Self-Determination in the 21st century

Redefining



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CONFERENCE REPORT

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Foreword

Accommodating different nations, ethnic, cultural and religious groups within the same territory is still seen as a democratic challenge for contemporary multicultural states. In an increasingly interdependent world, due to processes of economic globalization, a great number of multicultural states are experiencing grass-roots demands for recognition. This has taken the expression of an increased number of people mobilizing with a view of exercising their right to self-determination, including in Europe, where the minority protection system has been hailed as the most advanced in the world.

With the aim of exchanging ideas with prominent academic and policy-oriented experts on these very issues, and furthermore exploring new models to make the minority dimension work within the framework of multinational states, the Unrepresented Nations and People Organization (UNPO), in cooperation with the Centre Internacional Escarré per les Minories Ètniques i Nacions (CIEMEN) and the Centre Maurits Coppieters, convened an international conference entitled "Redefining self-determination in the 21th century" on 1 April 2014 at the European Parliament.

The conference confirmed that the idea of self-determination has different aspects that are both theoretically and politically relevant in the 21st century. On the one hand, individual self-determination refers broadly to the capacity of human beings to have control over their own life and to pursue a horizon of dignity and self-realization. On the other hand, the collective dimension of self-determination refers to the possibility of granting a sufficient level of self-government to groups, either by an internal or external exercise.

Drawing upon both academic frameworks and practical case studies the conference not only contributed to an increased general understanding of the concept of self-determination and its interconnectedness to minority protection, but also succeeded in situating it in the context of today's globalised world. Self-determination being one of the fundamental concerns of UNPO's Members, this conference, as part of a larger UNPO initiative focusing on the different aspects of self-determination, represents an important milestone for UNPO and its Members, and confirms the importance of engaging in constructive dialogue on this very issue in the 21st century.

Marino Busdachin UNPO General Secretary

Opening Remarks

Mr. Ramon Tremosa i Balcells, Member of the European Parliament (ALDE) Mr. Raül Romeva i Rueda, Member of the European Parliament (Greens/EFA) Mr. Marino Busdachin, UNPO General Secretary

PANEL I: Self-Determination Today: Individual's Collective Rights

Different Ways of Exercising Self-Determination: External vs Internal Dimension Michael Jewkes, KU Leuven (Belgium)

Minority Language Protection in the EU? Miquel Strubell, Open University of Catalonia (Catalonia)

PANEL II: Redefining Self-Determination: Past and Current Cases

The Case of Scotland Danny Boyle, Equality and Parliamentary Officer with BEMIS Scotland (Scotland)

Unilateral Exercise of Self-Determination Alan Sandry, Member of Advisory Scientific Council, Professor at University of Swansea (Wales)

Constitutional Regulation and Internal Community Supervision: The Case of Montenegro *Ivan Serrano, Open University of Catalonia (Catalonia)*

Closing Remarks

Panel I: Self-Determination Today: Individual's Collective Rights



Mr. Michael Jewkes



Mr. Miquel Strubell

Michael Jewkes KU Leuven (Belgium)

Miquel Strubell, Open University of Catalonia (Catalonia)



PANEL I: Speeches

Michael Jewkes KU Leuven (Belgium)

Different Ways of Exercising Self-Determination: External vs Internal Dimension

I want to read you a quote which I think points out a really important fact of the world we live in. The quote is from Ernest Gellner and he says: "To put it in the simplest possible terms, there is a very large number of potential nations on earth. Our planet also contents room for a certain number of independent or autonomous political units. On any reasonable calculation, the former number is probably much, much larger than that of possible viable States." So what should we take from Gellner's quote? I think firstly we can say the universal right to statehood for all the national groups is not viable and could potentially be very dangerous.

"There is a need for us to think of alternative forms of selfdetermination"

So I carry on with Gellner's quote: he says that "It follows that the territorial political unit can only become ethnically homogenous in such cases – where the population is intermixed – if it either kills, or expels or assimilates all nonnationals". So, he is really pointing to the danger of making national groups believe that the only way for them to experience self-determination is by producing their own homogenous nationstate.

Therefore, the second thing to take from this quote is that it does not rule out statehood in any particular case. It is impossible to have a universal right to statehood but in a particular case, provided that it can be shown that both the new state and the 'rump' state are viable entities that would respect the rights of the minorities within that mix, this option is not necessarily ruled out in any particular case. Most importantly, there is a need for us to think of alternative forms of self-determination, in order to allow national groups to exercise authority over cultural, linguistic and political questions, as well as participating in the democratic decision-making process of the 'ruler state'.

Assuming this is correct and we need to think about these alternative forms of selfdetermination, there are some questions that immediately arise. Notably, are all of these alternative forms of self-determination 'born equal', or is there some kind of hierarchy of forms with full statehood at the top and then descending through varied internal institutional models? If we do think there is some kind of hierarchy in place, can we really justify the fact that some national groups receive full statehood while other groups have to do with second-rate self-determination? This self-determination starts to look like a concept of first-come, firstserved and tough luck for the rest.

"Can we really justify the fact that some national groups receive full statehood while other groups have to do with second-rate selfdetermination?"

In order to try to answer these questions, I need to have a clearer idea of what it is that we want self-determination to do. I think that I can identify three distinct goals of selfdetermination.

The first one is to protect and promote national culture, providing the national group with the institutional tools to protect their language and their culture, to allow them to maintain a public sphere that operates in that language and culture -in education system, public services, etc. This will be particularly important when the national group in question is a minority that is dealing with a broader statewide situation of asymmetry, when there is other national groups who are much larger and who oppose a threat to the survival of their cultural and linguistic heritage.

The second goal is to democratically determine a nation's fate: self-determination allows nations to take democratic decisions that determine the future direction of the group and of its members. Once again it is particularly important when you have a situation of asymmetry, and particularly for statewide institutions are run on a basis of a pure majoritarian system, in which case the minority group can expect to be constantly outvoted on questions at statewide level.

The third goal is to provide recognition and a parity of esteem between national groups. It allows national groups to meet each other on roughly equal terms and to recognize one another as self-determined actors. I think this element of recognition is important internally within the state – you wish to be recognized as a self-determined nation by the other groups you share a state with – but also externally – you wish to be recognized as a self-determined nation by the broader international community.

I am now going to consider how four institutional models try to provide these goals:

Firstly, the model of non-territorial autonomy. The basic idea is that you have national groups which are intermingled and can be separated territorially, and that you allow them to have some autonomy over their own members but not over all individuals within the territory. It can be referred to as a "personality principle" rather than a "territorial principle".

The second model is devolution. An example would be the UK, but it could also potentially include Spain or Puerto Rico. The basic principle of this devolution model is that there is a great deal of self-rule allowed to sub-state groups, but very little constitutional or institutional change at the center.

The third model is federalism, which tries to correct these features of devolution by constitutionally entrenching the division of power between central government and subunits. Secondly, it allows for a non-proportional representation within central institutions. The idea here is to guarantee minority groups with voters within the central institutions by giving them more representation than pure integration of numbers would allow. The classic example would be the US Senate, where every State receives two senators regardless of the size of the State.

The final model is independent statehood, which does not require any explanation.

I will now consider how these four models do to deliver the three goals I suggested.

First, how do they do in terms of protecting language and culture? I think they all do a reasonable job, they all allow setting up institutions in the public sphere where the language and culture of the national group are predominant. However, I would say that devolution, federalism and full statehood do a far better job than non-territorial autonomy. Non-territorial autonomy can provide some support to the culture, but inevitably, it exists in an environment where the public sphere is shared and where different national cultures and languages are coming into constant interaction and competition between one another. Whereas in a system of devolution, federalism or statehood, where each national group has their own territory, you are able to insulate that culture and language to a certain extent. That culture and language are able to be a king on their territory.

The second goal was about democratically determining your destiny. Again, I think nonterritorial autonomy does not do particularly well, because it only allows a national group to work on questions that are non-territorial in nature. Many political questions are necessarily territorial. if we are talking about policy on roads, environment, policing or defense, it

always comes with a territorial element, so it does not allow the national group to decide their future alone. Devolution offers some improvement here, because at least on those issues where the national group is affected exclusively, they are able to make policy within their own territory. The problem is that many questions must be decided in the center: questions of macroeconomic policy, interregional redistribution, foreign affairs, immigration. The fact that devolution leaves statewide majoritarianism in place potentially jeopardizes the extent to which national group can influence policy at the central level. Federalism offers another improvement here, since it can offer a guaranty of representation of minorities within the central institutions. However, it is not an entirely independent exercise of self-determination. You still have to work alongside other groups.

"In the interdependent world we live in, independent statehood does not offer a full vision of determining your own destiny"

So we may think statehood is a great deal in terms of determining your own destiny. It may be, but perhaps not as much as we typically think. If the states, because of their position of economic or political weakness in relation to other states, ends up in a position where they are dominated or vulnerable to domination by other states, then they may not have the capacity to control their own destiny. For instance, can we say that Greece has been able to entirely control its own destiny since the financial crisis? In some cases we may wonder if federalism, and the fact that it can manage the imbalances of power, does not offer a better solution. I am wondering for instance in a case like Puerto Rico, whether an independent Puerto Rico would presumably be very vulnerable to domination by the United States, having many of their decisions influenced if not dictated by the US. Wouldn't it be better for them to be part of federal US and have two senators and many congressmen? The point here is that in the interdependent world we live in, independent statehood does not offer a full vision of determining your own destiny.

The final goal was to deal with internal and external recognition. Again here I think the nonterritorial autonomy works poorly, since a really important part of being a self-determining entity is linked to the fact of controlling your own territory, your homeland. It seems unlikely that other national groups would recognize you as a nation if you do not have your own state. It may be difficult for you to think yourself as a fully fleshed nation if you do not have your own territorial space. Devolution I think also does quite badly in terms of recognition, as the minority's constitutional right to self-determine is not recognized and the autonomy that is in place is often granted by the statewide parliament, which tends to be dominated by the majority group of the state. So, to a certain extent, it is bad in terms of establishing recognition and esteem between groups. Federalism here does a little better. It can potentially provide some constitutional recognition of the equal status of constituent national groups and of their right to selfdetermine. However, where it potentially falls down is on the international element of recognition. Typically, only states are invited to become members of international organizations such as the UN, NATO, EU, FIFA and Eurovision Song Contest. Actually, some of these seemingly trivial elements are quite important in terms of being recognized by other populations as a nation: to be seen in the Olympics, in the World Cup or whatever it is, is important in terms of external recognition.

"The best thing to do might be to seek out ways to improve the international recognition of sub-state federal nations."

To conclude, non-territorial autonomy is likely always to be sub-optimum in terms of providing self-determination. In some cases it may be the best we can do, but we should not keep ourselves from doing more than that. Devolution I think is likewise flawed, due to the absence of effective shared rule mechanisms in the central institutions of the state, and in terms of the lack of recognition that it can provide. In some way I think it is worse actually, because it seems that conditions for more are in place, but what is lacking in most cases is a political will. Federalism I think can be a good option, but it potentially falls short in terms of international recognition of the national group. Therefore, I think that statehood remains the gold standard of self-determination, but it may not be as good as some national groups think it is. It will not always offer a complete opportunity to determine their own destiny. Given the difficulties of implementing a world of independent states, the best thing to do might be to seek out ways to improve the international recognition of sub-state federal nations.

This brings us back to the distinction between internal and external self-determination. External self-determination, in particular, seems to carry dual meaning. On the one hand it is taken to mean full independent statehood, while on the other hand it is taken to mean external recognition by other states within the international community. These two elements are often taken to be synonymous, but what I am suggesting is that they must be separated. We should seek to understand external selfdetermination in the sense of recognition and then extend that recognition to groups who do not and/or cannot have a state of their own. How to achieve this – Europe of regions? World Cup of nations not states?

Minority Language Protection in the EU? Miquel Strubell, Open University of Catalonia (Catalonia)

If we are talking about self-determination, we should not be talking about these supranational organizations, we should rather be talking about what goes on at the grassroots, at the local community level, and to what extent that community can organize its own future, its own social, cultural and political environment.

"Language is the be all and end all of an institution"

My reflection was that we could go through what the EU has to say about minority language issues, but then I would rather go into a case study, the Catalan case. However, I will not suggest it is a typical case, as I think we are an exception in many ways in Europe right now.

What does the European Union say about this? In the Charter on fundamental rights, one article stipulates that the Union will respect religious, cultural and linguistic rights. But what does respect mean? It is very different for an organization to respect religion than it is to respect languages. An institution can respect religion just by keeping out of the issue; likewise, respecting cultural diversity can mean trying not to be fixed to one particular cultural point of view.

Language is the be all and end all of an institution; you cannot remove language from an institution. Any institution has to make a linguistic option, it can chose one language or up to 20 languages, but it cannot respect linguistic diversity by using every single language spoken in Europe. The Union can say it respects linguistic diversity, but every time it opens its mouth, it is not respecting linguistic diversity because it is impossible in practice. We could say the same about respecting linguistic diversity in Spain for instance, where the legal framework gives priority to the language of the majority group. There is another issue that the EU raises in terms of national minorities: the Copenhagen criteria, which were used as indicators, which candidate countries wanting to join the EU had to fulfil. One of these criteria was the respect of national minorities. One of these countries rather sarcastically said that the European Union was expecting a treatment of national minorities which the members have never respected themselves. There was a kind of double standard there being applied.

"The more a process develops towards integration, the greater the threat on the controlling majority group."

I think it would not be fair to end this treatment of the EU without mentioning the fact that the Commission has a page on its website about regional minority languages, about what the Union feels about it and what it does for it. But what it does for minority languages goes no later than 2004. Maybe in the past there was a greater sensitivity for supporting minority language communities, but recently they have not really found many examples. There are initiatives like ELEN, a network of minority language communities, which is an NGO that has not received any support from the EU. Time will tell if they fulfil the requirements to get support and to be able to do their work.

The more a process develops towards integration, the greater the threat from the controlling majority group. You can see this in Spain very clearly and I think you could see it at the European level. You can see it especially well if you come from a smaller language community. If you come from a larger language community, I think there is a lack of comprehension of what minorities are talking about. It is hard for my left-hand side – my English side – to understand what my right-hand side - my Catalan side - is talking about. Because from an English-speaking perspective, language is just a matter of communication, while for my right-hand side, it is communication with the members of my group. If I am deprived of being able to use English, I'll go straight to the quote: "who do they think they are?" but if I am deprived of speaking Catalan by a policeman, by a customs officer or by a judge in the court, I probably shrink and keep quiet about it.

I think this particular aspect is what I would like to link to the issue of minority languages on a more local level: that is in many cases, if we allowed the Bretons or Occitans or the Sardinians to determine themselves in terms of their linguistic environment they would not. The rush towards the majority language would be even faster than it is and has been. The dominant discourse is to make minorities feel they are a minority. Even the word "minority" sounds like something you really want to be "ashamed of". There is a constant trend towards convergence with the majority discourse, the majority culture, the mainstream language. You can see this in a beautiful study done right at the end of the last century in France, which shows how all the regional languages have declined during the last hundred years, a very sad visual expression of what you can notice.

"The dominant discourse is to make minorities feel they are a minority."

In the Catalan case, the increasing will for Catalonia to become independent does have an important linguistic element, because the central government has its own philosophy, its own ideology, and this is not an accommodating ideology. The state structures are monolingual in spirit and in ideology, and anything that is not monolingual is suspect and can be viewed as treachery. I think that is one of the reasons why in Catalonia there is such a strong movement towards independence. May I say it is Spain's fault - it is the failure of Spain to recognize its internal diversity and to accommodate it that has led the majority of Catalans asking to become an independent state.

The clash between two ways of looking at democracy and the way people live together has

been made very evident. My only regret if Catalonia becomes independent, it is that at least 3 million speakers of Catalan will remain inside a system that I doubt will be more accommodating than it is now, as regards linguistic diversity.

Panel II: Redefining Self-Determination: Past and Current Cases



Danny Boyle Equality and Parliamentary Officer with BEMIS Scotland (Scotland)

Alan Sandry Member of Advisory Scientific Council, Professor at University of Swansea (Wales)

> Ivan Serrano Open University of Catalonia (Catalonia)

PANEL II: Speeches

Danny Boyle

Equality and Parliamentary Officer with BEMIS Scotland (Scotland)

The Case of Scotland

We are very aware in Scotland that the eyes of the world are currently resting on us as the Independence Referendum date approaches on September the 18th when the nation shall answer the simple yet complex question; 'Should Scotland be an independent country'?

The Better Together campaign, advocates of the NO vote believe that devolution as part of the UK gives Scotland the best of both worlds. An ability to govern devolved areas of competency such as education and health while maintaining the capacity to deal with global challenges as part of a greater union increasing our standing, prowess and importance on the international stage.

"The Yes Campaign clearly believes that 'Decisions about Scotland, will be taken by the people who care most about Scotland, those who live and work here'."

The YES campaigns aspiration is centred upon a perceived democratic deficit i.e. successive Conservative Governments who do not have the political mandate in Scotland forming governments unilaterally or as a coalition within the structure of the Union. They believe that 'Decisions about Scotland, will be taken by the

people who care most about Scotland, those who live and work here'.

"Well done, this is a good day for Scotland, and a good day for Britain and the United Kingdom that era of centralized government is over". These were the words spoken by former British Prime Minister Tony Blair on the 13th December 1997. The British Labour party had romped to victory in the 1997 British general election crushing their Conservative rivals at the Ballot box and bringing to an end 18 years of Conservative Government.

The conservative governments led by Margaret Thatcher and latterly John Major had become a toxic brand in Scotland with a series of policies which were rejected and criticised by the Scottish electorate imposed upon us, this manifested itself clearly in 1997 when the conservatives finished with zero Scottish representatives.

I vividly remember the sense of excitement which accompanied this Labour election landslide victory and this momentum was carried into the enactment of a manifesto pledge which promised to hold a referendum on Scottish Devolution.

The referendum took place in September 1997 and a huge majority some 74% voted in favour of the re-instatement of the Scottish Parliament. In 1998 the Scotland Act was passed which gave the parliament legal authority and so it came to pass that on the 12th may 1999 the Scottish Parliament was reconvened.

It is important to note that the Scottish Parliament was reconvened as opposed to created. Scotland had had its own parliament and systems of governance prior to the act if the union in 1707 and the political atmosphere in which the 1707 act was created and signed is a topic of intrigue that I unfortunately do not have the time to dwell on today.

I have lived my entire political consciousness with a Scottish Parliament and its benefits are clearly evident. I was 12 years old when the Parliament was reconvened and it has had a tangible positive impact on the Scottish People both in terms of legislative and policy developments and broader public engagement. In very simple terms its geographical location, naturally in Scotland makes it more accessible than Westminster which is situated in London. This perception of 'closeness' encourages communities and citizens to engage with the Parliament and parliamentarians in a variety of capacities.

Consecutive Scottish Governments have passed legislation on areas of devolved powers which have been democratically reflective to the needs and aspirations of the Scottish people:

- Free personal care for the elderly
- Free prescriptions
- The smoking band
- Travel for elderly
- Free higher education for Scottish students

The current Scottish Government lead by the Scottish Nationalist Party, a leading protagonist

in the YES campaign outline within this 'WHITE PAPER – The Case for an Independent Scotland' why they believe that Scotland should be an Independent Country.

"I have lived my entire political consciousness with a Scottish Parliament and its benefits are clearly evident."

"The central purpose of Independence is to make life better for people living in Scotland, the Scottish Parliament and government would always be able to put the interests of the people of Scotland first. We only have to look at the track record of devolution since 1999 to know this is the case. These powers have been good for Scotland but in those areas controlled by Westminster there has been many costs for families and communities in Scotland. Independence means that people in Scotland will take responsibility for their own future in their own hands, that they will also get the social and economic powers that any country needs to build a more prosperous and viable society. That will demonstrate that Scotland can afford to be Independent"

There has been recognition from individuals with the Better Together campaign including British Prime Minister David Cameron that Scotland has the ability to function successfully as an Independent country, the question therefore in the context of self-determination is for the citizens of Scotland to consider the best constitutional framework in which to achieve the best outcomes for the people of Scotland. Another element of the Independence referendum relevant to this over-arching theme of self-determination is the broadening of the electorate for this particular vote.

The voting age in Britain for general elections, local authority elections and Scottish parliamentary elections is 18 however for this single vote both 16 and 17 year olds will be able to participate. The basic philosophy of this development is that this generation will inherit the decision of the referendum either way and therefore should have a say in its outcome.

"A conservative government is formed at Westminster which has no political mandate in these areas but enacts welfare policy which is acutely troublesome for many families and individuals."

Trends are developing in terms of the broader campaign which point towards a significant September 18th. turnout on Scottish Parliamentary voter turnout has plateaued at around 52% for elections since the 60% turnout for the devolution referendum in 1997. Indications are that the turnout in September will be upwards of 80%. In light of this there is certainly a wild card, previously unaccounted dynamic of the electorate who will have a significant bearing on the outcome in September.

One of the grassroots elements of the YES campaign 'The Radial Independence Campaign' have been actively targeting working class areas across Scotland with traditionally low levels of democratic engagement. Communities such as Easterhouse and Castlemilk are examples of these areas which continue to score highly on the inequality index in Britain despite having solid representation from the traditional left of centre party in Britain, Labour. These challenges are exacerbated when a conservative government is formed at Westminster which has no political mandate in these areas but enacts welfare policy which is acutely troublesome for many families and individuals.

The disengagement with politics in general can be traced to this variable reflected that across the UK in voter turnout trends that their vote is 'meaningless' 'nothing ever changes'...

The unique aspect of the referendum in that it is an in-out question has galvanised YES campaign political activists to articulate that this is 'their one chance to vote for meaningful change'. To give a bloody nose to what is perceived to be an out of date, out of touch, turgid system of politics separated by party colours and semantics as opposed to ideology and philosophical interpretation.

The slogan that the decisions for Scotland will be 'Taken on the streets of Scotland as opposed to playing fields of Eton' is a direct attack on what is perceived to be an out of touch political establishment, cabinet of multi-millionaires in Westminster who know little of the realities of life in Scotland for a vast proportion of the population. There is a recognition and consensus that the YES campaign has more successfully engaged at a grassroots level and that this strategy will bear fruit in the final outcome as opposed to the mainstream media, government and think tank polls. From my perspective the legacy of the Independence referendum can only be a positive one. If Scotland becomes an Independent country I have absolute faith that it has the ability to sustain itself and prosper. If the will of the people is to remain part of the UK then we will have a new generation of people and youth re-engaged with the political discourse, discussing, debating and continuing to campaign for a more equal and socially just Scotland. There is already a general consensus that the status quo cannot and will not remain, there will at a minimum be a further devolution of powers to the Scottish Parliament which will be utilised to fulfil the aspirations of the Scottish electorate and that can only be a positive outcome.

"The legacy of the Independence referendum can only be a positive one."

Alan Sandry

Member of Advisory Scientific Council, Centre Maurits Coppieters (Brussels) and Professor at University of Swansea (Wales)

Unilateral Exercise of Self-Determination

We have recently established a European Institute of Identities and I think it is vitally important that we recognize individual identities, as well as, collective identities of people. We have done this on a European stage but, obviously, we do look at identities on site. I think it is vitally important that the UNPO is representing nations and peoples. Sometimes we get lost in our discussions of nations and states and actually forget about the peoples coming together. Obviously, we recognize that some people around the table here today are fortunate in a sense that their peoples have a greater sense of self-determination and have achieved more in political terms than others. So we will always recognize that there are many people struggling around the world, thus being

critical is vitally important, otherwise we will make no progress forward.

If you look at Wilson's 14 points that came out in 1918, where he talks about mutual guarantees of political independence and territorial integrity, the key word there is 'mutual'. When you look at self-determination, it has to have a mutual element; it has to be about people

"Self-determination has to have a mutual element; it has to be about people working together and respecting each other." working together and respecting each other. You also see it in 1945 with the United Nations Charter, which talks about developing friendly relations among nations based on respect of the principle of equality on self-determination. It also talks about the self-determination of peoples: it is not the self-determination of nations, but it is actually "peoples". Again, it is going back to the idea of the community and the collective, whatever a collective may be?

Then, in the Universal Declaration of Human Rights in 1948, article 15 states that everyone has a right to a nationality, no one should be arbitrarily deprived of a nationality or denied the right to change nationality. I think this is again something really important, especially when people have been told by hegemonic powers and forces that they have not the right to their nationality: "you are not as important as we are". Here this is the idea of freedom of movement and freedom to take on-board new nationalities.

Following that, we saw a period from 1946 to 1960, when we saw a deep decolonization of Africa and Asia, with the creation of new nations. Now we are also about to see, in Europe and in other parts of the world, the emergence of new nations, and I think we will see Scotland as the first of those coming in September. We are on the verge of something which is going to change everyone's expectations and everyone's ideas.

Within self-determination, individual freedoms will always be prominent. The notion of the "self" in self-determination is very important. Here we go back in a sense to the basis of liberal philosophy: the individual should be prominent in all of this. I would say that community development is very important and should be encouraged. The plurality in citizenship is essential: the individual and the collective coming together and working together.

What I would argue for is that selfdetermination should be encouraged by whoever pushes it forward, but what we really want is the idea that there is a democratic conviction, there is some support, some idea of democracy. It may be a history of democratic conviction by the nations or peoples, or it could be a willingness to accept new democratic practice, in a case of a nation emerging, for example, from totalitarian rule. But that should ensure the acceptance of self-determination by other actors, who are willing to be democratic and transparent. Then I think that those movements should be supported. Also, I think if the peoples' call for self-determination is illiberal, for example if people want to set a new society but they want it to be a racist society, or they want it to be a homophobic society, then I think those claims are not justified.

"Be it a nation or a nation-state or a group of people, it can be very useful in political and legal terms to draw up a constitution that contains your values"

One thing I think is important is the setting up of constitutions. Be it a nation or a nation-state or a group of people, it can be very useful in political terms, in legal terms, to draw up a constitution that contains your values, that contain your ideas, that put across to people of the world who you are and what you represent. It does not have to be a particularly complicated constitution, it could be a statement of values, the "10 Commandments" let's say: this is who we are and this is what we see for our society. So a setting up of a constitution within peoples or within nations that reflects civil society in its broadest sense – young and old, male and female, multicultural, multi-ethnic – can take your arguments forward.

In my own country, Wales, the arguments are about devolution and how useful devolution is. If you have got no political power, then devolution seems a very good thing. But devolution in a UK sense is actually a state-down method of governance. Devolution has been set up by the UK government. It allows certain limited self-determination but it is restricted, so in a sense it is a halfway house: you are halfway there, but you are halfway back to the status quo.

"Through everyday interaction of peoples, you enforce selfdetermination, just by talking to people, meeting people, advertising your own community."

In international terms, it only allows extremely limited options. So you can be a member of the Committee of the Regions, for example, but you cannot have full EU membership if you are a nation like my own. Also, of course, when represented abroad, you are under the flag of the UK state, and again this is very restricting. So the answer lies in forms of para-diplomacy: through everyday interaction of peoples, you enforce self-determination, just by talking to people, just by meeting people, just by advertising your own community. Through that, you gain not just knowledge about other people but you also create an environment, which is vitally important for the self-determination of peoples, which is based upon mutual respect and egalitarianism. So if you have limited political power, you have to extend it in another way, not politically but culturally, linguistically, and so on.

One of the options we have been discussing in the UK is federalism. In a sense it will be a form of devolution-max, as in Scotland if the referendum says no, or it will be independence, which I believe will be the option for Scotland. The vital thing that is not what happens to Wales but what happens to England: how does England respond to this? I think there will be a reawakening of civic nationalism, which is a thing that is missing in England. I think it is probably represented in other European nations, but England desperately needs a civic nationalist political organisation. Whether people within the Labour Party can fulfil that role, I am not quite sure, because they have invested themselves within unionism, and within British nationalism, so it will be very, very difficult for the Labour Party to now come out as a civic nationalist party. Possibly the Liberal Democrats in England could respond, they may develop into a sort of English multilateral state civic nationalist party. It will be interesting to see what happens.

I think it is important again, as people who want their ideas reflected, that we work with organizations like the CMC, and UNPO, that we work and we discuss and we pass around ideas in a democratic context. It is important to get all

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Constitutional Regulation and International Community Supervision: The Case of Montenegro

We have seen a lot of different approaches and a lot of relevant elements to think about selfdetermination, whether at an internal or external level, whether by an agreement with the state, as in Scotland, or following a unilateral decision. What I want to do is to focus on two different theoretical aspects. The first one is the idea of regulating secession at the level of the state i.e. regulating the secession constitutionally. The second one is to what extent we need some references at the international level, i.e. regulating secession at the international level from the perspective of international law.

"Most states more or less explicitly forbid secession to preserve the territorial integrity of the state."

The idea of regulating secession internally at the level of the state is strongly recommended by normative political theory, but is also justified for some pragmatic reasons. However, we could say that it is actually a scarcely followed advice, that is, we find very few cases introducing constitutional regulations of secession. Most constitutions do not include such a clause and some historical cases that did were not fullyfledged democracies (such as the USSR or Yugoslavia) even though they eventually reinforced the legitimation of secession processes.

What we find is in fact that most states more or less explicitly forbid secession to preserve their territorial integrity. Moreover, it has become a matter of concern for some international institutions such as the European Court of Human Rights, because sometimes, these provisions curtail some fundamental rights such as freedom of expression or freedom of association.

However, from a normative perspective, introducing a clause regulating secession at the state level would provide some good incentives for the stability and viability of the existing state. In my view, concerning this option of introducing a constitutional regulation of secession, it should follow two criteria affecting both the existing state and the potential secessionist unit. On the one hand, the regulation of secession in the constitutional framework should be difficult enough to prevent behaviors opportunistic or 'ethnic entrepreneurship' using it as a bargaining tool in the political process. On the other hand, introducing such a regulation should be feasible enough to be put into practice by the potential secessionist unit. That is, these requirements included in the constitutional regulation of secession should not impose criteria that would be practically impossible to be met by the

secessionist unit. This would include, for instance, imposing unfair statewide majorities, discretional veto power by the central government, the central parliament, or a coalition of other regions or actors within the state. In other words, it should prevent the so called problem of the "permanent minority". Mechanisms introduced within the constitutional framework must be at the same time protective for the state but also feasible for the potential secessionist unit. It has to be a real option if there is a claim for self-determination within a given society.

When talking about regulation of secession at a constitutional level we have to put the burden of proof not only on the secessionist unit but also on the behaviour of the state, in order to reach a fair regulation of these controversial issues. We should focus on both actors, on both parts of the political question.

Talking about the state, in a minimally just democracy, we could argue that a democratic state should have the moral duty to handle political conflicts by democratic means and in fair terms. By a constitutional clause regulating secession, by a specific legislation or even by a political agreement as in the case of Scotland for instance, a democratic state has the duty to respond to democratic claims, which in fact, and this is important to remind, are a demand made by a part of its own citizens. Scottish citizens are part of the UK and their state has to respond in democratic terms, it cannot simply solve the problem by rejecting the possibility of negotiation or just negating the existence of a conflict. Failure to address the situation in fair terms is referred to in the literature as a failure of recognition.

On the other hand, we should put the burden of proof on the side of the secessionist unit too.

Here, in my view, we should follow the three basic criteria that have been traditionally raised by the literature dealing with secession from a theoretical perspective. These criteria in a sense are aimed at providing with strict criteria following the elements mentioned before of being state-protective but also democracysensitive.

"A democratic state has the duty to respond to democratic claims, which in fact are a demand made by a part of its own citizens."

To establish the legitimacy of a possible secession, we could combine these three classical approaches of the theory of secession dealing with the creation of new states.

The first one is the democratic approach, the so called associative or plebiscitarian perspective, that is the possibility of secession must be expressed as a morally acceptable and collective democratic decision. In this sense, it must follow a number of criteria: for instance, it must be an inclusive project, it must be based on civic values rather than ethnic. The second one is to respect and promote human rights at both individual and collective levels. Here we find as well this interesting vision of the idea of a relation between nations and peoples: at the end of the day, nations are formed by individuals, so individual human rights must be taken as the starting point when thinking about the possibility of creating a new state. The third one is a focus on welfare, providing a relation of individual dignity and self-realization within the polity. The last one is that it needs to be developed by means of a fair and democratic

process of decision, following normative principles underpinning international law, given the absence of a positive regulation.

The second classical approach of theories of secession is the so called communitarian perspective: we could refer to it as the national one. In this sense a case should prove that it comes from a society with a significant level of self-recognition as a *demos*, a self-recognition as subjects able to take their own decisions about these constitutional or institutional expressions of democratic will. Secondly it should prove that it comes from an historic community that has consistently expressed this will for a recognition and self-government. In order to prevent ethnic entrepreneurship it must prove to some extent that it is a long lasting self-recognizing community expressing the will of selfdetermination, of self-government.

"An international regulation of secession should aim at preventing pervert incentives, such as problems of permanent minorities, ethnic entrepreneurship, or opportunistic behavior."

Lastly, from the dominant approach in theories of secession, which is the remedialist approach, the secessionist unit must consistently prove as well that it has explored all the democratic and legal channels available in order to find a stable accommodation within the existing state. This also includes the first element with which I began my intervention, that is the proposal for a constitutional clause or national legislation regulating the possibility of secession. This must be one of the key-elements to assess when "all" democratic and legal channels have been explored by the secessionist unit thus opening the possibility for a legitimate unilateral secession.

From the perspective of international theory, following again the work of Allen Buchanan, we can discuss some basic criteria that should be used as the basis for an international regulation of secession. The first one is that it should follow moral principles of international law, not existing principles -as they do not exist as suchbut at least moral principles that underpin international agreements and legislations. The second one is that a regulation must be established in realistic terms, that is -again- that it must be both state-protective and democracysensitive in the sense that it does not impose to the secessionist unit impossible or unfair criteria to be met. The third element of these criteria is that they should aim at preventing perverse incentives both at the state and substate level, such as problems of permanent minority, ethnic entrepreneurship, or opportunistic behavior. The fourth one is that regulation should have a universalistic pretention, it should be aimed at not only regulating *de facto* situations but also having a global vision to be a reference for dealing with these situations.

If an international regulation should be developed following these criteria, it has not only to prevent perverse incentives but also to provide positive incentives for all the actors involved when these conflicts arise. In this sense, such a regulation would not only be a regulation of secession at the international level, but would also involve the protection of autonomy arrangements at the state level. It would offer a possible outcome in terms of stabilizing the existing state and in fact it would also prevent secession because the state would be obliged to follow a certain behaviour. This international regulation would offer some positive elements, playing the role of a broker of autonomy agreements between the state and the sub-state units. It would also monitor the compliance of these agreements, and thirdly it would provide this impartial judgment whenever disputes may be met during the implementation of these arrangements.

One of the problems we face when thinking about international regulation is -as raised by the normative literature- the existence of a truly impartial referee. This is a relevant topic to keep in mind: existing references of international law or recommendations by international organizations actually come from entities where only existing and recognized independent states are full members. This is obviously a challenge for a fair regulation of these issues. Of course this is not to say that some international organizations do not include the regional dimension – for instance the Congress of Local and Regional Authorities in the Council of Europe, or the Committee of Regions and Local Authorities in the European Union, but this is an important element to keep in mind in order to give voice to all the actors involved in these situations.

Where are we today? Regarding the classical references and discussions on whether or not existing international law gives us some answers on how to regulate these conflicts, there has been a number of relevant developments in the last few years, which are interesting to take into account in order to understand how these processes of self-determination should be addressed. While there is not a fully-fledged positive regulation of international law, we have some potential guidelines that would be part of the debate if such a positive regulation would

come into being. The first one is obviously the opinion of the International Court of Justice on Kosovo. I am sure all of you have read this and have your own "opinion on the opinion" of the Court, but here I would like to highlight three elements. The first one is that the opinion does not generate a positive regulation of secession. That is to say, it does not recognize the existence of a unilateral right to secession. The second one is that it nevertheless acknowledges that secession does not go against international law. The third one, is that the opinion does not accept the principle of territorial integrity of the state as an argument against secession. The reason is that the principle of territorial integrity of the state is a matter of inter-state relations, and not a matter of sub-state or state versus sub-state relations.

"The principle of territorial integrity of the state is a matter of inter-state relations, and not a matter of sub-state or state versus sub-state relations."

Now I will finally talk about the case of Montenegro. Montenegro is interesting because we find a combination of constitutional regulation of secession and intervention of the international community. As you know, a clause was included in the constitution of Serbia and Montenegro that allowed Montenegro to withdraw from the union, following democratic standards of freedom of association, neutrality of the government and so on. For what concerns us today, I think that three elements are important concerning how to reach democratic decision following the previous criteria. The first one is referred to the level of participation in such processes of popular consultations. The second one is whether or not a qualified majority should exist. The third one is the franchise, which was to a great extent controversial in the Montenegro case, or we have also the interesting option in Scotland where sixteen and seventeen-year-old citizens can vote or also the definition of the electoral franchise, which is based on the local and not the parliamentary elections.

I will focus for reasons of time on the first two dimensions, that is the level of participation and to what extent we need a qualified majority. Talking about the required level of participation, the European Commission for Democracy through Law, the so called Venice Commission, recommended that the majority of the electorate took part in the consultation. This would be in accordance with international standards. I think this is the most unproblematic element, as these processes usually involve high levels of mobilization and participation easily meet these criteria, which usually introduce a treshold of a 50% turnout. The majority requirement is more controversial in my view. Here we have two options according to the recommendations of the Venice Commission. The first option is a qualified majority of voters, of those taking part in the referendum; and the second one is a treshold percentage of the total electoral census. In fact, very few cases at the international level include requirements in this sense, but the argument put forward by the Venice Commission is that some of those regulating this aspect deal precisely with issues of territorial integrity of the state or selfdetermination, not only to sub-state units but also to the very existence of the state. In the report produced for the referendum of Montenegro, the commission recommended a qualified majority, namely the first option. However, it acknowledged that no international standard existed to justify this provision. The reason argued was that creating new states is a transcendental decision, and for that matter a reinforced majority could be seen as a reasonable requirement.

However, we could easily agree that there is a wide range of other transcendental decisions in reforming a constitution for which we can impose super majorities, for instance when dealing with human rights, the protection of minorities, certain individual rights such as basic freedoms of expression and association, the right of women to control their own bodies, etc. In fact, the commission expressed some concerns about measures imposing reinforced majorities as they could create some perverse incentives, while protecting rights can be addressed in other more effective ways -for instance, committing to existing international regulations on the protection of individual and collective rights. Introducing these kind of criteria in a referendum could result in controversial situations that would be very difficult to manage. That would also introduce some perverse incentives for the actors involved in the process, for instance promoting not to participate in the election or behaviours not following the principle of neutrality of the state. The Commission also mentioned the canadian case, which is of course very popular. In fact, the 1995 referendum in Quebec was accepted at the state level based on the simple majority rule, even though the later Clarity Act imposed a more restrictive -and controversial- procedure. In the case of Scotland, no majority requirements have been established for the referendum by the Electoral Commission. In the case of Montenegro, the final recommendation of the Venice Commission was in fact to invite all political parties to negotiate the solution, but

the priority was given to the acceptance within Montenegro, while the famous tax quota of 55% of approval was a political decision promoted by the EU foreign policy chief, Javier Solana.

Moreover, in a later report issued by the Commission a few months later, "A code for good practice in referendums", the final recommendation was not to include approval tresholds, as a negative consequence of these provisions could cancel out their potential benefits, for instance the necessity to produce a clear mandate from the electorate involved in the decision.

As a conclusion, a constitutional clause regulating secession could prevent grievances and opportunistic behaviors in state and substate relations. In fact it is a stabilizing measure for the state. The empirical evidence shows in fact that states not dealing with self-government demands in democratic terms or that reject the possibility of regulating it through democratic channels eventually experience stronger secessionist tensions. Thus, from normative and also pragmatic reasons, it is good for the state to regulate these issues. Lastly, international regulations introducing fair and impartial democratic guidelines are needed, and this is particularly important for the EU. If the EU wants to be something more than an intergovernmental organization, it cannot be silent on these issues and most promote democratic ways to address the question of selfgovernment and self-determination within its own boundaries.

Speaker Profiles

Michael Jewkes

Doctoral researcher at KU Leuven (Belgium)

Michael Jewkes was born in England and is a doctoral researcher at the KU Leuven Institute of Philosophy. His work is primarily focused on questions of justice in multinational environments, as well as the normative potential of federalism to provide institutional solutions for the accommodation of sub-state national minorities. He holds a Master's degree in political science from Universitat Pompeu Fabra, Barcelona, and a Bachelor's degree in politics from University of Newcastle upon Tyne

Miquel Strubell

Open University of Catalonia (Catalonia)

Miguel Strubell is an expert in the field of regional and minority languages, education and multilingualism. He is the executive secretary of Linguamón–U.O.C (Open University of Catalonia) Chair in Multilingualism (Barcelona). Strubell ran the Catalan government's language promotion office and research department from 1980-1999. He was the coordinator for several EU projects, including Euromosaic I and II reports, over 15 language use surveys, Adum: a project offering information on EU programs relevant for the funding of minority language promotion projects, and European Parliament reports: 'Lesser-Used Languages in States Applying for EU Membership' (2001) and 'The EU and Minority Languages' (2002).

Danny Boyle

Black & Ethnic Minorities Infrastructure in Scotland, BEMIS (UK)

Danny Boyle is the Parliamentary and Policy Officer with BEMIS Scotland. He graduated from Glasgow University in 2007 with a degree in Theology and Religious Studies. Previously he was the Project Manager of the Dept. Foreign Affairs IGESP (Irish Government Emigrant Support Programme) funded 'Irish Heritage Foundation Scotland' and General Manager of integrated 'Indepen-dance' an creative movement company. In January 2014 he returned to BEMIS Scotland with whom he had been Capacity Development and Research Officer from 2010-11. Danny has lived all of his political consciousness with Scottish а Parliament and through his work and experience at both a grassroots and professional level he has a perfect vantage point to analyse the referendum and the impact of devolution in Scotland.

Alan Sandry

Member of Advisory Scientific Council, Centre Maurits Coppieters (Brussels) and Professor at University of Swansea (Wales)

Alan Sandry is a Research Fellow at the European Institute of Identities at Swansea University, Wales. He is also a Research Associate at the Institute of Contemporary European Studies, Regents University London, England. He is the co-author of the well-known text Devolution in the United Kingdom (Edinburgh University Press, 2007). In 2011 he published Plaid Cymru: An Ideological Analysis (Welsh Academic Press), a substantial book on the ideological evolution of Plaid Cymru. It also includes some important insights into the history of nationalism in Wales. It is a valuable addition to the growing literature in this exciting field.

Ivan Serrano

IN3-UOC (Open University of Catalonia)

Ivan Serrano is a political scientist and researcher at Open University of Catalonia (Catalonia). In 2012 he won the XVI Ramon Trias Fargas Award for his essay, which addresses a question raised with increasing persistence in the Catalan political debate: Considering its difficulty in finding a satisfactory place within contemporary Spain, could Catalonia be considered a legitimate case of unilateral secession? The paper covers several examples, from Kosovo and Montenegro to Scotland and Quebec, which are often provided as parallels of the Catalan case, and finally states the grounds for the argument that Catalonia could be a legitimate case of unilateral secession.

About the supporters

Raül Romeva i Rueda

Member of the European Parliament, PhD in International Relations and Graduate in International Economics.

Raül Romeva worked as a researcher and research coordinator at the Early Alert Unit of the School of Culture of Peace (Autonomous University of Barcelona), as well as a researcher on peace and disarmament issues at Catalonia's UNESCO Centre. He was also a senior assistant to the UNESCO Representative in Bosnia-Herzegovina. He was elected to the European Parliament in 2004 and re-elected in 2009 as head of the list of Iniciativa per Catalunya Verds. Presently, he is Vice-President of the Greens/EFA Group, member of the European's Parliament Committees of Women's Rights and Gender Equality and of Fisheries, and substitute Member of the Committees on Civil Liberties. Justice and Home Affairs and of Employment and Social Affairs. Furthermore, he is member of the Delegations to the Euro-Latin American and

to the Euro-Mediterranean Parliamentary Assemblies and the EU-Central America relations.

Ramon Tremosa i Barcells

Member of the European Parliament, PhD in Applied Economic Analysis

Ramon Tremosa is a graduate in economics (specializing in business economics) from the University of Barcelona. He completed a Master's degree and Doctorate in Applied Economic Analysis from the University of Barcelona. He was the Secretary-General of the Ministry of Social Welfare in the Generalitat (Regional Government) of Catalonia. He also has published articles in various academic journals as well as in the "Avui" daily newspaper and the "El Temps" weekly, amongst others. He is a member of the Convergència Democràtica de Catalunya party, whose aim is to promote people's well-being and to create a fair, united and free society.

About the organizers of the conference

The Unrepresented Nations and Peoples Organization (UNPO)



The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent, and democratic membership organization, founded in 1991. Its members are indigenous peoples, minorities, and unrecognized or occupied territories who have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find nonviolent solutions to conflicts which affect them. Although the

aspirations of UNPO Members differ greatly, they are all united by one shared condition – they are not adequately represented at major international fora, such as the United Nations. As a consequence, their opportunity to participate on the international stage is significantly limited, as is their ability to access and draw upon the support of the global bodies mandated to defend their rights, protect their environments, and mitigate the effects of conflict.

Centre Internacional Escarré per les Minories Ètniques i Nacions (CIEMEN)



CIEMEN is a cultural, not-for-profit, non-governmental organization. CIEMEN began its activities in 1974, and was officially registered in Italy in 1975 and in Catalonia in 1978. CIEMEN exists to combat some of the most fundamental and challenging problems affecting the peaceful co-existence of individuals and communities in Europe and beyond. These include problems stemming from a misunderstanding and refusal to accept so-called ethnic minorities and national communities, and the people behind

these terms, as well as problems, which degenerate into phenomena as appalling as racism, xenophobia, exclusive nationalism, and so on. Combatting disrespect for ethnic minorities and the failure to accept all people and communities as equal can have a hugely positive outcome for society as a whole, if and insofar as these problems are understood to derive from a lack of knowledge and acknowledgement of human realities, that could potentially strengthen and enrich the basic rights of everyone. The right to equality, for instance, insofar as ethnic minorities and marginalized peoples demand greater respect for difference, and the right to be different, insofar as ethnic minorities and nations embody a notion of pluralism that lies at the very core of a constructive union of all individuals and peoples.

Centre Maurits Coppieters



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The Centre Maurits Coppieters promotes policy research at a European and international level mostly focusing on Nationalism, Management of cultural and linguistic diversity in complex societies, Multilevel governance, Decentralization, State and constitutional reform, Secession of states and self-

determination, Political and economic governance of Sub-Central Governments, Conflict resolution, Human Rights and Peace promotion.



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