote-ref-241)
242. This idea of just war is an organising theme in: Coppieters, B. & Sakwa, R. (2003) (eds.) *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press. [↑](#footnote-ref-242)
243. Stilz (2011), p.587-589. [↑](#footnote-ref-243)
244. Mehta, P. B. (2011) ‘After Colonialism: The Impossibility of Self-Determination’, in J. T. Levy (Eds), *Colonialism and its Legacies.* Lanham, Maryland: Lexington Books, p.152-153. [↑](#footnote-ref-244)
245. On the similarities of apartheid and other unequal political unions with colonialism, see: Ypi (2013). [↑](#footnote-ref-245)
246. Skinner, Q. (1998) *Liberty before Liberalism.* Cambridge: Cambridge University Press, p.44-49. [↑](#footnote-ref-246)
247. By this I mean a broadly left-of-centre liberalism, common to contemporary Anglo-American political philosophy, typified by: Rawls, J. (1999a) [1971] *A Theory of Justice*. Cambridge: Massachusetts: Harvard University Press. [↑](#footnote-ref-247)
248. Buchanan (1991), chapter two. See also: Buchanan, A. (1997b) ‘Self-Determination, Secession, and the Rule of Law’, in R. McKim & J. McMahan (Eds), *The Morality of Nationalism.* Oxford: Oxford University Press. [↑](#footnote-ref-248)
249. Ibid, p.39. For other just-cause theories that including economic violations amongst their justifications, see: Birch, A. H. (1984) ‘Another Liberal Theory of Secession’, *Political Studies*, Vol. 32 (4), pp.596-602; Dahbour, O. (2005) ‘Borders, Consent, and Democracy’, *Journal of Social Philosophy,* Vol. 36 (2), pp.255-272; Norman (1998). [↑](#footnote-ref-249)
250. Buchanan (1991), p.42. [↑](#footnote-ref-250)
251. For libertarian-friendly perspectives, see: McGee, R. (2012) (eds.) *The Ethics of Tax Evasion: Perspectives in Theory and Practice*. New York: Springer. [↑](#footnote-ref-251)
252. Buchanan (1991), p.40-41. [↑](#footnote-ref-252)
253. Ibid, p.44-45. [↑](#footnote-ref-253)
254. Ibid, p.117-121. [↑](#footnote-ref-254)
255. Ibid, p.43. [↑](#footnote-ref-255)
256. On the case of Confederate secession from the United States, see: Abbot, P. (1998) ‘The Lincoln Propositions and the Spirit of Secession’, in P. Lehning (Eds), *Theories of Secession*. London: Routledge; Wellman, C. (2005) *A Theory of Secession.* Cambridge: Cambridge University Press, chapter four. [↑](#footnote-ref-256)
257. Huysseune, M. (2003) ‘A Nation Confronting a Secessionist Claim: Italy and the *Lega Nord*’, in B. Coppieters & R. Sakwa (Eds), *Contextualising Secession: Normative Studies in a Comparative Perspective.* Oxford: Oxford University Press. [↑](#footnote-ref-257)
258. Buchanan (1991), p.114-115. [↑](#footnote-ref-258)
259. On this see: Norman (1998). [↑](#footnote-ref-259)
260. Buchanan makes this point himself in later work: Buchanan (2004), p.397. [↑](#footnote-ref-260)
261. Again, Buchanan concedes in later work that in liberal-democratic states this standard should be upheld, because this is how these types of states legitimise themselves – with extra conditions than those mandated in his moral theory of international law: Buchanan, A. (1998) ‘Democracy and Secession’, in M. Moore (Eds), *National Self-Determination and Secession.* Oxford: Oxford University Press, p.24-30; Buchanan (2004), p.259. [↑](#footnote-ref-261)
262. I will detail this concern at length in the following chapter. [↑](#footnote-ref-262)
263. In a sense this is a version of the American revolutionaries slogan *no taxation without representation*, albeit for political contexts where there is formal representation but it is not exercisable. Indeed, like these revolutionaries it is not the economic policies that are of real significance but subjugation to arbitrary power. On the theme of domination in the American revolutionaries claims, see: Bailyn, B. (1967) *The Ideological Origins of the American Revolution*. Cambridge, Massachusetts: Harvard University Press; Skinner (1998). [↑](#footnote-ref-263)
264. Indeed, the *Padanian* nationalist *Lega Nord* party have been in the Italian government since their emergence in the early 1990s and have made coalitions with the greater Italian political right to this end. [↑](#footnote-ref-264)
265. I will detail the republican conception of self-determination in detail in the following chapter. [↑](#footnote-ref-265)
266. Although in the latter case it is hard to see how this could be implemented, especially considering if the wealth-differential was the reason that lead the group in question to make claims for self-determination in the first place. However, this might be possible when the claims in question are not secessionist but claims for intra-state autonomy. On this difficultly, see: Buchanan (1991), p.116. [↑](#footnote-ref-266)
267. Buchanan (1991), p.52-54; Norman (1998), p. 41. [↑](#footnote-ref-267)
268. For examples of cultural imperilment accounts that advocate special rights before self-determination, see: Cobban (1969); Hannum, H. (2006) ‘Self-Determination in the Twenty-First Century’, in H. Hannum & E. Babbitt (Eds), *Negotiating Self-Determination.* Lanham, Maryland: Lexington Books. [↑](#footnote-ref-268)
269. Buchanan (1991), p.61. [↑](#footnote-ref-269)
270. Ibid, p.57. [↑](#footnote-ref-270)
271. Ibid, p.58. [↑](#footnote-ref-271)
272. Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, p.3. [↑](#footnote-ref-272)
273. Norman, W. (2006) *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State.* Oxford: Oxford University Press, chapter two. [↑](#footnote-ref-273)
274. Ibid, chapter three. [↑](#footnote-ref-274)
275. Bauböck, R. (2000) ‘Why Stay Together? A Pluralist Approach to Secession and Federation’, in W. Kymlicka & W. Norman (Eds), *Citizenship and Diverse Societies.* Oxford: Oxford University Press; Costa, J. (2003) ‘On Theories of Secession: Minorities, Majorities, and the Multinational State’, *Critical Review of International Social and Political Philosophy,* Vol. 6 (2), pp.63-90; Norman (2006), chapter six. [↑](#footnote-ref-275)
276. Buchanan (2004), chapter nine; Buchanan, A, (2006) ‘Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession’, in H. Hannum & E. Babbitt (Eds), *Negotiating Self-Determination.* Lanham, Maryland: Lexington Books. [↑](#footnote-ref-276)
277. Seymour, M. (2007) ‘Secession as a Remedial Right’, *Inquiry,* Vol. 50 (4), pp.395-423. [↑](#footnote-ref-277)
278. I will argue in the next chapter that the constitutionalisation of these types of right also does not help groups subject to this kind of power. [↑](#footnote-ref-278)
279. The devolution regimes that Scotland and Wales have within the United Kingdom illustrate this point. The regional autonomy Scotland and Wales have is easily revoked by a simple majority in the Westminster parliament. The self-determination associated with Scottish and Welsh devolution, therefore, is not had *by right* but at the discretion of the majority of U.K. parliamentarians – most of whom represent English electoral constituencies. This is the case not matter how implausible it would be for the London parliament to revoke Scottish and Welsh regional autonomy in practice. This is an issue that is not easily resolved without the U.K. having a written constitution to put limits on the authority of Westminster. [↑](#footnote-ref-279)
280. For a sympathetic account, associated with a remedial understanding of self-determination, see: Christiano, T. (2006) ‘A Democratic Theory of Territory and Some Puzzles about Global Democracy’, *Journal of Social Philosophy*, Vol. 37 (1), pp.81-107. [↑](#footnote-ref-280)
281. Pettit, P. (1999b) [1997] *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press; Skinner, Q. (1998) *Liberty before Liberalism*. Cambridge: Cambridge University Press. [↑](#footnote-ref-281)
282. Pettit (1999b). See also: Brugger, B. (1999) *Republican Theory in Political Thought: Virtuous or Virtual?* London: Macmillan; Honohan, I. (2002) *Civic Republicanism.* London: Routledge; Maynor, J. (2003). *Republicanism in the Modern World*. Cambridge: Polity Press. [↑](#footnote-ref-282)
283. Skinner (1998). For a clear statement of the idea of status see: Skinner, Q. (2013) ‘Introduction’, in Q. Skinner & M. Van Gelderen (Eds), *Freedom and the Construction of Europe, Volume II: Free Persons and Free States*. Cambridge: Cambridge University Press. [↑](#footnote-ref-283)
284. This is not to deny, however, that specific exemptions can be made for other reasons, such as exemptions for subjects like children. [↑](#footnote-ref-284)
285. Except in the circumstances of usurpation, such as colonialism or invasion. [↑](#footnote-ref-285)
286. Pocock, J. G. A. (1975) *The Machiavellian Moment: Florentine Political Theory and the Atlantic Republican Tradition.* Princeton, New Jersey: Princeton University Press; Skinner, Q. (1978) *The Foundations of Modern Political Though, Volumes I & II*. Cambridge: Cambridge University Press. [↑](#footnote-ref-286)
287. Skinner (1978) & (1998); Viroli, M. (1995) *For Love of Country: An Essay on Nationalism and Patriotism*. Oxford: Oxford University Press; Viroli, M. (1998) *Machiavelli*. Oxford: Oxford University Press; Viroli, M (2003) *Republicanism*. New York: Hill and Wang. [↑](#footnote-ref-287)
288. Skinner (1978). [↑](#footnote-ref-288)
289. The Aristotelian reading of republicanism, often referred to as *civic humanism*, is associated with J.G.A. Pocock’s (1975) interpretation of the same Italian-Atlantic tradition. [↑](#footnote-ref-289)
290. Skinner (1998) & (2013). [↑](#footnote-ref-290)
291. Skinner (1998), chapter two. [↑](#footnote-ref-291)
292. Pettit (1999b); Pettit (2001) *A Theory of Freedom: From the Psychology to the Politics of Agency*. Oxford: Oxford University Press; Pettit, P. (2012) *On the People’s Terms: A Republican Theory and Model of Democracy.* Cambridge: Cambridge University Press; Martí, J. L. & Pettit, P. (2010) *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain.* New Jersey: Princeton University Press. [↑](#footnote-ref-292)
293. Pettit (1999b), p.22-23. [↑](#footnote-ref-293)
294. Ibid, p.24-27. [↑](#footnote-ref-294)
295. Berlin, I. (1969) *Four Essays on Liberty.* Oxford: Oxford University Press. [↑](#footnote-ref-295)
296. Pettit (1999b), p.31-35. [↑](#footnote-ref-296)
297. Ibid, p.24. [↑](#footnote-ref-297)
298. Ibid, p.24.25. [↑](#footnote-ref-298)
299. Ibid, p. 27-31. [↑](#footnote-ref-299)
300. Skinner, Q. (2001) ‘A Third Concept of Liberty’, *Proceedings of the British Academy,* Vol. 117, pp.237-268. Skinner has been more ambivalent, however, about the distinctiveness of republican liberty from negative freedom than Pettit. See: Pettit, P. (2002) ‘Keeping Republican Freedom Simple: On a Difference with Quentin Skinner’, *Political Theory*, Vol. 30 (3), p.339-356; Pettit (1999b), postscript. [↑](#footnote-ref-300)
301. Carter, I. (2008) ‘How are Power and Unfreedom Related?’, in C. Laborde & J. Maynor (Eds), *Republicanism and Political Theory.* Oxford: Blackwell; Dowding, K. (2011) ‘Republican Freedom, Rights, and the Coalition Problem’, *Politics, Philosophy, and Economics,* Vol. 10 (3), pp.301-322; Kramer, M. (2008) ‘Liberty and Domination’, in C. Laborde & J. Maynor (Eds), *Republicanism and Political Theory.* Oxford: Blackwell. See also: Carter, I. (1999) *A Measure of Freedom.* Oxford: Oxford University Press; Kramer, M. (2003) *The Quality of Freedom.* Oxford: OxfordUniversity Press. [↑](#footnote-ref-301)
302. Kramer (2008), p.41-50. [↑](#footnote-ref-302)
303. Dowding (2011). [↑](#footnote-ref-303)
304. Ibid, p.301. [↑](#footnote-ref-304)
305. Skinner, Q. (2008) ‘Freedom as the Absence of Arbitrary Power’, in C. Laborde & J. Maynor (Eds), *Republicanism and Political Theory*. Oxford: Blackwell, p.96. [↑](#footnote-ref-305)
306. Pettit (1999b), p.35-41. [↑](#footnote-ref-306)
307. Hobbes, T. (2003) [1651] *Leviathan*, (Eds) R. Tuck. Cambridge: Cambridge University Press, p.152. [↑](#footnote-ref-307)
308. Strictly speaking these practices are not made impossible as one could flout the law, and thus it seems pure negative liberty theorists are vindicated on this point. However, the law and living in an association with good laws for traditional and some contemporary republicans also conditions agents with relevant virtues to live within the terms of the law and to respect the status of other free citizens. It is this that prevents dominating practices from taking place. See: Burtt, S. (1993), ‘The Politics of Virtue Today: A Critique and a Proposal’, *American Political Science Review,* Vol. 87 (2), pp.360-368; Pettit (1999b), chapter seven; Viroli (1995). [↑](#footnote-ref-308)
309. Pettit (1999b), p.42-44. [↑](#footnote-ref-309)
310. This mirrors the debate between left and right libertarians; the former wanting to defend a descriptive idea of freedom as non-interference, whereas the latter articulate a normative version of this idea for the purposes of defending a minimal state. The former being: Steiner, H. (1994) *An Essay on Rights.* Oxford: Blackwell; Van Parijs, P. (1995) *Real Freedom For All: What (If Anything) Can Justify Capitalism?* Oxford: Oxford University Press. And the latter: Nozick, R. (1974) *Anarchy, State, and Utopia*. New York: Basic Books. [↑](#footnote-ref-310)
311. Lovett, F. (2010a) *A General Theory of Domination and Justice*. Oxford: Oxford University Press; Pettit, P. (2008) ‘Republican Freedom - Three Axioms, Four Theorems’, in C. Laborde & J. Maynor (Eds), *Republicanism and Political Theory*. Oxford: Blackwell. [↑](#footnote-ref-311)
312. Pettit (2012), chapter one. [↑](#footnote-ref-312)
313. Ibid, p.58. [↑](#footnote-ref-313)
314. This is broadly in the vain of the question Rousseau posed in ‘The Social Contract’ of how to reconcile freedom and society: Rousseau, J-J. (2003) [1792] ‘The Social Contract’ in *The Social Contract and Other Later Political Writings,* (Eds) V. Gourevitch. Cambridge: Cambridge University Press, book one, chapter six ‘The Social Compact’. [↑](#footnote-ref-314)
315. Bellamy, R. (2007*) Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*. Cambridge: Cambridge University Press; Bohman, J. (2007) *Democracy across Borders: From Dêmos to Dêmoi.* Cambridge, Massachusetts: M.I.T. Press; Laborde, C. (2008) *Critical Republicanism: The Hijab Controversy and Political Philosophy.* Oxford: Oxford University Press; Richardson, H. (2002) *Democratic Autonomy: Public Reasoning about the Ends of Policy.* Oxford: Oxford University Press. [↑](#footnote-ref-315)
316. Laborde, C. (2013) ‘Republicanism’, in M. Freeden, L. T. Sargent, & M. Stears, (Eds) *The Oxford Handbook of Political Ideologies.* Oxford: Oxford University Press, p. 524-526. [↑](#footnote-ref-316)
317. For a critique of republicanism as being indistinguishable from constitutional liberalism see: Larmore, C. (2001) ‘A Critique of Philip Pettit’s Republicanism’, *Philosophical Issues*, Vol. 11 (1), pp.229‐243. [↑](#footnote-ref-317)
318. Bellamy (2007); Bohman (2007); Laborde (2008); Richardson (2002). [↑](#footnote-ref-318)
319. The partial exception being: Bohman (2007). Also working from a non-explicitly republican point of view: Tully, J. (2008) *Public Philosophy in a New Key.* Cambridge: Cambridge University Press; Young, I. M. (2007) *Global Challenges: War, Self-Determination and Responsibility*. Cambridge: Polity. [↑](#footnote-ref-319)
320. Pettit (1999b), p.146-147. [↑](#footnote-ref-320)
321. Skinner (1998), p.ix & x. [↑](#footnote-ref-321)
322. McMahon, C. (2005) ‘The Indeterminacy of Republican Policy’, *Philosophy and Public Affairs*, Vol. 33 (1): pp.67-93. And a response: Pettit, P. (2006) ‘The Determinacy of Republican Policy: a Reply to McMahon’, *Philosophy and Public Affairs*, Vol. 34 (3), pp.275-283. [↑](#footnote-ref-322)
323. Laborde (2013), p.528-529. [↑](#footnote-ref-323)
324. On the idea of reinventing normative concepts in times of political transition see: Bohman (2007), p.1-11. [↑](#footnote-ref-324)
325. De Tocqueville, A. (2003) [1835 & 1840] ‘Democracy in America’ in *Democracy in America and Two Essays on America*, (Eds) I. Kramick. London: Penguin; Madison, J., Hamilton, A. & Jay, J. (1987) [1788] *The Federalist Papers*. London: Penguin; Mill, J. S. (2003) [1859] ‘On Liberty’ in *On Liberty and Other Political Writings*, (Eds) S. Collini. Cambridge: Cambridge University Press. [↑](#footnote-ref-325)
326. Mill (2003). [↑](#footnote-ref-326)
327. Lovett (2010a), p.112. [↑](#footnote-ref-327)
328. Pettit (1999b), chapter two. [↑](#footnote-ref-328)
329. Lovett (2010a), p.112. [↑](#footnote-ref-329)
330. Ibid, p.112; List, C. (2006) ‘Republican Freedom and the Rule of Law’, Politics, Philosophy, and Economics, Vol. 5 (2), pp. 201–220. [↑](#footnote-ref-330)
331. Lovett (2010a), p.99; Pettit (1999b), p.174-177; Skinner (1998), p.43-44. [↑](#footnote-ref-331)
332. Lovett (2010a), p.117-118. [↑](#footnote-ref-332)
333. Ibid, p.119. On the will of group agents see: List, C. & Pettit, P. (2011) *Group Agency: The Possibility, Design, and Status of Corporate Agents.* Oxford: Oxford University Press. [↑](#footnote-ref-333)
334. Lovett (2010a), p.18. [↑](#footnote-ref-334)
335. This wrong may not be reducible to domination by itself, but unlike Lovett my claim is that domination is present. [↑](#footnote-ref-335)
336. Skinner (1998), chapter two. [↑](#footnote-ref-336)
337. The law was unjust and not in itself dominating, but my claim is dominating political power is required to make unjust laws such as these. [↑](#footnote-ref-337)
338. One could imagine a version of the just-cause theory capturing these claims for self-determination. [↑](#footnote-ref-338)
339. Pettit, P. (2001), p. 156-160; Pettit (1999b), p.55-58 & 66-68. [↑](#footnote-ref-339)
340. Pettit (2012), p.244-245; Pettit, P. (2004b) ‘The Common Good’, in K. Dowding, R. E. Goodin & C. Pateman (Eds), *Justice and Democracy: Essays for Brian Barry*. Cambridge: Cambridge University Press. [↑](#footnote-ref-340)
341. Skinner (1998); Viroli (2003). [↑](#footnote-ref-341)
342. Pettit (2012), p.245. [↑](#footnote-ref-342)
343. Ibid, p.183-184. [↑](#footnote-ref-343)
344. On the point about coherence see: Ibid, p. 191-194. [↑](#footnote-ref-344)
345. Ibid, p.209-211. [↑](#footnote-ref-345)
346. Ibid, p.211-212. [↑](#footnote-ref-346)
347. Ibid, p.212-213. [↑](#footnote-ref-347)
348. Ibid, p.213-215. [↑](#footnote-ref-348)
349. Ibid, p.215-216; Pettit, P. (2004a) ‘'Depoliticizing Democracy', *Ratio Juris*, Vol. 17 (1), pp. 52-65. [↑](#footnote-ref-349)
350. Pettit (2012), p217-218. [↑](#footnote-ref-350)
351. Ibid, p.232. [↑](#footnote-ref-351)
352. Ibid, p.217. [↑](#footnote-ref-352)
353. Ibid, p.92-107. [↑](#footnote-ref-353)
354. Ibid, p.218-220; Pettit, P. (1999a) ‘Republican Liberty, Contestatory Democracy’, in C. Hacker-Cordon & I. Shapiro (Eds), *Democracy’s Value*. Cambridge: Cambridge University Press. [↑](#footnote-ref-354)
355. Pettit (2012), p.232-238. [↑](#footnote-ref-355)
356. Ibid, p.252-269. [↑](#footnote-ref-356)
357. Bellamy (2007), p.166-168. [↑](#footnote-ref-357)
358. Ibid, p.3-5. On pluralism as the context of political disagreement see: Bellamy, R. (1999) *Liberalism and Pluralism: Towards a Politics of Compromise*. London: Routledge. [↑](#footnote-ref-358)
359. Bellamy (2007), p.163-166 [↑](#footnote-ref-359)
360. Ibid, p.170; Waldron, J. (1999) *Law and Disagreement*. Oxford: Clarendon Press, chapter eight. [↑](#footnote-ref-360)
361. Bellamy (2007), p.169. See also: Richardson (2002), p.48-55. [↑](#footnote-ref-361)
362. Bellamy (2007), p.191-195. [↑](#footnote-ref-362)
363. Markell, P. (2008) ‘The Insufficiency of Non-Domination’, *Political Theory,* Vol. 36 (1), pp.9-36. See also Richardson (2002). [↑](#footnote-ref-363)
364. Bellamy (1999), chapter four. Jeremy Waldron also defends electoral democracy in a similar manner: Waldron (1999). [↑](#footnote-ref-364)
365. Bellamy (1999), p.113. [↑](#footnote-ref-365)
366. Bellamy (2007), p.165; Wollheim, R. (1969) ‘A Paradox in the Theory of Democracy’, in P. Laslett & W. G. Runciman (Eds), *Philosophy, Politics, and Society (2nd series)*. Oxford: Blackwell. [↑](#footnote-ref-366)
367. Bellamy (2007), p.200-207. [↑](#footnote-ref-367)
368. Bellamy’s own position is a version of this reading: Ibid, chapter six. [↑](#footnote-ref-368)
369. Tully (2008), volume one, p.151-154. [↑](#footnote-ref-369)
370. Ibid, p.150. [↑](#footnote-ref-370)
371. On consociational power-sharing and Northern Ireland see: McGarry, J. & O’Leary, B. (1995) *Explaining Northern Ireland: Broken Images*. Oxford: Basil Blackwell; Taylor, R. (2009) (eds.) *Consociational Theory: McGarry & O’Leary and the Northern Ireland Conflict*. London: Routledge. [↑](#footnote-ref-371)
372. Indeed, Pettit’s solution of creating more depoliticised forms of decision-making in the N. Ireland example is likely to alienate Protestants/British Unionists from agreeing to abide by the political decisions made, in any attempt to protect the minority Catholic/Irish Nationalist community. The Unionist political reaction to the Parade’s Commission – a depolitised body making decisions on parading in Northern Ireland is a case in point. [↑](#footnote-ref-372)
373. These are consociational claims, see: Lipjhart, A. (1977) *Democracy in Plural Societies: A Comparative Exploration*. New Haven, Connecticut: Yale University Press; McGarry, J. & O’Leary, B. (2005) ‘Federation as a Method of Conflict Resolution’, in S. Noel (Eds), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies.* Montreal & Kingston: McGill-Queen’s University Press; Moore, M. (2006) ‘Globalization and Democratization: Institutional Design for Global Institutions’, *Journal of Social Philosophy,* Vol. 37 (1), pp. 21-43; O’Leary, B. (2005) ‘Debating Consociational Politics: Normative and Explanatory Arguments’, in S. Noel (Eds), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies.* Montreal & Kingston: McGill-Queen’s University Press. And as a critique: Barry, B. (1975a) ‘Political Accommodation and Consociational Democracy’, British Journal of Political Science, Vol. 5 (4), pp. 477–505; Barry, B. (1975b) ‘The Consociational Model and its Dangers’, European Journal of Political Research, Vol. 3 (4), pp.393–412; Bellamy (1999), p.123-129. [↑](#footnote-ref-373)
374. Pettit (2012), p.216. [↑](#footnote-ref-374)
375. Tully (2008), volume one, p.201-205. [↑](#footnote-ref-375)
376. Ibid, p.194-200. [↑](#footnote-ref-376)
377. Lukes, S. (2005) [1974] *Power: A Radical View*. London: MacMillan. [↑](#footnote-ref-377)
378. Laborde (2008). See also: Bohman, J. (2012) ‘Critical Theory, Republicanism, and the Priority of Injustice: Transnational Republicanism as Non-Ideal Theory’, *Journal of Social Philosophy,* Vol. 43 (2), pp.97-112; Khan, G. (2013) ‘Critical Republicanism: Jürgen Habermas and Chantal Mouffe’, *Contemporary Political Theory,* Vol.12 (4), pp.318-337. [↑](#footnote-ref-378)
379. Lovett (2010a), p.47-49. [↑](#footnote-ref-379)
380. Laborde (2013), p.521-522. For a helpful discussion of this theme: Hayward, C. R. & Lukes, S. (2008) ‘Nobody to Shoot? Power, Structure, and Agency: A Dialogue’, *Journal of Power,* Vol. 1 (1), pp.5-20. [↑](#footnote-ref-380)
381. Laborde (2008), p.14; Hayward, C. R. (2011) ‘What Can Political Freedom Mean in a Multicultural Democracy? On Deliberation, Difference, and Democratic Governance’, *Political Theory,* Vol. 39 (4), pp.468-497; Tully (2008); Young, I. M. (1990) *Justice and the Politics of Difference*. Princeton, New Jersey: Princeton University Press; Young, I. M. (2000) *Inclusion and Democracy.* Oxford: Oxford University Press. [↑](#footnote-ref-381)
382. Sharon Krause shows how this type of power can constitute a form of unfreedom broader than this interaction: Krause, S. (2013) ‘Beyond Non-Domination: Agency, Inequality and the Meaning of Freedom’, *Philosophy and Social Criticism*, Vol. 39 (2), pp.187-208. [↑](#footnote-ref-382)
383. Laborde (2008), p.18. [↑](#footnote-ref-383)
384. *Laïcité* differs from liberal neutrality in that it is orientated towards a different end of creating citizens with a public persona ready to engage in self-government: Ibid, p.41-44. [↑](#footnote-ref-384)
385. It is interesting to note the context specificity of this argument. For example, the same headscarf ban that has been part of Turkish (Kemalist) secular project does not constitute domination – at least not in the same way as it does in France – as it does not reflect an implicit set of the majority culture’s interests over a minority: Laborde (2008), p.15. [↑](#footnote-ref-385)
386. Laborde (2008), p.112. On civic identity: Laborde, C. (2002) ‘From Constitutional to Civic Patriotism’, *British Journal of Political Science,* Vol. 34 (2), pp. 591-612. [↑](#footnote-ref-386)
387. Laborde (2008), p. 83. [↑](#footnote-ref-387)
388. Ibid, p.19-20. [↑](#footnote-ref-388)
389. Tully, J. (1995) *Strange Multiplicity: Constitutionalism in an age of Diversity*. Cambridge: Cambridge University Press. See also: Young (2007), chapter one: ‘Hybrid Democracy: Iroquois Federalism and the Postcolonial Project.’ [↑](#footnote-ref-389)
390. For example, J.S. Mill wrote of colonialism readying *uncivilised peoples* for self-government: Mill, J. S. (1998) [1861] ‘Considerations on Representative Government’ in *On Liberty and Other Essays,* (Eds) J. Gray. Oxford: Oxford University Press, chapter eighteen: ‘Of the Government of Dependencies by a Free State’. See also: Plamenatz, J. (1960) *On Alien Rule and Self-Government.* London: Longmans, chapter three. [↑](#footnote-ref-390)
391. Tully (2008), volume one, part three ‘Indigenous Peoples’. [↑](#footnote-ref-391)
392. Mehta, P. B. (2011) ‘After Colonialism: The Impossibility of Self-Determination’, in J. T. Levy (Eds), *Colonialism and its Legacies.* Lanham, Maryland: Lexington Books, p.148-153. [↑](#footnote-ref-392)
393. For an example of anti-imperial nationalism see: Mazzini (1907). And as a critique: Dalberg-Acton, J. E. E. (1922) [1862] ‘Nationality’ in *The History of Freedom and Other Essays,* (Eds) J. N. Figgis & R. V. Lawrence*.* London: Macmillan. [↑](#footnote-ref-393)
394. Tully (2008), volume one, chapter eight ‘The Struggles of Indigenous Peoples for and of Freedom’; Young (2007), p.15-16. [↑](#footnote-ref-394)
395. Buchanan (2004), chapter eight. See also: Stilz, A. (2011) ‘Nations, States, and Territory’, *Ethics,* Vol. 121 (3), pp.572-601. [↑](#footnote-ref-395)
396. Buchanan (2004), part two: ‘Legitimacy’. [↑](#footnote-ref-396)
397. For Buchanan’s attempt to deal with this issue see: Buchanan (2006), p.96-105. [↑](#footnote-ref-397)
398. Laborde (2008), p.19. [↑](#footnote-ref-398)
399. For an argument congenial to Laborde’s, see: Phillips, A. (2007) *Multiculturalism without Culture*. Princeton, New Jersey: Princeton University Press. [↑](#footnote-ref-399)
400. Laborde (2008), p.22. [↑](#footnote-ref-400)
401. Tully (2008), volume one, p.189-190. It is the justificatory emphasis on the political exercise of citizenship that makes civic recognition distinct from other accounts of recognition such as: Honneth, A. (1995) *The Struggle for Recognition.* Cambridge: Polity; Taylor, C. (1995) *Philosophical Arguments.* Cambridge, Massachusetts: Harvard University Press. [↑](#footnote-ref-401)
402. This is not to refute, however, that there are claims for recognition that are not connected to domination and self-determination that are ends and can be justified from some other basis, or have an instrumental relationship to non-domination. [↑](#footnote-ref-402)
403. Laborde (2008), p.239-244. [↑](#footnote-ref-403)
404. For example: Smith, R. M. (2003) *Stories of Peoplehood: The Politics and Morals of Political Membership*. Cambridge: Cambridge University Press, p.102-125. [↑](#footnote-ref-404)
405. Kymlicka, W. & Patten, A. (2003) (eds.) *Language Rights and Political Theory.* Oxford: Oxford University Press. [↑](#footnote-ref-405)
406. For example, Irish and *Ulster-Scots* speakers in Northern Ireland whose first language is English. [↑](#footnote-ref-406)
407. In addition to Laborde (2008) there are other treatments of domination and multiculturalism as a part of the wider domain of social justice, including: Bachvarova, M. (2014) ‘Multicultural Domination and the Ideal of Non-Domination’, *Critical Review of International Social and Political Philosophy*, Vol. 17 (6), pp.652-673; Hayward (2011); Lovett, F. (2010b) ‘Cultural Accommodation and Domination’, *Political Theory*, Vol. 38 (2), pp.243-267. [↑](#footnote-ref-407)
408. Canovan, M. (2001) ‘Sleeping Dogs, Prowling Cats and Soaring Doves: Three Paradoxes in the Political Theory of Nationhood’, *Political Studies*, Vol. 49 (2), pp.203-215. [↑](#footnote-ref-408)
409. Ibid, p.211. [↑](#footnote-ref-409)
410. Laborde has discussed the naivety of post-nationalist accounts of identity whilst simultaneously arguing that a republican polity should not encourage a strong national identity, but encourage instead the creation of a civic or political identity that is specific to a place, set of citizens as political actors, and institutions that are not culturally anchored nor universally abstract: Laborde (2002). See also: Viroli (1995). [↑](#footnote-ref-410)
411. Richard Bellamy has referred to the paradoxical situation of well-organised and participating minority groups being those that are in the best position to receive recognition claims when in fact they are the groups that least need it in a manner similar to this: Bellamy (1999), p.128. [↑](#footnote-ref-411)
412. Though in cases both can be found together subjecting agents to domination. [↑](#footnote-ref-412)
413. Bohman (2007); Bohman, J. (2008) ‘Non-domination and Transnational Democracy’, in C. Laborde, & J. Maynor (Eds), *Republicanism and Political Theory*. Oxford: Blackwell. [↑](#footnote-ref-413)
414. Bohman (2007), p. 27-28. [↑](#footnote-ref-414)
415. Ibid, p. 47-48. [↑](#footnote-ref-415)
416. Ibid, p.1-5. [↑](#footnote-ref-416)
417. Ibid, p.24. [↑](#footnote-ref-417)
418. Ibid, p.25. [↑](#footnote-ref-418)
419. Rawls. J. (1999b) *Law of Peoples*. Cambridge, Massachusetts: Harvard University Press; Rawls, J. (1999a) [1971] *A Theory of Justice*. Cambridge: Massachusetts: Harvard University Press. On the scope of obligation see: Buchanan, A. (2000) ‘Rawls’s Law of People: Rules for a Vanished Westphalian World, *Ethics*, Vol. 110 (4), p.697-721. [↑](#footnote-ref-419)
420. Bohman (2007), p.23-24. [↑](#footnote-ref-420)
421. Ibid, p.25. [↑](#footnote-ref-421)
422. Ibid, p.28. [↑](#footnote-ref-422)
423. Kant, I. (2009) [1795] ‘Perpetual Peace: A Philosophical Sketch’ in *Political Writings*, (Eds) H. S. Reiss. Cambridge: Cambridge University Press. [↑](#footnote-ref-423)
424. Bohman, p.11-15. See also: Bishai, L. (1998) ‘Altered States: Secession and the Problems of Liberal Theory’, in P. B. Lehning (Eds), *Theories of Secession*. London: Routledge; Gould, C. C. (2006) ‘Self-Determination beyond Sovereignty: Relating Transnational Democracy to Local Autonomy’, *Journal of Social Philosophy,* Vol. 37 (1), pp.44-60; Young (2007), chapter two: ‘Two Concepts of Self-Determination’. [↑](#footnote-ref-424)
425. Bohman (2007), p.156-157. [↑](#footnote-ref-425)
426. Young (2007), chapter two: ‘Two Concepts of Self-Determination’. And as a helpful critique: Levy, J. T. (2008) ‘Self-Determination, Non-Domination, and Federalism’, *Hypatia,* Vol. 23 (3), pp.60-78. [↑](#footnote-ref-426)
427. Bohman (2007), p.93. [↑](#footnote-ref-427)
428. Ibid, chapter three. [↑](#footnote-ref-428)
429. Bohman (2007), p.150 & 160-165. See also: Benhabib, S. (2004) *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge: Cambridge University Press. [↑](#footnote-ref-429)
430. On agenda-setting see: Mackie, G. (2003) *Democracy Defended*. Cambridge: Cambridge University Press, p.166-172. [↑](#footnote-ref-430)
431. Bohman (2007), p.94-97. Understood in this way as *hearing the other side* deliberation can be seen in a political as opposed to moral or ethical sense as it is for some deliberative democrats: Habermas, J. (1990). *Moral Consciousness and Communicative Action*. Cambridge, Massachusetts: M.I.T. Press. Nor does this political conception of deliberative democracy need to be opposed to agonistic visions of democracy: Mouffe, C. (2000) *The Democratic Paradox*. London: Verso. On this position see: Bellamy (2007), chapter five; Tully (2008), volume one, especially part two. [↑](#footnote-ref-431)
432. Hayward (2011), p.487-489. Though in the next chapter I will argue electoral reform can in cases be understood as a claim for self-determination, albeit, as a non-territorial claim. [↑](#footnote-ref-432)
433. Exceptions can justifiability be made, however, for legislatively represented non-democrats, such as fascists, for more fundamental reasons about protecting formal equality. [↑](#footnote-ref-433)
434. Hassan, G. & Ilett, R. (2011) (eds.) *Radical Scotland: Arguments for Self-Determination.* Edinburgh:Luath Press; Maxwell, S. (2012) *Arguing for Independence: Evidence, Risk, and the Wicked Issues.* Edinburgh: Luath Press. [↑](#footnote-ref-434)
435. In this sense Laborde’s case of female French Muslim citizens is rectified through self-determination, albeit, a non-separatist or reformist form of self-determination. [↑](#footnote-ref-435)
436. On this see: Fusco, A. (2014) ‘After the Referendum: Why it can’t be Business as Usual’, *Renewal: A Journal of Social Democracy,* Vol. 22 (1-2), pp. 38-46 [↑](#footnote-ref-436)
437. Christiano, T. (2006) ‘A Democratic Theory of Territory and Some Puzzles about Global Democracy’, *Journal of Social Philosophy*, Vol. 37 (1), p.103. [↑](#footnote-ref-437)
438. Tully (2008), volume one, p.155-158. [↑](#footnote-ref-438)
439. Bohman (2007) discusses this within the context of the European Union, p.158-160. [↑](#footnote-ref-439)
440. Ibid, chapter four. [↑](#footnote-ref-440)
441. Skinner (1998), chapter two. [↑](#footnote-ref-441)
442. Pettit (1999b), p.31-32. [↑](#footnote-ref-442)
443. Despite the republican tradition often being deeply sexist, its idea of citizenship can be reconstructed for contemporary purposes, if accompanied by structural changes to the social and political world – that created by generations of a masculine idea of citizenship. See: Phillips, A. (2002) ‘Republicanism and Feminism: Is this a Plausible Alliance?’, *Journal of Political Philosophy*, Vol. 8 (2), pp.279-293. [↑](#footnote-ref-443)
444. Skinner (1998), p.36-57. [↑](#footnote-ref-444)
445. Bellamy (2007), p.1. [↑](#footnote-ref-445)
446. Rousseau (2003), book one, chapter six ‘The Social Compact’. [↑](#footnote-ref-446)
447. Bellamy (2007), p. 163-164. [↑](#footnote-ref-447)
448. Arendt, H. (1994) [1951] *The Origins of Totalitarianism.* New York: Harcourt Brace, chapter nine, part one. See also Bohman (2007), chapter three. [↑](#footnote-ref-448)
449. On the latter point this sets the issue of the moral realism of rights aside, because in political practice having rights is a matter of being politically recognised as having rights – regardless of whether or not human beings genuinely have rights by virtue of being human: Arendt (1994), chapter nine, part two. [↑](#footnote-ref-449)
450. I of course do not mean that these groups simply want democratic-citizenship for its symbolic value or that they are content with, for example, their socio-economic status, but that what they might want democratic-citizenship for, albeit in part, is the entitlement to be included in the benefits of socio-economic wealth distribution, which for instance white citizens of the southern United States benefitted from in the pre-civil rights period, whilst black Americans did not. [↑](#footnote-ref-450)
451. At least they were equal among their class, such as being equal amongst plebeians or patricians in the Roman mixed constitution that prevented either group from dominating each other. On the mixed constitution see: Pettit (2012), p.220-225. [↑](#footnote-ref-451)
452. This was discussed by Machiavelli as the issue of *usurpation*, see: Machiavelli, N. (2013) [1531] *The Discourses on Livy*, (Eds) B. Crick. London: Penguin, book one, chapter thirty-four: ‘That the authority of the Dictator did Good and not Harm to the Roman Republic: and that it is not those Powers which are given by the Free Suffrages of the People, but those which Ambitious Citizens Usurp for themselves, that are Pernicious to a State’. [↑](#footnote-ref-452)
453. Abizadeh, A. (2012) **‘**On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem’, *American Political Science Review*, Vol. 106 (4), pp. 867-882; Christiano (2006); Miller, D. (2009) ‘Democracy’s Domain’, *Philosophy & Public Affairs*, Vol. 37, (3), pp. 201-228. [↑](#footnote-ref-453)
454. Representative of this view is: Dahl, R. A. (1989) *Democracy and Its Critics*. New Haven, Connecticut: Yale University Press, p. 207. For a useful discussion see: Näsström, S. (2007) ‘The Legitimacy of the People’, *Political Theory,* Vol. 35 (5), pp.624-658. [↑](#footnote-ref-454)
455. Christiano (2006). [↑](#footnote-ref-455)
456. Ibid, p.83-84. [↑](#footnote-ref-456)
457. Ibid, p.89-91. [↑](#footnote-ref-457)
458. As detailed in the discussion of Bohman, however, it is not necessarily the case that all of the excluded form one single candidate for self-determination. Although this can be the case, more often than not they form several candidates for different inclusion-based and separatist claims for self-determination. [↑](#footnote-ref-458)
459. Objective theories of self-determination, such as the republican account, may isolate candidates for self-determination, which are groups that do not actually make claims or even conceive of themselves as a group. Objective theories, however, may encourage these candidates to make claims for the value each theory contends self-determination embodies. [↑](#footnote-ref-459)
460. It is only in cases of usurpation, such as state invasion or colonial conquest that the *status quo* cannot be reformed by the incumbent political authority, as the republican theory contends that groups who have had their previous status of self-determination usurped are justified in restoring these statuses, regardless if the new authority makes an effort to uphold the two conditions of its new political subjects. [↑](#footnote-ref-460)
461. It is assumed here that inclusion-based claims fulfil the second condition as well, however, strictly speaking this may not be the case. I disaggregate these claims here, however, for the purposes of explanation, but note that in political practice the reality may be more complicated. [↑](#footnote-ref-461)
462. The *status quo* bias criticism might stick for other remedial theories of self-determination, particularly the substantive version of the just-cause theory. The basic version can dodge the criticism on the basis of practicality, but for the substantive version of the just-cause theory reform seems plausible when groups are subject to specific violations of their economic or cultural rights. [↑](#footnote-ref-462)
463. On non-state-based secession, see: Buchanan, A. (1991) *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder, Colorado: Westview, p.15. [↑](#footnote-ref-463)
464. On the case of civil rights in the United States expanding the *demos* in this manner see: Frank, J. (2009) *Constituent Moments: Enacting the People in Post-Revolutionary America*. Durham, North Carolina: Duke University Press. [↑](#footnote-ref-464)
465. I do not deny, however, that there are significant side-constraints or instrumental considerations involved in making these specific determinations. [↑](#footnote-ref-465)
466. On the general idea of inclusion, see: Benhabib, S. (2004) *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge: Cambridge University Press. [↑](#footnote-ref-466)
467. Different conceptions of citizenship imply different rights. The republican theory of citizenship is one that stresses the priority of collective self-government. On different conceptions of citizenship – liberal, libertarian, and republican – see: Miller, D. (2000) *Citizenship and National Identity*. Cambridge: Polity, chapter three: ‘Citizenship and Pluralism’. [↑](#footnote-ref-467)
468. Bohman, J. (2007) *Democracy across Borders: From Dêmos to Dêmoi.* Cambridge, Massachusetts: M.I.T. Press. See also: Benhabib (2004). [↑](#footnote-ref-468)
469. This criticism comes from: Norman, W. (1998) ‘The Ethics of Secession as the Regulation of Secessionist Politics’, in M. Moore (Eds), *National Self-Determination and Secession.* Oxford: Oxford University Press, p.41. [↑](#footnote-ref-469)
470. For example: Soutphommasane, T. (2012) *The Virtuous Citizen: Patriotism in a Multicultural Society.* Cambridge: Cambridge University Press. [↑](#footnote-ref-470)
471. Laborde, C. (2008) *Critical Republicanism: The Hijab Controversy and Political Philosophy.* Oxford: Oxford University Press. On the republican objection to the value of national identity see: Laborde, C. (2002) ‘From Constitutional to Civic Patriotism’, *British Journal of Political Science,* Vol. 34 (2), pp. 591-612; Viroli, M. (1995) *For Love of Country: An Essay on Nationalism and Patriotism*. Oxford: Oxford University Press. [↑](#footnote-ref-471)
472. To be clear, the republican account of self-determination does not provide an argument for open borders, but argues that those that have gained residency, for whatever reason, should be entitled to citizenship. It is a different political question, however, for existing self-determining groups to decide who they want to physically admit into their jurisdiction and give residency to – and thus, on republican grounds, citizenship. [↑](#footnote-ref-472)
473. Will Kymlicka makes this distinction between immigrants and indigenous national minorities claims for self-determination: Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press. [↑](#footnote-ref-473)
474. This is of course assuming that migrants had these rights elsewhere. [↑](#footnote-ref-474)
475. The just-cause theory could also argue for a highly substantive account of human rights. This would include political rights and would not be subject to the problem of voluntarism. This is a possibility for the just-cause theory’s defence, however, as Allen Buchanan has persuasively argued, a substantive account of human rights is too high a standard to be agreed upon and implemented by actors in the existing state system: Buchanan (2004), p.396-400. Such a standard would require a post-statist cosmopolitan political order where self-determination ceases to be a major concern. [↑](#footnote-ref-475)
476. Pettit, P. (1999b) [1997] *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press, p.61-63. [↑](#footnote-ref-476)
477. This is excluding the Northern Ireland political parties and withstanding the fact that the Liberal Democrats participated in the 2010-2015 coalition government and that the S.N.P. almost won a clean slate in all of the Scottish constituencies in the 2015 general election. [↑](#footnote-ref-477)
478. In the case of *Die Linke*, this party is compensated by sub-national participation in the *Bundesländer –* which is a postive aspect of the German federal system from the point of view of the republican theory. [↑](#footnote-ref-478)
479. For a domination-based justification for electoral reform see: Hayward, C. R. (2011) ‘What Can Political Freedom Mean in a Multicultural Democracy? On Deliberation, Difference, and Democratic Governance’, *Political Theory,* Vol. 39 (4), p.487-489. [↑](#footnote-ref-479)
480. Although it could be argued Scotland at this time was also subject to a weak form of arbitrary social and cultural power in the form of *Anglo-normativity* – the general and unreflective conflation of England and the United Kingdom, and its interaction with political decision-making creating a o*ne size fits all* political template. However, by itself this provides too weak a justification for claims to self-determination. [↑](#footnote-ref-480)
481. Rousseau, J-J. (2003) [1792] ‘The Social Contract’ in *The Social Contract and Other Later Political Writings,* (Eds) V. Gourevitch. Cambridge: Cambridge University Press, book two, chapter three: ‘Whether the General Will is Fallible’. [↑](#footnote-ref-481)
482. Copp, D. (1997) ‘Democracy and Communal Self-Determination’, in R. McKim & J. McMahan (Eds), *The Morality of Nationalism*. Oxford: Oxford University Press; Philpott, D. (1995) ‘In Defence of Self-Determination’, *Ethics,* Vol. 105 (2), pp.352-85. [↑](#footnote-ref-482)
483. Rousseau (2003), book one, chapter six ‘The Social Compact’. [↑](#footnote-ref-483)
484. On this and the point about the continuation of unequal political exclusion: Hassan, G. & Ilett, R. (2011) (eds.) *Radical Scotland: Arguments for Self-Determination.* Edinburgh:Luath Press; Maxwell, S. (2012) *Arguing for Independence: Evidence, Risk, and the Wicked Issues.* Edinburgh: Luath Press. [↑](#footnote-ref-484)
485. Miller (2000), chapter five: ‘Bounded Citizenship’. [↑](#footnote-ref-485)
486. Smith, R. M. (2003) *Stories of Peoplehood: The Politics and Morals of Political Membership*. Cambridge: Cambridge University Press p.102-125. [↑](#footnote-ref-486)
487. On these issues, see: Fusco, A. (2014) ‘After the Referendum: Why it can’t be Business as Usual’, *Renewal: A Journal of Social Democracy,* Vol. 22 (1-2), pp. 38-46. [↑](#footnote-ref-487)
488. It is only Nevis, however, that can secede from St Kitts. [↑](#footnote-ref-488)
489. Monahan, P. J. & Bryant, M. J., with Coté, N. C. (1999) ‘Coming to Terms with Plan B: Ten Principles Governing Secession’, in D. R. Cameron (Eds), The Referendum Papers: Essays on Secession and National Unity. Toronto: University of Toronto Press. [↑](#footnote-ref-489)
490. MacGinty, R., Wilford, R., Dowds, L, & Robinson, G. (2003) ‘Consenting Adults: The Principle of Consent and Northern Ireland's Constitutional Future’, *Government and Opposition*, Vol. 36 (4), pp.472-492. On the case of Canada, it is a matter of constitutional dispute whether or not Québec’s two attempted secessions have created a *de facto*, if not *de jure* secession right in the Canadian constitution, see: Monahan, Bryant, & Coté (1999). [↑](#footnote-ref-490)
491. Machiavelli, N. (2013) [1531] *The Discourses on Livy*, (Eds) B. Crick. London: Penguin, book one, chapter forty: ‘Of the Creation of the Decemvirate in Rome, and What Therein is to be noted. Wherein among other Matters is Shown How the same Causes may lead to the Safety or to the Ruin of a Commonwealth’. [↑](#footnote-ref-491)
492. However, these procedures can have indirect advantages for non-territorial groups or groups subject to a different source of domination, as it gives these groups opportunities to form winning coalitions with groups who can threaten use of constitutional procedures for self-determination to advance their interests and secure their civic equality, which in the absence of these procedures they may find harder to do. [↑](#footnote-ref-492)
493. On the need for a space of free non-proscribed political action, in terms of the game-like nature of politics, see: Tully, J. (2008) *Public Philosophy in a New Key.* Cambridge: Cambridge University Press, book one, chapter four: ‘The Agonistic Freedom of Citizens’. [↑](#footnote-ref-493)
494. Hirschman, A. O. (1970) *Exit, Voice, and Loyalty.* Harvard: Harvard University Press; Shorten, A. (2014) ‘Constitutional Secession Rights, Exit Threats, and Multinational Democracy’, *Political Studies,* Vol. 62 (1), pp.99-115. [↑](#footnote-ref-494)
495. Weinstock, D. (2001) ‘Constitutionalizing the Right to Secede’, *The Journal of Political Philosophy,* Vol. 9 (2), pp.182-203. [↑](#footnote-ref-495)
496. The classic republican defence of this line of thinking being: Madison, J., Hamilton, A. & Jay, J. (1987) [1788] *The Federalist Papers*. London: Penguin. See also: Levy, J. T. (2007) ‘Federalism, Liberalism, and the Separation of Loyalties’, *American Political Science Review,* Vol. 101 (3), pp.459-477. [↑](#footnote-ref-496)
497. Indeed, the preceding line of criticism also applies to veto-based forms of politics, such as those that exist in some federal or consociational forms of government. Although from the point of view of the republic theory veto politics is an improvement on the discretionary politics that can exist in unitary states, it provides the wrong fluid or dynamic solution to the non-fulfilment of the two conditions of republican self-determination. This is because it does not involve dominant political actors changing their behaviour, but rather it involves dominated groups preventing dominant political actors pursuing their aims. In this sense veto politics only *papers over the cracks* of the problem. Veto politics, however, may be appropriate for post-conflict societies, especially where dominated groups are not territorially-located – this is for the necessity of dominated groups’ political non-domination in these types of societies and the fact that the *cracks* go so deep in these societies that veto politics may be required so that dominant groups do not simply continue to behave in the manner they did before without fear of the consequences. [↑](#footnote-ref-497)
498. For example: Glaser, D. J. (2003) ‘The Right to Secession: An Anti-Secessionist Defence’, *Political Studies,* Vol. 51 (2), pp.369-386; Philpott, D. (1998) ‘Self-Determination in Practice’, in M. Moore (Eds), *National Self-Determination and Secession.* Oxford: Oxford University Press. [↑](#footnote-ref-498)
499. Although discussed in as substantive cultural-based just-cause theories of self-determination, these theorists give the best discussions of multinational states constitutionalising secession rights. See: Bauböck, R. (2000) ‘Why Stay Together? A Pluralist Approach to Secession and Federation’, in W. Kymlicka & W. Norman (Eds), *Citizenship and Diverse Societies.* Oxford: Oxford University Press; Costa, J. (2003) ‘On Theories of Secession: Minorities, Majorities, and the Multinational State’, *Critical Review of International Social and Political Philosophy,* Vol. 6 (2), pp.63-90; Norman, W. (2006) *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State.* Oxford: Oxford University Press, chapter six; Seymour, M. (2007) ‘Secession as a Remedial Right’, *Inquiry,* Vol. 50 (4), pp.395-423. [↑](#footnote-ref-499)
500. Buchanan, A. (2004) *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press, chapter nine; Buchanan, A, (2006) ‘Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession’, in H. Hannum & E. Babbitt (Eds), *Negotiating Self-Determination.* Lanham, Maryland: Lexington Books. [↑](#footnote-ref-500)
501. Philpott (1998), p.85. [↑](#footnote-ref-501)
502. Ibid, p.94. [↑](#footnote-ref-502)
503. Indeed, there are cases where states allow independence referenda but give all of the population of that state, and not just the seceding region, a vote on the matter – also predetermining the outcome. The French state did this in a number of decolonisation referenda in the 1950s. [↑](#footnote-ref-503)
504. For example, the sacrifice of Cavan, Monaghan, and Donegal from the creation of the Northern Ireland state in 1921 was a deliberate ploy by Unionists to guarantee a Protestant majority in the new state, when initially Northern Ireland was to include not six, but all of the nine counties of the province of Ulster. [↑](#footnote-ref-504)
505. This is the same argument as Bellamy’s legitimacy-based critique of Pettit’s depoliticised form of decision-making, discussed in the previous chapter. [↑](#footnote-ref-505)
506. This poses one problem that Lincoln discussed with the southern states’ secession from the union – that if all federal units have this right, this leaves the possibility that a majority of states could secede *en masse* in effect excluding some states from the union. A republican theory would need remedial protections against this. On this, see: Abbot, P. (1998) ‘The Lincoln Propositions and the Spirit of Secession’, in P. Lehning (Eds), *Theories of Secession*. London: Routledge; Wellman, C. (2005) *A Theory of Secession.* Cambridge: Cambridge University Press, chapter four. [↑](#footnote-ref-506)
507. Moore, M. (2006) ‘Globalization and Democratization: Institutional Design for Global Institutions’, *Journal of Social Philosophy,* Vol. 37 (1), pp. 21-43. [↑](#footnote-ref-507)
508. It is necessary that remedial procedural requirements exist on this underlying process also to prevent claimants redistricting certain cities and regions for their own socio-economic advantage. [↑](#footnote-ref-508)
509. Buchanan (1991), p.132. [↑](#footnote-ref-509)
510. Ibid, p.133-134. [↑](#footnote-ref-510)
511. On this see: Shorten (2014), p.112-113. [↑](#footnote-ref-511)
512. Sunstein, C. (1991) ‘Constitutionalism and Secession’, *The University of Chicago Law Review,* Vol. 58 (2), pp.633-670; Sunstein, C. (2001) ‘Debate: Should Constitutions Protect the Right to Secede? A Reply to Weinstock’, *The Journal of Political Philosophy,* Vol. 9 (3), pp.350-355. [↑](#footnote-ref-512)
513. Sunstein (1991), p.636-642. [↑](#footnote-ref-513)
514. Sunstein (2001), p.350-351. See also: Shorten (2014). [↑](#footnote-ref-514)
515. Cicero and Polybius discussed this in terms of the Roman constitution. This idea of conflict having a productive role to play in the preservation of liberty continued through Machiavelli to the idea of a separation of powers in the 18th and 19th centuries. See: Viroli, M. (1998) *Machiavelli*. Oxford: Oxford University Press. [↑](#footnote-ref-515)
516. Again this is a version of Bellamy’s criticism of Pettit, albeit in this instance it is Sunstein who is making a quasi-republican argument for depoliticisation. [↑](#footnote-ref-516)
517. Shorten (2014), p.104-106. [↑](#footnote-ref-517)
518. On this see: Canovan, M. (2005) *The People.* Cambridge: Polity; Connolly, W. (1995) *The Ethos of Pluralisation*. Minneapolis, Minnesota: University of Minnesota Press; Frank (2009); Honig, B. (2007) ‘Between Decision and Deliberation: Political Paradox in Democratic Theory’, *American Political Science Review*, pp.1-17; Näsström, S. (2007) ‘The Legitimacy of the People’, *Political Theory,* Vol. 35 (5), pp.624-658; Ochoa Espejo, P. (2011) *The Time of Popular Sovereignty: Process and the Democratic State*. University Park, Pennsylvania: Penn State Press; Smith (2003). [↑](#footnote-ref-518)
519. See: Buchanan, A. (2004) *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press; Philpott, D. (1998) ‘Self-Determination in Practice’, in M. Moore (Eds), *National Self-Determination and Secession.* Oxford: Oxford University Press. [↑](#footnote-ref-519)
520. There is a modest literature on the institutionalisation of claims for self-determination, including: Buchanan (2004); Buchheit, L. C. (1978) *Secession: The Legitimacy of Self-Determination.* New Haven, Connecticut: Yale University Press; Glaser, D. J. (2003) ‘The Right to Secession: An Anti-Secessionist Defence’, *Political Studies,* Vol. 51 (2), pp.369-386; Moore, M. (2006) ‘Globalization and Democratization: Institutional Design for Global Institutions’, *Journal of Social Philosophy,* Vol. 37 (1), pp. 21-43; Norman, W. (2006) *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State.* Oxford: Oxford University Press; Philpott (1998). [↑](#footnote-ref-520)
521. This literature is mainly critical of consociationalism, including: Barry, B. (1975a) ‘Political Accommodation and Consociational Democracy’, *British Journal of Political Science*, Vol. 5 (4), pp. 477–505; Barry, B. (1975b) ‘The Consociational Model and its Dangers’, *European Journal of Political Research* Vol. 3 (4), pp.393–412; Bellamy, R. (1999) *Liberalism and Pluralism: Towards a Politics of Compromise*. London: Routledge, p.123-129. The exception being: O’Leary, B. (2005) ‘Debating Consociational Politics: Normative and Explanatory Arguments’, in S. Noel (Eds), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies.* Montreal & Kingston: McGill-Queen’s University Press. [↑](#footnote-ref-521)
522. Bartkus, V. O. (1999) *The Dynamic of Secession.* Cambridge: Cambridge University Press, p.4. [↑](#footnote-ref-522)
523. For an example of this type of enquiry: Canovan, M. (1996) *Nationhood and Political Theory*. Cheltenham: Edward Elgar. [↑](#footnote-ref-523)
524. Laborde, C. (2013) ‘Republicanism’, in M. Freeden, L. T. Sargent, & M. Stears (Eds), *The Oxford Handbook of Political Ideologies.* Oxford: Oxford University Press, p.522. [↑](#footnote-ref-524)
525. The exceptions being: Buchanan, A. (1997a) ‘Theories of Secession’, *Philosophy and Public Affairs,* Vol. 26 (1), pp. 31-61; Buchanan (2004); Moore, M. (2001) *The Ethics of Nationalism*. Oxford: Oxford University Press. [↑](#footnote-ref-525)
526. Canovan, M. (2005) *The People.* Cambridge: Polity; Connolly, W. (1995) *The Ethos of Pluralisation*. Minneapolis, Minnesota: University of Minnesota Press; Frank, J. (2009) *Constituent Moments: Enacting the People in Post-Revolutionary America*. Durham, North Carolina: Duke University Press; Honig, B. (2007) ‘Between Decision and Deliberation: Political Paradox in Democratic Theory’, *American Political Science Review*, pp.1-17; Näsström, S. (2007) ‘The Legitimacy of the People’, *Political Theory,* Vol. 35 (5), pp.624-658; Ochoa Espejo, P. (2011) *The Time of Popular Sovereignty: Process and the Democratic State*. University Park, Pennsylvania: Penn State Press; Smith, R. M. (2003) *Stories of Peoplehood: The Politics and Morals of Political Membership*. Cambridge: Cambridge University Press. [↑](#footnote-ref-526)