

A Social Contractarian Perspective on the Catalan Demand for Independence

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Abstract

The Social Contract addresses the legitimacy of the authority of the state over individuals: *'It purports to define the terms on which that society is to be governed: the people have made a contract with their ruler which determines their relations with him'* (J. W. Gough 1936).

Accordingly, the Constitution of a State acts as *'a body of fundamental principles or established precedents according to which a state or other organisation is acknowledged to be governed'* (Oxford Dictionary 2017). The legal manifestation of the contract, as a body of laws, defines the basic rights of citizens, alongside the powers of different entities of the state.

After the death of dictator Francisco Franco in 1975, the promulgation of the Spanish Constitution in 1978 marked the culmination of the transition to liberal democracy. In 2017, Catalonia held an illegal referendum on independence, demanding secession, while Section 2 of the Spanish Constitution stipulates that *'the Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards'*. Under what conditions, if any, can Catalonia legitimately demand secession?

This paper uses the complexity and diversity of conceptualisations of the Social Contract by three foundational Social Contract authors: Thomas Hobbes, John Locke and Jean-Jacques Rousseau, to examine justifications for secession in the case of Catalonia. The application of the underlying philosophical principles on Catalonia provides a unique insight in this regard.

Keywords: Social Contract, Hobbes, Locke, Rousseau, Catalonia, Spain

Introduction

Social Contractarianism posits that a state derives its legitimacy to rule over its citizens through a theoretical contract, in which individuals transfer rights and privileges in return for benefits from the sovereign. The theory is intimately bound up with the development of the

nation state and democracy more generally, with modern constitutions acting as the political manifestation of the theoretical contract.

In Spain's case, after the death of dictator Francisco Franco in 1975, the promulgation of the Spanish Constitution in 1978 marked the culmination of the transition to liberal democracy. The most meaningful modern challenge to this contract came in 2017 through the Catalanian referendum on independence. The result clearly demanded secession, whilst Section 2 of the Spanish Constitution stipulates that '*the Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards*'.

This paper analyses the ongoing Catalan demand for independence from Spain from a Social Contractarian perspective, using Thomas Hobbes, John Locke and Jean-Jacques Rousseau, as representatives of three important strands within the tradition. Each thinker has different understandings of how such a contract is made, and why the rulers resulting from the contract can be legitimate. Rousseau is the more democratic of the trio, with Hobbes and Locke representing the statist beginnings of Social Contractarianism.

The deserving fame and importance of the Leviathan stems not only from its bleak depiction of the natural human condition, but Hobbes's faith in the ability of both reason and fear to construct a mutually beneficial civic society. Indeed, he was the first to formulate the concepts and define the ongoing language of the Social Contract tradition, not least the sharp distinction between the 'state of nature' and 'civil society'. Therefore, no understanding of the Social Contract tradition can be complete without a serious reading of Hobbes's writings.

The inclusion of John Locke in this study can be justified on two accounts. Firstly, Locke takes the Hobbesian Social Contractarian framework and applies it to a strict system of rights, attempting to justify the state from within the liberal paradigm. Consequently, he can be seen, and has continually been taught as, the natural progression from Hobbes for the tradition. Whereas Hobbes' continual prioritisation of stability can strike the modern reader as counterintuitive and even unjustifiable, Locke's reinterpretation and increased respect for mankind leads him to more palatable and relevant conclusions today. Secondly, Locke is a crucial theorist in understanding the manifestation of the Social Contract tradition in liberal democracies across the world. Although most famously seen as the 'theorist of America' and being embodied most faithfully in the New World, Locke's rights to life, liberty and property have seen to have been protected across the democratic world, not least in Spain.

No examination of modern democracy could be complete without an analysis of Jean-Jacques Rousseau's Social Contract. Emphasising the conditions under which democratic deliberation would be possible, and with a heavy emphasis on civic unity, Rousseau seeks to understand the conditions under which a truly democratic and stable Social Contract could exist. Although it seems clear that the modern Spanish state falls closer to a Lockean legitimisation than a Rousseauian one, the ideals of Rousseau's General Will, coupled with his more optimistic reading of the human condition, is crucial in understanding the modern democratic state.

I. A Hobbesian Perspective

'Hobbesian perspective' refers to the conceptualisation of the Social Contract by Thomas Hobbes in Political Theory, rather than a Hobbesian, or Realist, approach in International Relations Theory.

A. A Natural State of Civil War

Thomas Hobbes' conceptualisation of human nature in Part I of the Leviathan, 'Of Man', is highly influential when viewing requirements of governance in the political community. The state of nature is characterised by anarchy, where an absence of political order and law leads to humans having the 'right to all things' (Hobbes 1651, XIII.13), including the right to self-preservation. Consequently, the state of nature is driven by competing desires for security, resulting in a state of 'war of all against all' (Hobbes 1651, Chapter XIV) - *bellum omnium contra omnes*. Hobbes' perception of human existence is developed in both *De Cive* (1642), and the Leviathan (1651):

'I demonstrate, in the first place, that the state of men without civil society (which state we may properly call the state of nature) is nothing else but a mere war of all against all; and in that war all men have equal right unto all things.' (Hobbes 1642, Preface)

'In such condition there is no place for industry, because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation nor the use of commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short.' (Hobbes 1651, XIII)

Hobbes does not define war as a situation of fighting between men, namely a battle, but rather as an absence of the guarantee that humans will not attempt to kill one another, resulting in uncertainty and fear.

In Chapter XIV of the Leviathan, Hobbes further defines the natural laws:

'The right of nature, which writers commonly call jus naturale, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgement, and reason, he shall conceive to be the aptest means thereunto.' (Hobbes 1651, Chapter XIV).

Thus, by liberty, Hobbes understands the 'absence of external impediments' (Hobbes 1651, Chapter XIV). The state of nature, which is a state of absolute liberty, is essentially a state of civil war, where only an absolute sovereign and an undivided government could circumvent the inevitable brutish life.

First of all, the context of the writing of the Leviathan, the 1642 - 1651 English Civil War, guides the interpretation towards the analysis of the situation of the 1936 - 1939 Spanish Civil War. The Spanish Civil War would precisely reinforce the legitimacy of the absolute sovereign, an undivided government that could circumvent the natural state of civil war. Consequently, the author of the Leviathan would also have justified the dictatorship of Franco, as a necessary exit from the 'war of all against all', and guarantee of stability, peace and security. Hobbes would have had little interest for the internal divisions between the Nationalists and the Republicans, the fact that Barcelona was a main hub of the resistance and anarcho-sindicalism, nor the distinct vernacular and identity of Catalonia. The crucial element is the departure from the 'nasty, short and brutish' (Hobbes 1651, XIII) state of nature, exemplified in the Civil War. The actions by the Spanish Government, which involved sending the *Guardia Civil* to Catalonia to prevent voting in the illegal independence referendum on October 1st 2017, the triggering of Article 155 and the dissolution of the Catalan Parliament, would be justified by Hobbes as a series of acts that prevent instability and a reversion to a state of anarchy.

B. The Erection of the Commonwealth

As a result, in Part II of the Leviathan 'Of Commonwealth', in order to avoid the state of nature, a number of actions must occur. Men enter a contract with each other to establish a political community and strive to erect a commonwealth. Individuals agree to submit to the authority of the sovereign, the Leviathan, in exchange for protection. They surrender their natural 'right to all things' for positive legal rights, as established by the Leviathan. The Contract is defined as the 'mutual transferring of right' (Hobbes 1651, Chapter XIV).

'The final cause, end, or design of men (who naturally love liberty, and dominion over others) in the introduction of that restraint upon themselves, in which we see them live in Commonwealths, is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent, as hath been shown, to the natural passions of men when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants, and observation of those laws of nature set down in the fourteenth and fifteenth chapters.' (Hobbes 1651, XVII)

The commonwealth is established when all individuals say *'I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner.'* (Hobbes 1651, XVII).

Sovereignty may be attained in two ways; a Commonwealth by acquisition, *'one, by natural force: as when a man maketh his children to submit themselves, and their children, to his government, as being able to destroy them if they refuse; or by war subdueth his enemies to his will, giving them their lives on that condition.'* (Hobbes 1651, XVII), or a Commonwealth by Institution, *'when men agree amongst themselves to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others.'* (Hobbes 1651,

XVII). Here, we focus on the latter. In the political Commonwealth, or Commonwealth by Institution, the sovereign bears twelve rights (Hobbes 1651, XVIII):

1. A new covenant, a return to the state of nature, or transfer of sovereignty cannot be made without the sovereign's permission (Hobbes 1651, XVIII).
2. The sovereign cannot breach the covenant, and none of the subjects can forfeit, or be freed from subjection (Hobbes 1651, XVIII).
3. Sovereignty results from the declaration by the majority; the minority has voluntarily entered the congregation and must follow his covenant, otherwise it acts unjustly (Hobbes 1651, XVIII).
4. The Leviathan cannot be accused of injustice, because every subject is the author of the judgements and actions of the sovereign by institution (Hobbes 1651, XVIII).
5. The Sovereign cannot be punished by his subjects or be put to death justly (Hobbes 1651, XVIII).
6. The Sovereign has the '*power to be judge, or constitute all judges of opinions and doctrines, as a thing necessary to peace; thereby to prevent discord and civil war*' (Hobbes 1651, XVIII).
7. The Sovereign holds the power to prescribe property rules (Hobbes 1651, XVIII).
8. The Sovereign holds '*the right of judicature; that is to say, of hearing and deciding all controversies which may arise concerning law, either civil or natural, or concerning fact*' (Hobbes 1651, XVIII).
9. The Sovereign holds '*the right of making war and peace with other nations and Commonwealths; that is to say, of judging when it is for the public good, and how great forces are to be assembled, armed, and paid for that end, and to levy money upon the subjects to defray the expenses thereof*' (Hobbes 1651, XVIII).
10. The Sovereign bears the right of '*the choosing of all counsellors, ministers, magistrates, and officers, both in peace and war*' (Hobbes 1651, XVIII).
11. The Sovereign holds '*the power of rewarding with riches or honour; and of punishing with corporal or pecuniary punishment, or with ignominy, every subject according to the law he hath formerly made*' (Hobbes 1651, XVIII).
12. The Sovereign bears the rights '*give titles of honour, and to appoint what order of place and dignity each man shall hold, and what signs of respect in public or private meetings they shall give to one another*' (Hobbes 1651, XVIII).

C. Conditions for Secession

The provisions for secession are limited. According to (1.), a new covenant or transfer of sovereignty can be lawfully made only with the approval of the sovereign. All other cases do not allow a return to the state of nature, a withdrawal from the covenant, or the transfer of sovereignty: (2) The sovereign may not breach the covenant. Independence can therefore not be declared on the grounds of a breach of the covenant on the part of the ruler. (3) The minority, because it has voluntarily entered into the congregation, must follow the covenant; it cannot unilaterally withdraw. (4) The sovereign cannot injure its subjects or be unjust. Secession can therefore not be declared on the ground of injury or injustice. (5) The sovereign cannot be punished by its subjects. Subjects may not withdraw from the covenant as a means of punishment. (6) (8) The sovereign has the power to constitute the rules, but also to judge controversies. Independence may not be declared as a result of dissatisfaction of certain rules or controversies.

Furthermore, in Chapter XIV, Hobbes adds that *'Men are freed of their covenant two ways; by performing; or by forgiven. For performance, is the natural end of obligation and forgiveness, the restitution of liberty; as being a retransferring of that right, in which the obligation consisted'* (Hobbes 1651, Chapter XIV). Again, this refers to the sole case where withdrawal from the Social Contract or transfer of sovereignty can be justified: only with the approval of the sovereign.

Civil Laws, as opposed to Natural Laws, bind individuals together in a political community, under the Social Contract. Nonetheless, Hobbes agrees that all laws need interpretation: *'the interpretation of the law of nature, is the sentence of the judge constituted by the sovereign authority, to hear and determine such controversies, as depend thereon'* (Hobbes 1651, Chapter XXVI). Hobbes also defines the third law of nature, as *'that men perform their covenants made: without which, covenants are in vain, and but empty words'* (Hobbes 1651, Chapter XIV). Consequently, *'to break it is unjust: and the definition of injustice, is no other than the not performance of covenant'* (Hobbes 1651, Chapter XIV).

D. Performance of the Spanish Covenant

It can be argued that the performance of the covenant is essentially to respect the Spanish Constitution. However, with regards to the transition to democracy and the current Constitution, Hobbes would have dedicated little attention to the context of the signing of the Constitution. Hobbes supports two types of sovereign power: by acquisition, or natural force, and by institution, or agreement (Hobbes 1651, XVII). Therefore, whether through coercion or consensual means, the entrance into the Social Contract and application of the Spanish Constitution to Catalonia is not invalidated by the circumstances under which the Constitution itself was signed and ratified.

In addition, the rejection of the autonomy statute in the Constitutional Court in Madrid in 2006 would have minimal impact on the right to secession. Once again, the Sovereign has the *'power to be judge, or constitute all judges of opinions and doctrines'* (Hobbes 1651, XVIII).

The Constitution and the Constitutional Court, as the materialisation of the Social Contract and sovereign power, are supreme.

Furthermore, the holding of the referendum on independence on October 1st 2017 along with the unilateral declaration of independence on October 27th by the Catalan Parliament would not have been accepted by Hobbes, because an attempt to exit the Social Contract necessitates the authorisation of the sovereign. The suspension of the referendum by the Constitutional Court of Spain after the declaration of a breach of the 1978 Spanish Constitution is therefore considered a non-performance of the covenant on the part of Catalonia.

As outlined in this section, a Hobbesian perspective allows little room for manoeuvre to justify secession. The author of the Leviathan justifies authoritarian regimes due to the state of nature being portrayed as a state of permanent civil war. Furthermore, the sovereign can never perform an injustice on his people, and an exit from the covenant can only be allowed with the authorisation of the Leviathan. This implies that Catalonia can only declare independence from Spain through an amendment to the 1978 Spanish Constitution, which acts as the 'written' Social Contract. The Hobbesian perspective on secession needs to be supplemented by other Social Contract theories, due to the overemphasis it places on the powerful Leviathan that bears the right to 'everything'.

II. A Lockean Perspective

A. The Inalienable Rights of the Individual

Unlike Hobbes, John Locke is a traditional liberal theorist. His starting point for his political theory is that each individual, stemming from natural law, has inalienable rights to life, health, liberty and possessions. These were the rights that became central to the enactment of liberalism through the inalienable rights of man, as set out in the US Constitution.

“Man being born, as has been proved, with a Title to perfect Freedom, and an uncontrouled enjoyment of all the Rights and Privileges of the Law of Nature, equally with any other Man, or Number of Men in the World, hath by Nature a Power, not only to preserve his Property, that is, his Life, Liberty and Estate, against the Injuries and Attempts of other Men; but to judge of, and punish the breaches of that Law in others, as he is persuaded the Offence deserves, even with Death it self, in Crimes where the heinousness of the Fact, in his Opinion, requires it.” (Locke 1998; 323-324)

The protection and promotion of these rights form the basis of Locke's critique of Robert Filmer's defence of the 'divine right of kings' (Locke 1998, p.142). Through these arguments, Locke makes the negative case against monarchy and authoritarianism more broadly. As well as men having natural rights, they begin life as naturally equal to one another. The natural equality of men, again central to the American concept of citizenship, is consistent with Locke's empiricism; insisting that the minds of all men are born a blank slate.

Therefore, owing to this equality, no one person has any divine right or natural right to become ruler. As expressed in the First Treatise:

“There cannot be any Multitude of Men whatsoever, either great or small..but that in the same Multitude there is one man amongst them, that in Nature hath a Right to be King of all the rest.” (First Treatise, Paragraph 104, quote from Boucher and Kelly, 2017; 234)

So important is the idea of maintaining the right to liberty for Locke, that to live under a monarch or authoritarian is worse, or comparably bad to living in the state of nature:

“It cannot be supposed that they should intend, had they a power so to do, to give any one, or more, an absolute Arbitrary Power over their Persons and Estates, and put a force into the Magistrates hand to execute his unlimited Will arbitrary upon them: this were to put themselves in a worse condition than the state of Nature, wherein they had a Liberty to defend their Right against the Injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single Man, or many in Combination.” (Locke 1998; 359)

“These ‘inconveniences’ - which include attempts at enslavement, unpredictable aggression, and a social atmosphere of miserable uncertainty - are no solved, he says, by subjecting all but one person in society to the rule of law.” (Boucher and Kelly 2017; 234)

It is immediately clear then that Locke views the state of nature in a different way to Hobbes. He details his understanding of humans pre-civil society in Chapter II of Book II of the *Two Treatises*, crucially emphasising the distinction that Hobbes neglects between the state of nature and the state of war. Although the key characteristics remain the same, Hobbes emphasises the role of fear in making men leave the state of nature, whereas Locke gives a more optimistic perspective on the potential for mankind under civil society. In particular it is only under a common arbitrator in civil society that men can be sure of the safety of their property:

“The Supream Power cannot take from any Man any part of his Property without his own consent. For the preservation of Property being the end of Government, and that for which Men enter into Society, it necessarily supposes and requiries, that the People should have Property, without which they must be suppos’d to lose that by entering into society, which was the end for which they entered into it, too gross an absurdity for any man to own.” (Locke 1998; 360)

In understanding the differences between Locke and Hobbes’ view on individual rights and the state of nature, one can begin to understand why Locke is seen as more liberal than Hobbes, and why he also defends the right to revolution. They both agree that the state of nature is a bad condition because one cannot protect themselves, and that giving up the individual executive power of the law of nature to the sovereign is beneficial. However, crucially for Locke, the individual maintains their liberty in civil society, whereas safety under the Leviathan takes paramount importance for Hobbes.

B. The Creation of the Social Contract

Given this, Locke captures the sentiments of voluntarism by arguing for a democratic Social Contract. In order to avoid the sacrifice of the individual natural right of liberty, the individual must consent to the sovereign. When read literally, Locke makes the simple distinction between passive and active consent, where passive consent is a suitable form of consent in the case where an individual is unable to continue to give their consent to a government. His generally accepted understanding of active consent and controversial formulation of tacit consent is as follows:

“Nobody doubts but an express Consent, of any Man, entering into any Society, makes him a perfect Member of that Society, a Subject of that Government.” (Locke 1998; 347)

“Every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give this tacit Consent, and is as far forth obliged to Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this his Possession be of Land, to him Heirs for ever, or a Lodging only for a Week; or whether it be barely travelling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government.” (Locke 1988; 348, Pitkin 1965; 995)

There has been considerable debate surrounding this formulation, with Pitkin illustrating that Locke is not reliant on individual consent to the sovereign. She argues instead that Locke is implicitly arguing that a government is legitimate if it is a government that a rational person would sacrifice their executive power of the law of nature for.

“Your obligation to obey depends on the character of the government - whether it is acting within the bounds of the (only possible) contract. If it is, and you are in its territory, you must obey. If it is not, then no amount of personal consent from you, no matter how explicit, can create a political obligation to obey it...As long as a government’s actions are within the bounds of what such a contract hypothetically would have provided, would have had to provide, those living within its territory must obey.” (Pitkin 1965; 996)

C. The Dissolution of the Social Contract

Regardless of whether Locke should be viewed as a hypothetical consent theorist or a traditional consent theorist, it is indubitable that Locke’s commitment to consent derives from his commitment to the inalienable natural rights of individuals. These rights further entail a right to revolution, which Locke describes the necessary and sufficient conditions for:

“Whence it is plain, that shaking off a Power, which Force, and not Right hath set over any one, though it hath the name of Rebellion, yet is no Offence before God, but is that, which he allows and countenances, though even Promises and Covenants, when obtain’d by force, have intervened.” (Locke 1998, p. 396)

Whilst Hobbes argues for the near-absolute authority of the sovereign, Locke perceived government legitimacy as the result of the citizen's delegation to the government of their right of self-preservation, as a necessary measure with which to achieve security, granting the state "*the monopoly on the legitimated use of physical force*" (Weber, 1919). If the government fails to secure the human's natural right to security and self-preservation, citizens can withdraw from their duty to obey.

This commitment stems from his commitment to natural rights and a differing understanding of the state of nature than Hobbes:

"He that will with any clearness speak of the Dissolution of Government, ought, in the first place to distinguish between the Dissolution of the Society, and the Dissolution of the Government." (Locke 1998; 406)

With this understood however, we begin to read apparent difficulties in distinguishing the right of secession to the right of revolution:

"The usual, and almost only way whereby this Union is dissolved, is the Inroad of Foreign Office making a Conquest upon them." (Locke 1998; 406)

D. A Lockean Defence of the Unity of Spain

For Locke, the key consideration in determining whether the Spanish Social Contract can justly disregard secession claims is whether the contract is just. If it is, then the circumstances before and after the contract are unimportant, because a perfectly rational individual would sign the constitution *a priori*. It is therefore the task of this section to assess whether the Spanish Constitution protects the 'life, liberty and property' of the Catalan people. Although this may be seen as an oversimplification of what Locke argued for, and inclusions should be made for more restrictive demands such as equality, it is a reasonable reading of Locke to say that the confirmation or denial of the just nature of a constitution is dependent on whether it maintains these basic rights. If the constitution maintains these rights but seems intuitively unjust in other ways (although one could question the plausibility of this), it would seem the constitution would move into what Rawlsian deems a 'nearly just' society. Although what constitutes a 'nearly just' society, particularly in the civil disobedience literature, has been severely contested. If a constitution protects the rights to 'life, liberty and property' it is plausible that it can create a hypothetical consent test, and that legal change can be achieved through civil disobedience or the mainstream political process.

The easiest of these to move past is the right to life. Although recent images of Spanish police brutality have shocked outsiders who perceived such acts as undemocratic, it would be an unsubstantiated claim to argue that the Spanish government had continually infringed upon the Catalan people's right to life. Of course, no constitution would directly include clauses that would compromise its citizens' right to life, but it could justify such oppression through ideology enshrined in the constitution. The stronger claim for this is that not only is there

nothing within the Spanish Constitution to suggest a direct repression of its citizens' right to life, but there can be no (reasonable) ideological justification of such oppression given the democratic nature of the guiding ideology.

Moreover, the right to property is clearly marked out in the constitution. Although a strong libertarian might argue that it impinges on these rights through taxation, not only is the right to property enshrined in the constitution, but it is a necessity for a market economy.

Part 2, Section 33:

"The right to private property and inheritance is recognised."

Part 2, Section 38

"Free enterprise is recognised within the framework of a market economy. The public authorities guarantee and protect its exercise and the safeguarding of productivity in accordance with the demands of the general economy and, as the case may be, of economic planning."

The more interesting question is whether the liberty of the Catalan people has been impacted in any way. The definition of basic liberties in the Spanish Constitution is vague, appealing to 'international treaties and agreements', although broadly supporting basic human rights. Within this, it is fair to see that rights to 'life, liberty and property' are enshrined:

Part 1, Section 10

"Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain."

As such, the picture of a regular democratic constitution can be pieced together gradually, as would be supported by Locke. In order to further understand the ideals of the Spanish Constitution, one can read from the Preamble of the Spanish Constitution:

"The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the wellbeing of all its members, in the exercise of its sovereignty, proclaims its will to:

Guarantee democratic coexistence within the Constitution and the laws, in accordance with a fair economic and social order.

Consolidate a State of Law which ensures the rule of law as the expression of the popular will.

Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.

Promote the progress of culture and of the economy to ensure a dignified quality of life for all.

Establish an advanced democratic society, and Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth.

Therefore, the Cortes pass and the Spanish people ratifies the following.”

In the first sections, the traditional safeguards are met, including democratic and legal rights. These would make it near-impossible for any doubter of the Spanish Constitution democratic credibility.

Section 1, Article 1:

“Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.”

Section 1, Article 9:

“Citizens and public authorities are bound by the Constitution and all other legal provisions.

It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.

The Constitution guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal statutes, the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights, the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action of public authorities.”

Part 1, Section 10:

“The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.”

Part 1, Section 15:

“Everyone has the right to life and to physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or

treatment. Death penalty is hereby abolished, except as provided for by military criminal law in times of war.”

In sum, Locke’s position is that as long as the state guarantees the natural rights of individuals to ‘life, liberty, and property’, and it would, hypothetically, be rational for citizens to agree to the contract, it is a legitimate authority from which one cannot secede. It is only when the *raison d’être* for the state is altered that a region could legitimately make a claim for the dissolution of the sovereign - on the grounds that the citizen’s natural rights are no longer being protected. In Spain, an assessment of the Spanish Constitution suggests this not to be the case. Although, as with every democracy, the Spanish state has its shortcomings, it is apparent that the fundamental liberties of Spanish citizens are being protected. His support for statehood is conditional on his belief of the inalienable rights of the individual. The sovereign state and the constitution are therefore instrumentally valuable in protecting rights.

III. A Rousseauian Perspective

A. The Creation of the Republic

According to Rousseau, the sovereign represents the common good of the community, and sovereignty stems from the General Will of the people (Rousseau 1993). Ideally, the Social Contract should be formed between a people which:

“already bound by some unity of origin, interest, or convention, has never yet felt the real yoke of law; one that has neither customs nor superstitions deeply ingrained, one which stands in no fear of being overwhelmed by sudden invasion; one which, without entering into its neighbours’ quarrels, can resist each of them singlehanded, or get the help of one to repel another; one in which every member may be known by every other, and there is no need to lay on any man burdens too heavy for a man to bear; one which can do without other peoples, and without which all others can do; one which is neither rich nor poor, but self-sufficient; and, lastly, one which unites the consistency of an ancient people with the docility of a new one. Legislation is made difficult less by what it is necessary to build up than by what has to be destroyed; and what makes success so rare is the impossibility of finding natural simplicity together with social requirements. All these conditions are indeed rarely found united, and therefore few States have good constitutions.” (Rousseau 1993; 223-224)

Consequently, not all states can adopt good legislation. The state must be neither too small, nor too big. If too small, it is too weak in comparison to other states. If too large, it is too administratively heavy. Rousseau also puts emphasis on the need for homogeneity within the community, which enables determination of the General Will between people who are *“already bound by some unity of origin, interest, or convention”*. The ideal state is also republican - not set in opposition to monarchy, but rather to despotic forms of governance.

The Spanish Republic clearly does not correspond to the ideal State envisaged by Rousseau by virtue of being highly yet unevenly populated, capitalist (hence excessively but not

uniformly wealthy), dependent on other states, multinational and multicultural – constituted by peoples with different “*customs and superstitions deeply ingrained*”. Hence, Rousseau would argue that the Social Contract established between the peoples of Spain is unstable and more prone to degenerate, which is eventually the natural end of every State. It follows that the independence movements that have undermined the Spanish unity are a result of the precarious foundations that the Spanish state was built upon. Nonetheless, the quality of the Spanish State as a Parliamentary Monarchy does not inhibit legitimacy, as it remains republican in the Rousseauian sense, embodying legitimacy in the ‘*état de droit*’. So, the question is, once the Social Contract is established, can Catalan secessionism have any ground in Rousseau’s political theory?

B. The Nullification of the Social Contract

The first ground on which independence could be demanded and achieved is through a nullification of the Social Contract over the claim that the Catalan people’s ascription and subscription to the terms of the contract is illegitimate. Indeed, if the contract is to be deemed null, then all the parties in relation to which the contract is invalid re-acquire their natural liberties; they are free to form another State. In order to assess the legitimacy of the Spanish Social Contract, the origins of Catalan consent need to be examined in greater depth.

During the 11th century, the county of Barcelona, which “*had reached a higher degree of civilization than Aragon*” (Prescott, 1838; 35), came to prominence as a flourishing maritime power, whose predominance in the Tyrrhenian Sea challenged that of the most well-established Italian maritime Republics (Prescott, 1838; 36). Thus, the union of Catalonia with the Crown of Aragon in the 12th century was more of a “*partnership among equals*”, in essence a “*Commonwealth*”, rather than an annexation (Prescott, 1838; 30). Indeed, Catalonia, Valencia and Aragon united under one dynastic kingdom but retained their independence through self-administration. The county of Barcelona was granted the most privileges and independence because of its superior economic power and its historically liberal institutions. In general, Catalans retained their culture – the Catalan language emerged prominently during the following centuries as the idiom of poetry and songs (Prescott, 1838; 38) – customs and institutions. Indeed, during a period of crisis within the commonwealth, Catalan’s ground-breaking and extraordinary doctrines emerged declaring “*that the Aragonese monarchs, far from being absolute, might be lawfully deposed for an infringement of the liberties of the nation*” (Prescott, 1838; 65). Thus, when the tensions de-escalated, both parties concluded negotiations with a stipulation “*that Barcelona should retain all its ancient privileges and rights of jurisdiction, and, with some exceptions, its large territorial possessions*” (Prescott, 1838; 65). Similarly, when the marriage between Ferdinand and Isabella in 1469 consecrated the union between the Crown of Aragon and the Crown of Castile, thus establishing the Spanish monarchy, the King of Spain “*solemnly swore to respect the constitution and laws of Catalonia*” (Prescott, 1838; 67)

From the historical excursus two conclusions are evincible: a) although Catalonia retained its privileges, territorial possession, jurisdiction, laws and constitution despite the partnerships

with Aragona and, in turn, Castilla, the Catalan nations gradually lost their independence as the government solidified and centralized its authority; b) the Catalan people did not ever, at any point in time, give consent to the assimilation into other Crowns through plebiscites or referenda. According to Rousseau, the Catalan subscription to the contract should be revoked insofar as the institution of a Social Contract relies on unanimous consent of a people to abdicate their natural rights and state in favour of the civil rights and state. Clearly, with Catalonia not being a Republic at the time, they did not have the right to dispose of the freedom of its citizens since only “*conventions form the basis of all legitimate authority among men*”. In fact, quite intuitively, “*in order to legitimise an arbitrary government, [...] people should be in a position to accept or reject it*” (Rousseau 1993; 186), and only if the government is consented by the people would its acts be legitimate.

A move to more recent history to encounter a form of consent from Catalonia is necessary. As argued in the Hobbesian and Lockean perspective, the Constitution of a State, acting as the written contract and the body of laws under which the state is governed, is fundamental to understand the Social Contract. The Spanish Constitution from which the modern Spanish state became a legal entity thus requires close attention. In 1978, the Spanish Constitution was enacted through a constitutional referendum. In Catalonia, the turnout was of 67.91 percent; 95.15 percent voted in favour of the adoption of the Constitution and 4.85 percent against. This element provides evidence of some form of consent from Catalonia to be legally bound to the Spanish state. This includes the agreement to Section 2 that stipulates that “*the Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards*”.

However, as argued in the previous sections, Hobbes pays little attention to the conditions under which consent is given. Whether coercion occurred or not is irrelevant. In addition, Locke focuses on the content on the Contract and whether it safeguards the individual’s natural rights. Instead, Rousseau emphasises the importance of the General Will for legitimacy.

C. Understanding the General Will

In order to allow any kind of meditation over the legitimacy that the Catalan independence could have within Rousseau’s Social Contract, the complexity of the General Will must be understood. The General Will works both as a moral will, which is a perpetuating will, and as a procedural mechanism, with a constitutive association as its genesis. The General Will is a perpetual and active moral will, while at the same time it performs a procedural mechanism in the relationship sovereign-government. The General Will is a moral will insofar as it is morally infallible. What the General Will dictates is principally good. In this way, the General Will works as the rational principle of the state to the extent to which they become free through civil freedom, the General Will is the moral will that ‘forces to be free’. The majority rules as the General Will because legislation happens through reason and away from personal interests and factions, this means through the General Will and not just through the will of all:

“There is often a great deal of difference between the will of all and the general will: the latter takes account only of the common interest; the former takes account of private interest, and is only a sum of particular wills.” (Rousseau 1993; 203).

The General Will is more complex than merely the sum of particular individual wills, thus challenging the validity of a referendum as the embodiment of the General Will. Rousseau argues that in a suffrage, the closer the result is to unanimity, the closer it is to the General Will. Large divisions, instead, are the symbol of the decline of the State. However, having some degree of opposition during the instauration of the Social Contract does not invalidate it, but rather indicates that some individuals have not understood, or are confused, about the General Will, the good of the whole. Therefore, after the suffrage, all citizens consent to the same laws, even those they have not voted for. The minority effectively loses to the majority, because it holds the wrong beliefs, and the minority’s will was not morally good. The referendum asks whether the law is to conform to the General Will, not whether the individual is in favour or against a law. The constitutional referendum in 1978 shows that the result in Catalonia was close to unanimity, while the turnout remains far from suggesting an overall popular consent. The General Will was therefore to establish Spanish unity for the good of the whole.

In addition, the only way the General Will can stay General is, in a similar manner to Kant’s morality, only legislating on what is general. The General Will is general *in abstracto*:

“Thus, just as a particular will cannot represent the general will, the general will in turn changes its nature if it has a particular object, and being general cannot pronounce either upon man or upon a fact” (Rousseau 1993; 206).

If the General Will would legislate over a particular fact it would inevitably legislate through a particular interest, given that the object or person over which it is legislating it is inevitably part of itself. This leads to the imposition of private interest over the common interest, and of factions over the General Will. A faction is, for Rousseau, a partial association which distorts the General Will by making it the sum of the wills of partial associations:

“But when intrigues arise, and partial associations are formed at the expense of the greater one, the will of each of these associations become general in relation to its members and particular in relation to the State. You may then say that there is no longer as many voters as there are men, but only as there are associations” (Rousseau 1993; 203).

The factions, as soon as they divide the sovereign, do not respond to the General Will but to private will and private interests. And it is in the particular and not in the general where private interest prevails, because the general will can never pronounce upon what is particular. At this point, Albert Camus claims that:

“From the moment that laws fail to make harmony reign, or when the unity which should be created by adherence to principles is destroyed, who is to blame? Factions. Who compose the factions? Those who deny by their very actions the necessity of unity. Factions divide the sovereign; therefore they are blasphemous and criminal. They, and they alone, must be combated.” (Camus, 1951)

Factions divide the sovereign and mute the General Will. Therefore:

“There is no general will concerning a particular object. For this particular object is either within the State or outside the State. If it is outside the State, a will that is foreign to it cannot be general with respect to it. And if this object is within the State, it is part of it. Then a relation is formed between the whole and its part which makes them into two separate beings, one of which is the part, the other the whole minus the same part. But the whole minus a part is not the whole; and so long as this relation persists there is no more whole, but two unequal parts. Whence it follows that the will of one part is never general either with respect to the other part.” (Rousseau 1993; 211)

Nevertheless, as said before, while the General Will cannot rule on the particular issue of independence of Catalonia, it could provide the grounds *in abstracto* for the government (understood in Rousseauian terms as that which executes legislation at the particular level) to rule in the specific case of Catalan independence. The General Will could revoke the articles in the constitution that dictate the unity of the Spanish Republic and legislate on whether to allow independence claims to be ruled over by the government according to certain criteria. This is in the power of the Sovereign.

“I’m assuming here something that I think I have shown, namely that there is in the state no fundamental law that can’t be revoked. Even the social compact itself can be revoked: if all the citizens came together for the agreed purpose of breaking the compact, there’s no doubt that this would very legitimately break it. Grotius even thinks that each man can renounce his membership of his own state, and recover his natural liberty and his goods on leaving the country. It would be absurd if all the citizens in assembly couldn’t do something that each can do by himself.” (Rousseau 1993; 273)

The plausibility of the reform and legislation on the abstract level for the independence, so as to allow Catalan independence on the particular level, is debatable; does the nature of the Contract and, hence, of the General Will allow a legislation *in abstracto* that performs the alienation of a part of the Sovereign without committing self-annihilation?

D. Legislation in Abstracto and Self-Annihilation

On the one hand, it could be argued that while the General Will cannot rule on the particular issue of the independence of Catalonia, it could provide the grounds *in abstracto* for the government to rule in the specific case of Catalan independence – the heart could direct the brain to act according to certain general principles. The General Will could revoke the

articles in the Constitution that dictate the unity of the Spanish Republic and legislate on allowing independence claims to be ruled over by the government according to certain criteria. This is in the power of the Sovereign as:

“there is in the state no fundamental law that can’t be revoked. Even the social compact itself can be revoked: if all the citizens came together for the agreed purpose of breaking the compact, there’s no doubt that this would very legitimately break it.” (Rousseau 1993; 273)

Furthermore, the Sovereign cannot bind itself, by nature, to a rule that it cannot break. This means that the Constitution can always be changed to be made stronger and ensure the longevity of the State in accordance with the General Will. Hence, the Spanish Constitution could be changed because public deliberation cannot impose on itself rules that it cannot break, and should change, if the General Will sees it necessary for the survival of the State. As explained above, the executive power should not be able to do anything against Specifically, the principle of unity enshrined in the Constitution could easily be abrogated, and should not actually have been there in the first place as it is a limit to the absolute power of the Sovereign.

However, with the principle of unity revoked, can the General Will possibly direct itself to self-annihilation? In other words, can the Sovereign rule against itself and its nature? As Rousseau puts it:

“the body politic or Sovereign, drawing its being solely from the sanctity of the contract, can never incur an obligation - Even towards another - for anything that infringes that primitive act, such as alienating some part of itself or submitting itself to another Sovereign. Violating the act whereby it exists would mean annihilating itself.” (Rousseau 1993; 194)

The Sovereign cannot incur into an obligation that annihilates itself, thus the General Will cannot legislate over its own dissolution, because it would be using as a legitimating principle that which it will be eradicating. It follows that Catalonia has no right to proclaim independence. Furthermore, the limitation is not merely limited to utter secession and should indeed be expanded to the Catalan special status:

“every authentic act of the general will, binds or favours all the citizens equally; so that the Sovereign recognises only the body of the nation, and draws no distinctions between those of whom it is made up.” (Rousseau 1993; 207)

If we take this passage literally, we are confronted with Rousseau’s “totalitarianism”. A Social Contract rests on the utter equality of its citizens (an argument could be made for equity – drawing on examples such as quotas) and therefore cannot entail any disparity of treatment over its parties (in fact it can only rule on general matters on which a common interest can be reached) because i) it would mark its self-annihilation and ii) because the structural inequalities enclosed in the contract could not possibly be accepted by sane individuals. However, this line of reasoning would directly lead us to consider the fallacy of

the Spanish Constitution which does ensure special status to Catalonia. Indeed, the Spanish nation should be the only nation within the State and there should not be any special treatment to minorities simply because they should not have been there in the first place (recall the concepts of homogeneity of the State). Furthermore, Rousseau preaches the reduction of the “*gross inequalities that currently exist to a minimum*” as to “*avoid dependency by one region upon another within the state*” (Boucher and Kelly 2003; 250) – while natural inequality is impossible to prevent and should persist, we should abolish those inequalities based on birth (i.e. special status, as far as regions are concerned). Hence, the Sovereign should not merely deny any demand for independence but even strengthen its centrality and annul the special rights that Catalonia might have enjoyed hitherto. The totalitarian reading of Rousseau lends itself with the actual agenda of Franco’s totalitarian regime, which aimed at destroying other national identities in order to forge and strengthen a single and unitary Spanish nation. However, with the fall of Franco, fomented by decades of oppression, the recrudescence of nationalism in Catalonia and the Basque Country augmented independent agendas, which were only appeased by compromises in the Constitution.

However, this totalitarian reading of Rousseau, which impedes independence and special status, collapses to the awesome powers the General Will is bestowed with. As we have seen, the General Will, by nature, only legislates what is good for the State. Hence, alienating a part of themselves would not be self-annihilation, just as it is not self-annihilation if a person abandons the State, and, just as it is legitimate for public deliberation to dissolve the whole compact. Therefore, the legislating *in abstracto* circa the conditions for independence is not to be seen as self-annihilation, but as moral precepts according to which the government should direct its particular executive power.

On the other hand, in spite of the fact that a constitutional reform seems *a priori* reasonable, a problem arises which makes the constitutional reform illegitimate in principle. The Sovereign cannot incur into an obligation that annihilates itself. The General Will cannot legislate over its own dissolution, because it would be using as a legitimating principle that which it will be eradicating. The argument runs similar to that used by J.S Mill against voluntary slavery: “*But by selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free.*” (Mill 1859; 94)

The sovereign cannot, ergo, rule some legislation which would destroy that sovereignty, meaning, it cannot rule anything that it cannot itself revert:

“*It is consequently against the nature of the body politic for the sovereign to impose on itself a law which it cannot infringe [...] there neither is nor can be any kind of basic law binding on the body of the people—not even the Social Contract itself.*” (Rousseau 1993; 193)

The sovereign cannot then legislate anything that would render its sovereign power insufficient to abide by that same law. It cannot use the sanctity of the contract as the

legitimate basis of a legislation that would subdue or destroy the sovereignty because that which is nothing, produces nothing:

“But the body politic or Sovereign, drawing its being solely from the sanctity of the contract, can never incur an obligation - Even towards another - for anything that infringes that primitive act, such as alienating some part of itself or submitting itself to another Sovereign. Violating the act whereby it exists would mean annihilating itself, and that which is nothing produces nothing.” (Rousseau 1993; 194)

The only way that the sovereign can *“impose on itself a law that it can't infringe”* is by imposing a law on itself that eradicates its sovereignty - this is a tautology. Therefore, a prohibition of any kind in the positive law is not a case of a law which the sovereign cannot infringe: the fact that the sovereign has not reverted that law is just a contingent fact and not a nomological one. Hence, Article 2 of the Spanish Constitution regarding the unity of Spain cannot be further away from being an imposition which the sovereign cannot infringe, because it is in itself the only thing that the pact cannot infringe - unity. It could be said that, in Rousseauian terms, the second article expressed in positive law is superfluous and redundant given that it is a corollary to the Pact. Nonetheless, far from being an imposition made by the sovereign to its subjects, it is an imposition given by its own nature which is equivalent to saying *“it is against the nature of the body politic for the sovereign to impose on itself a law that it can't infringe”*.

Thus, the only law that cannot be infringed by the sovereign is that which destroys its sovereign power; this is its capacity to infringe every law except the law which states that he cannot incur on itself a law which he himself cannot infringe. In simpler terms, once the Sovereign legislates the allowance of independence or subdues itself to another sovereign, it loses the capacity to revert that legislation, because its legislation is no longer binding for the alienated part, or for the ruling Sovereign to which is now subdued. Therefore, the unity of the sovereign cannot be infringed upon by the legislation of the sovereign because, once the dissolution of the unity has been legislated, the sovereign will not be able to infringe that dissolution. Any interpretation of the passage leads to a language paradox: saying that the Sovereign cannot incur into an obligation that he cannot infringe, is in itself an obligation for the Sovereign, so the Sovereign should not be even bounded by this obligation. *Ergo*, he *should* be able to incur into an obligation that he himself cannot infringe, losing its sovereignty. This is the omnipotence paradox. The Sovereign to exist must be able to infringe its own legislation and be able to revert it, but this is in itself something that he cannot revert or infringe, so the Sovereign should lose its capacity to infringe previous legislation so as to be absolutely able to infringe previous legislation. Equivalently, in the omnipotence paradox, God has to be able to build a rock that he himself cannot lift, leading to contradiction. This reading of Rousseau's passage is paradoxical.

Furthermore, it could be argued that *“because the sovereign is made out of nothing but its constituent individuals, it doesn't and can't have any interest contrary to theirs”* (Rousseau 1993; 194). Hence, given this and the fact that even the contract can be reversed, if the will of

everyone is to allow any regional independence *in abstracto*, then, the sovereign should rule in that way, given that the interest of the sovereign cannot be anything else than the interest of its constituent parts.

This argument suffers from a main fallacy, which is that it fails to recognize the contradictory claims in the will of the people in such a case. If the will of everyone (not the General Will) is that the sovereign rules the allowing of independence, then this will is contradictory. The only resolutions are, then, unity or the abolition of the contract. Yet, the abolition of the contract cannot be done through the legitimising power of the General Will, but through the individual right of every single individual. The abolition of the contract cannot have the compulsory force of the General Will, it is just the unanimous and simultaneous usage of the individual right to leave the contract, as Grotius suggests:

“Grotius even thinks that each man can renounce his membership of his own state, and recover his natural liberty and his goods on leaving the country. It would be absurd if all the citizens in assembly couldn’t do something that each can do by himself.” (Rousseau 1993; 273)

The legitimacy is then not in the compulsory legislation of the General Will, but in the individual (not compulsory, meaning that it is enough for one person not to leave the contract for the contract to exist, and by leave it is meant geographical displacement) use of the right to leave the country. The argument is difficult to fully sustain due to the legal nature of the contemporary borders of the states. Nonetheless, the European Single Market, which allows the free movement of people, could sustain Rousseau’s solution to some degree – but these considerations go beyond the scope of our analysis.

To conclude this section, it is clear from Rousseau’s text, that a referendum on the particular issue of Catalan independence goes against the abstract nature of the General Will and is therefore impossible. Legislation *in abstracto* would be needed, in that case, for the Government to rule at the particular level – i.e. at the Catalan level. Nevertheless, it has been shown that the possibility of ruling *in abstracto* regarding independence and alienation is obscure in Rousseau’s literature. The quasi-paradoxical nature of Rousseau’s argument does not seem to point at a clear path for the reader's interpretation and leaves enough space for opposite conclusions. Even though there is a possibility for the Sovereign to rule *in abstracto*, the possibility of regional independence could be contested and argued. The only clear solution to independence in Rousseau’s Social Contract is the dissolution of the contract. This dissolution is possible through the right preserved by individuals to leave the territory and, hence, the contract, meaning a unanimous rule to dissolve the contract. If this right can be exercised individually it can be also exercised simultaneously by everyone, breaking the contract and allowing the possibility for new Social Contracts to be formed. The plausibility of this solution in contemporary geopolitics seems, at least, dubious, but this evaluation goes beyond the ambitions of the paper.

Conclusion

To conclude, this paper examines some grounds for a legitimate Catalan demand for independence from the perspective of political theory. It uses the writings of Thomas Hobbes, John Locke and Jean-Jacques Rousseau, to provide insight on the nature, *raison d'être*, and legitimacy of the Social Contract, exemplified in the Constitution.

According to Hobbes, in order to escape from the natural state of civil war, the people give up their natural rights to all things in exchange for security and stability in the political community under the Leviathan. In the covenant, the sovereign retains absolute power, and it is always righteous. Hobbes' notion that consent cannot be annulled and retreated without the consent of the sovereign, renders Catalan independence only legitimate through constitutional amendment. This solution is in line with the legal aspects of legitimate secession from Spain supported by legal advisers, because of the content of the Spanish Constitution. Nonetheless, Hobbes' support for this solution, even for territory attained by acquisition, remains problematic.

Instead, Locke argues that individuals delegate the protection of their natural rights to 'life, liberty and property' to the government in order to optimise the achievement of security and self-preservation. However, citizens retain the right to withdraw their consent whenever their natural rights of life, liberty and property are violated. Thus, the legitimacy for the Catalan demand for independence rests solely on whether the Spanish Social Contract – the Constitution – is just, insofar as it does not threaten the natural rights of the citizens.

Lastly, the Catalan demand for independence finds a glimpse of legitimacy in Rousseau with the right that individuals retain to leave the contract. This right was recognised individually to every man by both Grotius and Rousseau. If a right can be exercised individually, then it can also be used by every individual simultaneously producing, in that case, the elimination of the original contract. Other roads to the ruling of Catalan independence are more troublesome. If the annulment of the contract (and the ruling of independence, which are equivalent) can be performed by the legislation *in abstracto* of the Sovereign, interpretations of Rousseau diverge. One interpretation considers that there is nothing that the Sovereign cannot rule over, including its own dissolution, while another interpretation would suggest that there is nothing the Sovereign cannot rule, except that ruling which he cannot later revert. This renders independence impossible through the legislation of the Sovereign, as it means the loss of sovereignty over that newly independent territory and, therefore, of the possibility to revert that independence through a new law. From a Rousseauian perspective there seems to be only two clear answers for Catalan Independence: either the Social Contract is nullified historically because it has never enjoyed legitimacy, meaning that there is no Spanish Sovereign and, hence, no restriction for the establishment of a Catalan contract, or, if the Contract is said to exist, it must be destroyed through the exercise of the individual right to leave the Contract. However, Sovereign legislation over independence is still open to contention and debate.

The three Social Contract theorists analysed thus provide three insights on the debate of Catalan secessionism. The validity of the Spanish Constitution as a guarantor of the natural rights to life, liberty and property, from a Lockean perspective, does not legitimise independence. Locke's argument indicates a preference for Spanish unity. Then, Rousseau's solution, the simultaneous use of each individual's right to leave the contract highlights the fact that Catalan independence would mean the destruction of the Spanish state. Lastly, Hobbes is insightful with regards to the requirement of a constitutional amendment, also reiterated by legal advisers, for legitimacy. The declaration of independence cannot be pronounced unilaterally, due to the legally binding nature of the Social Contract.

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