University of Pécs

Secession and Self-Determination:

A Comparison between Kurdistan and Catalonia

by

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A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

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DECLARATION

I declare that this dissertation that I have presented as a requirement for the PhD degree of the University of Pécs is my sole work other than where I have indicated that it is others' work.

I certify that my thesis consists of 66666 words.

I can ratify that an earlier draft of certain sections (“Background of Kurdistan” and applying theories of secession to Kurds) was previously submitted to be published in the Kuwait International Law School Journal.

I can confirm that most of my thesis was copy edited for conventions of language, spelling, and grammar by Jeannine Abu Sheikh.

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March 2022 Judge Eyad Ayed Alsamhan

Pécs, Hungary

WE ARE CREATED ALL FROM A SINGLE MAN AND A SINGLE WOMAN, AND MADE INTO RACES AND TRIBES SO THAT YOU SHOULD RECOGNIZE ONE ANOTHER.

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ABBREVIATIONS

ACHR	Arab Charter on Human Rights
EU	European Union
ECtHR	European Convention on Human Rights
FRY	Federal Republic of Yugoslavia
GDP	Gross Domestic Product
HDP	Peoples' Democratic Party
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
NATO	North Atlantic Treaty Organization
NGO	Non-government organization
OSCE	Organization for Security and Cooperation in Europe
PKK	Kurdistan Workers' Party
SC	Spanish Constitution
SCC	Spanish Constitutional Court
SFRY	Socialist Federal Republic of Yugoslavia
SNP	Scotland National Party
SSLM	South Sudan Liberation Movement
UDI	Unilateral Declarations of Independence

UN	United Nations
UNGA	United Nation General Assembly
UNAMET	United Nations Mission in East Timor
UNGA Res	United Nation General Assembly Resolution
UNMIK	United Nations Mission in Kosovo
UNMISET	United Nations Mission of Support in East Timor
UNOMIG	United Nations Mission in Georgia
UNOTIL	United Nations Office in Timor Leste
UNTAET	United Nations Transitional Administration in East Timor
USSR	Union of Soviet Socialist Republics
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

SECESSION AND SELF-DETERMINATION:

A COMPARISON BETWEEN KURDISTAN AND CATALONIA

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CHAPTER 1: INTRODUCTION

I. Ambitions

Although it is not a new way of creating new entities or states, the phenomenon of secession has lately attracted the attention of several nations in different regions. It seems that the world cannot stand to stay united in states with one another. Following any era of colonization and subsequent decolonization, several nation-states may be created with little consideration of the inhabitants within them or the borders formed to create these states. This has resulted in the rise of conflicts due to the creation of minorities within bordering states who, in many instances, face discrimination on all levels due to their ethnicity, religion, and traditions, along with other factors, thereby giving rise to calls for secession by these people.

Secession refers to separating part of a state's territory, which is carried out by the resident population to create a new independent state or accede to another existing state. [(1)] These people want self-determination, which is the right of people "freely to determine, without external interference, their political status." [(2)] Cassese specifically identifies some of the main manifestations of self-determination, which include, but are not limited to, decolonization and rights to democratic governance, good governance, freedom of association, freedom of expression, and a degree of autonomy and independence. Secession is therefore a means by which external self-determination may be achieved. [(3)] Secession is a necessity, because it reflects the self-determination principle, but secession is painful and can negatively affect not just the state's integrity but also its international stability. Secession appears in authoritarian states, states in which their governance does not strongly acknowledge the right of self-determination of the people, such as Cameroon, Iraq, the Central African Republic, Chad, and Sudan. However, secession has also been demanded in liberal democratic states as seen in Northern Ireland and Scotland (United Kingdom), Greenland (Denmark), Flanders

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[1] Rudolf Bernhardt, *Encyclopedia of public international law* (North-Holland 1987) 384

[2] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 24 October 1970, A/RES/2625 (XXV) (UNGA Res)

[3] Antonio Cassese, *Self-determination of peoples: A legal reappraisal/ Antonio Cassese* (Hersch Lauterpacht memorial lecture series, Cambridge University Press 1995)

(Belgium), Corsica (France), Venice (Italy), Catalonia and Basque (Spain), and Quebec (Canada).

The world is witnessing the birth of several secessionist movements every year. Upon reviewing these examples and literature, it can be seen that there are separation impacts that may reach all countries in the world. For this reason, these secessionist movements can be considered a phenomenon. This phenomenon is attacking the integrity of the sovereign states in the international community.

Yet, it is generally accepted that people have the right to determine their statehood. Self-determination is, in this sense, a practical factor in revolutions, reforms, or secessions. Self-determination and secession are affected by the question of legality, how constitutional and international law acts, or must act. Buchanan claims, that the secession theory is an important but neglected element of the larger theory of opposition to political authority that includes the theories of revolution, civil disobedience, and emigration. (4) If left to rule unchecked, this problem will expand and create total chaos not only nationally but also internationally. Nationally, it is quite challenging to let the people determine their statehood because people cannot successfully do so until they understand who 'the people' are, especially in the absence of self-determination in their constitutional process. Internationally, the lack of central government credibility to represent its nation before the international community will threaten the newly forming state's political stability, which can be expressed most visibly in revolutions or even armed conflicts. As seen, this will negatively affect international and constitutional governance and the rule of law. In fact, the study conducted by Moore and Buchanan in their work *States, Nations, and Borders: The Ethics of Making Boundaries* revealed that it is unclear if the basic idea that the government should serve the interests of the governed can be obtained in secession. (5) That is because there are no known studies that deal with how secession can satisfy all the secessionist movements around the world regardless of their justifications.

Although there are international and national challenges for secession, scholars have tried to justify secession because of its importance. Wellman Christopher, in his titled

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[4] Allen Buchanan, 'Toward a Theory of Secession' (1991) 101(2) Ethics 322, 342
[5] Allen Buchanan and Margaret Moore (eds), *States, Nations and Borders* (Cambridge University Press 2009) 338

work, *A Theory of Secession: The Case for Political Self-Determination,* says that the people's right to secede is a primary right as it is a reflection of the right to associate, so there is no need for oppression or unfair treatment to justify the secession of people. (6) Norman Wayne in his publication, *Negotiating Nationalism,* argues that the full case for constitutionalizing secession requires a complex blend of normative arguments about justice, democracy, recognition, and the right to self-determination, along with conjectures about the political sociology of multi-ethnic societies and the dynamics of nationalist politics; importantly, these dynamics are found in the nationalism theory of secession. He believes that it is an understatement to say that the nationalism theory of secession has yet to be made in a systematic fashion in the existing literature. (7) The same was said by Daniel Cetrà in his publication, *Nationalism, Liberalism and Language in Catalonia and Flanders.* (8)

Although Christopher, Wayne, and Cetrà justify secession in a certain way, there are others like Beran and Catala that have justified secession as a remedial method. Harry Beran in his work, *A Liberal Theory of Secession,* argues that secession is a challenge that has been studied but the literature has so far neglected to address political philosophy. Additionally, Beran's liberal theory of secession justifies secession as a legitimate right for the majority rule. (9) In her literature, *Remedial Theories of Secession and Territorial Justification*, Amandine Catala assures that addressing the question of secession justification non-arbitrarily and consistently requires adopting a broader conception of justice that includes morality as is implicit in the just-cause theories of secession justification. (10)

Nicolás Brando and Sergi Morales-Gálvez tried to join both the remedial and primary secession theories to justify what entitles people to claim independence in order to assess legitimate secessionism. They compared the right to secession in these two

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[6] Christopher H Wellman, *A theory of secession: The case for political self-determination/ Christopher Heath Wellman* (Cambridge University Press 2005)
[7] W. J Norman, *Negotiating nationalism: Nation-building, federalism, and secession in the multinational state/ Wayne Norman* (Oxford University Press 2006) 180
[8] Daniel Cetrà, *Nationalism, liberalism and language in Catalonia and Flanders* (Comparative territorial politics, Palgrave Macmillan 2019)
[9] Harry Beran, 'A Liberal Theory of Secession' (1984) 32(1) Political Studies 21 <10.1111/ j.1467-9248.1984.tb00163.x.>
[10] Amandine Catala, 'Remedial Theories of Secession and Territorial Justification' (2013) 44(1) J Soc Philos 74

approaches looking at their meeting points and discrepancies. [11] Pau Bossacoma Busquets tried to do the same in his recent book, *Morality and Legality of Secession: A Theory of National Self-Determination,* arguing that a right to secede should be assigned to national communities. However, when the parent state practices injustices against a specific sub-unit, the right to secede could be extended beyond the nation. [12] However, the literature mainly emphasizes the differences between primary and remedial justifications. It is my firm belief that these attempts of justification was already in the mind of Buchanan when he claimed that the apparent lack of a comprehensive theory of secession or an argument to show why one is not needed is inconsistent with many theories. [13] Specifically, his claim is in inconsistent with the liberal theory since recognizing the right to secede seems to be something liberalism is at least clearly committed to.

Thus, after reviewing these important pieces of literature about secession and self-determination, it can be realized that no scholar has yet connected all aspects of secession and self-determination from the original relationship between the state and its people to find a broader justification for secession. Perhaps the reviewed readings did not use the particular way of justifying the secession combined with the roots of creating a social contract between the state and the people to provide different outcomes. In this study, the possibility of studying the secession and self-determination from the social contract perspective combined with international recognition shall be tested on practical secession examples. This process will be used to help to test, discover, generate, integrate, apply, extend, and disseminate justifications of secession to answer the main question of the dissertation. This question is as follows: how can only a particular conceptualization of secession satisfy the endeavors of all the self-determination seekers around the world regardless of their reasons or justifications?

This study tries to test the theories of researchers' views in the field, indicating theories' shortcomings, and then come up with a new theory that could be applied to different nations. In other words, this research question needs to be asked, and as seen in the

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[11] Nicolás Brando and Sergi Morales-Gálvez, 'The Right to Secession: Remedial or Primary?' (2019) 18(2) Ethnopolitics 107

[12] Pau Bossacoma Busquets (ed), *Morality and Legality of Secession: A Theory of National Self-Determination* (Federalism and Internal Conflicts, Palgrave Macmillan 2020) 8

[13] Buchanan (n 4), 323

questions of the dissertation, against the background of the abovementioned brief literature review, it can be realized that there is a lack of a comprehensive modern theoretical framework of the phenomenon of secession. Hence, this dissertation aims to determine a comprehensive modern theoretical framework so that a general justification for all states from a constitutional and international perspective can be found and applied. This research process will address the problem by studying examples from two different secessionist movements and from different legal and international scenarios.

II. Why Kurdistan and Catalonia

The Kurdish referendum, the autonomous region of northern Iraq, (on September 15, 2017) and Catalan referendum (on October 1st, 2017) endeavors to establish a unilateral independence referendum have made secession, once again, a prominent political issue like the later Scottish referendum in September 2014 to be present again in the 2021 project. There is a need to compare the secession of Kurdistan and Catalonia through the said theoretical views that describe the analysis aspect of secession, like historical, locational, demographical and the international relational aspects, because knowing and understanding the nature of secession in the examples will put the researcher in the best position to offer some alternatives to overcome the challenge of secession and self-determination. The comparison between Kurdistan and Catalonia will be the ideal case law studies. In particular, contemporary studies come up with a theory and use different examples to support the theory from different aspects. Instead of that way, I am analyzing the legal justifications of secession and testing the suitability of the theoretical criteria as an international norm for the selected cases of Kurdistan and Catalonia. In other words, the theory will be a result of studying the comparison of the selected examples to come up with a comprehensive theory for the process of secession. The comprehensive rule for the process of secession can be developed and it can be applied to other future examples, including the Scottish secession as mentioned. Therefore, both chosen examples of Catalonia and Kurdistan are ideal examples for this study as they represent the range of laws and principles of secession over the world. If this study can compile the comprehensive theoretical framework of secession over the said examples, the outcomes can be applied to any secession case.

This dissertation's chosen examples were based on a careful analysis of two different movements with two different versions of democratic citizens that reflect both ideal

examples of world backgrounds. Internationally speaking, not only do Catalonia and Kurdistan want to secede from the countries to which they belong, but many other regions in the world have also sought to do so in recent years. For instance, the secession of Nagorno-Karabakh from Azerbaijan, Karakalpakstan from Uzbekistan, South-Sudan from Sudan, Western Sahara from Morocco, Kachin and Karen from the Union of Burma, and Tasmanian and Western Australia from Australia. Some of them have succeeded in secession, others did not, and some who became independent countries did not have a happy ending. Although the two chosen examples in this study share similar ambitions but have not managed to secede so far in the time of this study, they show an undeniable contrast of the situation in the parent state, location of the people regarding the parent state, number of the parent states, history, and steps taken to secede. Indeed, it is only after a 'diagnosis' that predictable legal solutions to the problem of secession can be offered. In the case of Kurdistan and Catalonia, all aspects of secession theories are not necessarily applicable in both cases. However, the main reason for studying all aspects is to discover if one of them or more can assert and justify the legality of secession for the early mentioned examples and others. In other words, in the literature, there have been theories developed based on studying the secession movements in Kurdistan and Catalonia, but they are not convincing enough because each study focuses on the specialty of the subject cases individually, each Kurdistan and Catalonia, without paying attention to the wide picture of the global challenge of secession.

Specifically, Catalonia is the most prominent example of a community seeking secession or independence today alongside Iraqi Kurdistan. Catalonia represents an example of a community contemplating secession with fewer security difficulties, where the generally peaceful relations among neighbors occur, and the pooling of security responsibilities within the European Union has created an international climate suitable for Catalonia and other European or non-European communities like Quebec.

On the other hand, while being unique in some aspects, the Kurdish movement shares various common characteristics with similar secession movements from the former Yugoslavia to Chechnya, from the Middle East to Africa. These movements represent the conflicting hopes and fears of diverse ethnic communities that have captured international attention during a period of rapid and often violent change.

III. Methodology

The methodology adopted in this dissertation is based on analyzing methodology adapted in the earlier studies and testing them on the two said examples. At the same time, a comparison between Kurdistan and Catalonia can determine secession's comprehensive theoretical framework.

As part of the methodology, the apex courts, or constitutional courts, decisions disclose the position of the self-determination of peoples from a constitutional view. It is necessary to know the position of self-determination in the constitutional law to understand the further steps after initiation and practicing the right of self-determination. It is especially important to know that the apex courts decisions are connected with most secession referendums and elections for the secessionists.

It also deserves to be noted that the rise of the national identity has international and constitutional aspects. The existing constitutional structure presents a serious global challenge of how the constitution can present its nation before the international community. This issue shows the difficulty of compromising the often conflicting political goals of minority and majority groups within one state. These are the first steps to address the global challenge of secession from a more abstract perspective.

In addition, building on the ideas of constitutional identity since every constitution should reflect the peoples' needs, the identity of the constitution is found within the provisions of the constitutional texts, and the related jurisprudence that is specifically and exclusively characterized by the situation that was formed during the constitution-making process. So that their purpose is to apply them in the face of internal obligations to people and international human rights requirements. [(14)] In other words, the constitution shall represent the needs of the people to represent its identity. The constitutional identity will not stay reserved when the constitution does not provide the needs of its people as seen in the outcome of the study.

This ambitious research tries to join the mentioned expressions in constitutional and international perspectives. This study will use the constitutional aspect represented in the social contract in secession's justification and show how it is connected with the

[14] Tímea Drinóczi, 'Constitutional Identity in Europe: The Identity of the Constitution. A Regional Approach' (2020) 21(2) German Law Journal 105

international perspective of secession represented in self-determination. In other words, one of the most modern renewable legal issues that preoccupy constitutional scholars in the world is so essential because of the growing awareness of third-generation human rights focusing on collective rights such as self-determination which could be tested in the formation of modern constitutions. This proposed thesis's main purpose is to inform action, prove a theory, and contribute to developing knowledge in constitutional and international studies. This dissertation will highlight the significance of people's self-determination alongside with the social contract. It deals with the developed definition of self-determination as an element of the democratic transition; it is also ostensibly connected with the social contract.

IV. Questions of the Dissertation

This study tries to answer the dissertation's main question of how all the self-determination seekers around the world can only satisfy with secession regardless of their bonds or justifications. This issue can be broken down into questions concerning the nature of the determining process and secession's common goal. In other words, who are the people that can decide and how can they? These are the main challenges of this dissertation. Consequently, does only self-determination initiate secession? How can the constitution play a role in secession? How can international law play a role in secession? Who are the people that can secede and who cannot? Can location play a role in secession? What are the future chances for the secession of Catalonia? Is there a single justification f people's right to self-determination and how international law can be the main factor to guarantee its existence. Similarly, one might query whether the establishment of a participatory democracy vitiates any further right to individual self-determination on the part of those groups participating. For example, it could legitimately choose an enlightened dictatorship or single-party regime as its form of government where the majority felt that these were less conducive to corruption or better able to achieve social or economic order. Finally, one must decide how often self-determination demands that this process recur. In other words, should a referendum be 'once in a generation' thing?

V. Insight to the Dissertation

These questions will be presented and discussed in three chapters: Justifications of secession; secession and Self-Determination in International Law; secession and Self-Determination in the Constitution. I discuss some theoretical frameworks, starting with the notion of secession, in the light of which and because of which I felt it necessary to adapt the comprehensive concept of secession in the first chapter. The first chapter will cover the terms of secession to clearly explore the conceptual borders of secession trying to stay in the core of the concept and to avoid the penumbra concepts of secession like separatism, independence, consent of the parent state, and the comprehensive approach of secession. Partly following the argument set in the earlier topic (Terms of secession's Debate), I tried to show how this debate is applicable to both cases of the study- Kurdistan and Catalonia. Scotland will be also seen in latter parts of the dissertation as a potential application. The first chapter's second topic will cover the theoretical justifications of secession, both the remedial and primary justifications. I could also observe that these kinds of justifications for legitimizing secession have not gotten out of two categories: primary and remedial theories. It has led me to investigate and test the suitable justification for the two cases of the study taking into consideration the historical impact of them and see if this suitable justification is convincing enough or shall another abstract justification be found.

I also believe that the international perspective is one of the fundamental perspectives of shaping the right of self-determination. The second chapter will analyze self-determination from an international law perspective by splitting the term into two topics: The people "self" and the process of "determination." The first topic will discuss the historical impact of deciding who the people are in order to know the people who can exercise the right of self-determination and the rights of minorities from an international law perspective. The second topic will similarly discuss the right of self-determination from an international perspective and the impact of international recognition when practicing it.

The third chapter will study self-determination from a constitutional perspective. It starts with secession according to the constitutional provisions that may permit, prohibit, or stay silent toward it and finishes with the courts' role in this situation. The second topic will discuss the social contract theories and the referendum from a

constitutional perspective and the other forms of self-determination, democracy, and good governance.

I briefly conclude in the last chapter that the outcomes of the comprehensive concept of secession and its theoretical framework applied in the examples of Kurdistan and Catalonia. These outcomes are supported by the studied aspects of secession and self-determination including but not limited to, location impact, the scope of people, and the right of minorities, the social contract and international recognition.

CHAPTER 2: JUSTIFICATIONS OF SECESSION

The second chapter will cover the terms of secession's debate to give a clear attempt to explore the conceptual borders of secession trying to be more certain of the concept and to avoid the penumbra concepts of secession like separatism, independence and consent of the parent state. Then the chapter will end by adapting the comprehensive approach of secession. This chapter also will test the suitability of justification's secession of the Kurdistan and Catalonia. Thus, to get the full understanding of the cases of Kurdistan and Catalonia I find that starting with the historical background of both examples will be the best start.

I. Background of the Study Examples

It is useful to commence with providing a background of Kurdistan and Catalonia to understand the real situation of this case study to analyze it carefully then to start examining the theories of the secession to come up with the proper justification of the secessionist movement of this case study. This background will help in understanding the specialty of each case of study to stand on common and specific features. I consider that each country has its own specific features from a social, cultural, legal, political, and historical point of view, and therefore one might think that it is extremely difficult, and almost impossible, to identify general rules that are always valid for every state.

A. Background of Kurdistan

The term "Kurdistan" is a conjunction of "Kurdi-" meaning people of Kurds with the Persian suffix "-stan" meaning "home of." So, the term means "the land of the Kurds." It is like other regions named after ethnic groups (Lasistan, Lorestan, Nuristan, Dagestan, Baluchistan, etc.). Kurdistan is the Kurdish people's home, a distinct ethnologic group that has inhabited the area since virtually the beginning of history. Geographically, it lies on a territory of approximately 74,000 square miles covering parts of Iraq, Iran, Syria, Turkey, and the former Union of Soviet Socialist Republics (USSR) and Yugoslavia. Of the Indo-European origin and speaking a language with Aryan Indo-European roots, Sorani and different dialects of Kurdish, (15) the Kurds trace their ancestry back to the tribes known as the Medes. The latter had probably settled in the mountains of Iran by the seventh century B.C. However, it is still too early to judge that they achieve the "self" requirement of self-determination. (16)

Considering that the vast territory was encouraging cruelness, tribal independence has become rooted in the Kurdish character and the foreigners have kept the level of governmental interfering to a minimum. The foreigners have historically had nominal rule over Kurdistan. This same feature, however, has militated against the cohesiveness

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15 Andrea Pieroni and others, 'Where tulips and crocuses are popular food snacks: Kurdish traditional foraging reveals traces of mobile pastoralism in Southern Iraqi Kurdistan' (2019) 15(1) Journal of ethnobiology and ethnomedicine 59, 61

16 C KI V9FT O9LK,Thomas Schmidinger, 'Kurdistan: Country without a State or Country against the State' in Thomas Schmidinger and Michael Schiffmann (eds), *Rojava: Revolution, war and the future of Syria's Kurds/ Thomas Schmidinger ; translated by Michael Schiffmann* (Pluto Press 2018) 31

of the Kurds as a people. Thus, their disposition toward tribal factiousness has been equally efficient in preventing all Kurds' sustained government. [17]

The salient feature of the last centuries of Kurdish history is that they were subsumed one after the other within the empires of the Assyrians, Persians, Greeks, Romans, Arabs, Mongols, Ayyubids' people, and the Ottoman Empire. In the face of their distinct culture, language and numbers, the Kurds have not enjoyed any long-lasting self-government. After the Kurds accepted Islam and became a part of the Islamic community, Kurds turned into various smaller domains. They only nominally belong to the Islamic Caliphate in the seventh century, starting with the Umayyad caliphate (661–750). Kurdistan experienced the emergence of semi-autonomous territories and tribal dominions on a regional level. [18] It is consequently even more surprising that the Kurds have conserved their individuality during this time, often defending their identity against some governors.

At the present time, the Kurds represent a substantial minority in Iraq, Iran, and Turkey, with smaller groups in Syria and the (USSR) and Yugoslavia, especially in both Armenia and Azerbaijan. The actual number of Kurds living in each of these countries is a matter of some dispute. The size of the Kurdish population is approximately estimated at 35 million according to a 2010 Central Intelligence of the United States of America study. [19] Although there are no updated official records, a 2018 study has calculated Kurds' comparative estimation as about 52 million based on the American records. [20] They are distributed in a Kurdish population of eighteen million in Turkey, eight million in Iran, about seven million in Iraq, and less than two million in Syria, where recent fighting has taken place, [21] and unknown population numbers in Azerbaijan and Armenia. [22] In terms of real numbers, there are many more Kurds in Turkey than in Iraq. The Kurdish in Iraq represents about 15-20% of the total Iraqi

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17 Bossacoma Busquets (ed) (n 12) 153

18 Thomas Schmidinger and Michael Schiffmann (eds), *Rojava: Revolution, war and the future of Syria's Kurds/ Thomas Schmidinger ; translated by Michael Schiffmann* (Pluto Press 2018) 31–32

19 The Central Intelligence of the United State of America, 'The World Factbook' (Feb 2020) <https://www.cia.gov/library/publications/the-world-factbook/attachments/summaries/IZ-summary.pdf>

20 محفوض، عقيل, تركيا و الأكراد: كيف تتعامل تركيا مع المسألة الكردية؟ :Turkey and the Kurds: How does Turkey deal with the Kurdish question? [personal translation]' (The Arab Center for Research and Policy Studies March 2013) 19

21 Jean Galbraith, 'United States Withdraws Troops from Syria, Leaving Kurds Vulnerable' (2020) 114(1) Am j int law 143, 143–148

22 محفوض، عقيل (n 20) 11

population. [23] Because of the conditions of Kurdish living, they will have a lesser and uncertain opportunity for autonomous development compared with the non-Turkish minorities within the Ottoman Empire. To the ears of the leaders of the Greeks, Slavs, Armenians, Arabs, and Kurds, Wilson's program was tantamount to an assurance of political independence. Kurdish hopes were further sustained by the text of the Treaty of Sèvres signed in August 1920. Paragraphs 62 through 64 of the treaty dealt with "Kurdistan":

> 62. A commission. Composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas.
>
> 64. If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey agrees to execute such a recommendation and to renounce all rights and title over these areas. [24]

Paragraph 64 specified that, after establishing an autonomous Kurdistan, the Kurds of the Mosul province, then under British control, were to be free to adhere to the new autonomous entity. The Treaty of Sèvres was ratified by the Sultan in Istanbul while in Ankara liberation forces were gathering for the war of liberation. After they won, they denounced Sèvres and negotiated the Treaty of Lausanne with the rise of Mustafa Kemal Ataturk. The Treaty of Sèvres was never ratified by the Turkish National Assembly. It was subsequently replaced by the Treaty of Lausanne (1923), which omitted any reference to an autonomous Kurdistan and contained customary provisions in Articles 37-45 to guarantee the protection of minority rights within Turkey. [25]

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[23] The Central Intelligence of the United State of America (n 19)
[24] Treaty of peace between the Allied and Associated Powers and Turkey 1920, August 10, 1920, Sèvres (Allied and Associated Powers (1914-1920))
[25] Kerim Yildiz, *The Kurds in Iraq: The past, present and future/ Kerim Yildiz* (Pluto 2007) 11–12

B. Spain and Catalonia Background

Catalonia is an autonomous region of the Spanish state. This area's history is deeply rooted as old as the history of Spain. Catalonia is an identity first and then a state. Earlier Catalonia suffered huge centralizing initiatives by central authorities, beginning in the seventeenth century with King Philip IV's reign. Later, Catalonia attracted many working-class immigrants in the post-war era for Madrid's economic necessity to dilute their community's cohesiveness. When the autonomy statute was adopted, it could only be amended by absolute majorities in both the regional assembly and the Cortes, and by a referendum in the autonomous community. The autonomous governments have exclusive jurisdiction over local civil law, resource allocation, and regulation of local transportation, industry, communications, urban planning, public works, infrastructure, and social programs for health, unemployment, welfare, and culture. The Catalans insisted on permission to establish an "autonomous police force." Consequently, the highly centralized Spanish government has become significantly decentralized in less than a decade. [26]

Catalonia was formerly a principality of Aragon's crow*n*, and it has played an important role in the history of the Iberian Peninsula. The Iberian Peninsula is a mountainous region that's most associated with the countries of Spain and Portugal. From the 17th century, it was the center of a separatist movement that sometimes dominated Spanish affairs. Catalonia was one of the first Roman possessions in Spain. The Muslims ruled it in 712 AD and at the end of the 8th century by Charlemagne, who incorporated it into his realm as the Spanish March, ruled by a count. [27]

Catalonia lost its political independence in 1714 AD after it was annexed by the Spanish King Philip V by force, and since that day the Catalan people have never stopped fighting for independence and the recognition of their distinct Catalan identity. In 1871 AD, the region had the opportunity to secede from the kingdom, but the latter managed to preserve the region and made promises to fulfil its demands. A civil war broke out in the thirties of the last century between the central government and its

[26] Viva O Bartkus, *The dynamic of secession* (Cambridge studies in international relations vol 64, Cambridge University Press 1999) 177–178
[27] Flocel Sabaté (ed), *The Crown of Aragon: A Singular Mediterranean Empire* (Brill's companions to European history volume 12, BRILL 2017)

Catalan ally and Franco's army, in which the Catalan Central Alliance was defeated. Franco's army practiced repression, oppression and persecution of the Catalan identity, which prevented the Catalan language from being considered an official language, and its teaching in schools was refused. The Catalan identity was rejected, which led to the growth of independence of the Catalan people. After the fall of the oppressive regime led by Franco, a referendum was organized in order to restore the democratic life of Spain, during which the people voted by 90% in favor of the Spanish constitution, according to which "indissoluble unity of the Spanish nation", and "guarantees and recognizes the right to self-government for nationalities, minorities and territories that it consists of Spain." (28)

In 1979, the Catalan nation got the right to self-government, and it was required that the Spanish and Catalan languages be recognized as official languages in the region, while the new Catalan authority was allowed at that time to assume responsibilities for education, health, culture and politics, and a Catalan security force was formed. However, after the cooperation between the Spanish government and the Catalan parliament, differences arose between the nationalist wing in favor of Catalonia's independence and the one opposed to this secession.

Focusing on the Catalonian secession's efforts, several referendums were held. The local population voted to expand the Basic Law of Autonomy, and the Catalans were ready to cooperate with the Spanish government in order to live under Spain. However, the central government questioned the constitutionality of this decision and the referendum, and efforts culminated in the Spanish Constitutional Court ruling that the amended statute of self-government is unconstitutional because, according to the constitution, there is one nation, which is the Spanish nation. This ruling caused many reactions throughout Catalonia with the most organized being in Barcelona. The nationalists held numerous non-binding referendums for Catalan independence from December 2009 until 2011. Another referendum was held in 2014, and in 2017 there was a binding referendum, according to the nationalists, in which the majority of voters, who did not make up the majority of Catalan society, voted in favor of independence by 90%. Only 43% of the eligible voters participated. The Spanish Constitutional Court

[28] Abulafia and David, 'The Catalans and the Mediterranean' in Flocel Sabaté (ed), *The Crown of Aragon: A Singular Mediterranean Empire* (Brill's companions to European history volume 12. BRILL 2017)

declared the referendum unconstitutional again, and after the declaration of independence by the public in October 2017, Madrid implemented Article 155 of the constitution and stripped workers and the regional government of all their powers and took control of the region. [29]

Demographically speaking, most of the people of Catalonia live in Barcelona in the northeast of Spain. The region is diverse, meaning tourism is an important part of Catalonia's economy. Another major part of this region's economy is manufacturing and metalworking because Catalonia maintains three nuclear power plants. It is a big consumer of natural resources like oil and natural gas, thus creating a very competitive industrial sector and making this area one of Spain's wealthiest. Spain resisted the secession because Catalonia's economy reaches 19% of Spain's gross domestic product (GDP). Catalonia's landscape is also boosting the local economy and gives relative prosperity compared to other regions of Spain, like the Basque Country when the financial crisis erupted in 2008, so Madrid's austerity measures fueled the separatists' will for secession.

Barcelona, with its Catalonian sisters Grinda, Larda, and Tarragota, is the richest sector in Spain. The Catalan region area is 32 thousand square kilometers, around 8% of Spain's total area. Furthermore, its population does not exceed 14% of the population of Spain. Despite its small area, it produces nearly 20% of Spain's gross national product, with a total of 210 billion euros, and controls 70% of Spain's foreign trade. Seven rivers are flowing with freshwater, enabling it to produce enough electricity for industry. These rivers also aid the agricultural activities, and they also help with grazing fields for animals.

Besides, Catalonia alone produces a third of Spain's industrial output, a quarter of its exports, and half of electronic equipment and cars. Barcelona also attracts many tourists to Spain, and it contains one of the largest commercial ports in the Mediterranean and has four international airports.

These economic factors reinforce claims to independence in Catalonia's region, using its economic power against the Spanish state. The Catalan region's residents believed that the Spanish government imposes heavy taxes on them amounting to 10% of the region's

[29] Christos Tzagkas, 'The Internal Conflict in Spain: The case of Catalonia' [2018]

GDP, which exceeds 20 billion euros annually. While the Spanish state suffers from economic challenges, weakness in the public budget, a large deficit and an increase in unemployment, not to mention the austerity measures taken by the country, the secession of Catalonia comes as a step that would weaken the Spanish state significantly, which lead to Spain threatening to freeze Catalan's financial resources if it continued to hold the illegal referendum is in its view.

Finally, if the Catalan region's secession and its hopes for independence are realized, then this will be the end of the Spanish state, and the fall of the dominos will continue when the first piece falls. It will also encourage the Basque Country, home of the separatist organization Aita, to secede. (30)

[30] BBC, 'Spain's Basques form human chain calling for independence vote' *BBC* (10 June 2018) <https://www.bbc.com/news/world-europe-44431122> accessed Febuary 11, 2021

II. The Terms of the Secession's Debate

This chapter will try to shape the concept of secession in order to encompass the subsequent parts of this study. In any fruitful debate, it is extremely important to recognize the terms of the study subject in order to preface the way to reach a coherent result without misleading the path. Technically speaking, secession is one of the most controversial terms because of its aspects in deferent fields: for example, political, international law, and constitutional law. In the political perspective, secession is a revolutionary concept because it lies in an ultimate challenge to state sovereignty. At the same time, it is conservative in the reinforcement of the virtues of the self-government because it relies on the disconnection between the central government and the seceding territory.

In the international law sense, while secession is not definitely acceptable, it is not totally forbidden. It is possible to find the international community supporting decisions to ban tearing up the state. On the other side, it is possible to find the international community welcoming with wide arms to the secession of a certain territory at the same time. This secession will require international accreditation. Furthermore, in constitutional law, secession is a taboo. Secession is not easily accepted in the constitutional concept of the unity of the land and the state. However, Referendums and other constitutional measures are constitutionally found to solve certain constitutional matters but never admitted to being used for the matter of secession. (31)

This issue is reflected in the nature of regulations surrounding secession. Thus, secession is a legal act as much as a political one. This study will focus on the legal aspect of the secession more than other sides of the view, starting with the technical meaning of the term secession in legal dictionaries. Secession is defined as:

> "The action of breaking away or formally withdrawing from an alliance, a federation, a political or religious organization, etc." (32)

One of the judicial definitions of secession, which I am going to rely on, is that of the Supreme Court of Canada in reference to the secession of Quebec. The court decision

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31 Mia Abel, 'Is There a Right to Secession in International Law?' [2020], 1

32 E. A Martin and Jonathan Law, *A dictionary of law* (Oxford paperback reference, 6th ed. Oxford University Press 2006) 449

defines it as "the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, with a view to achieving statehood for a new territorial unit on the international plane. In a federal state, secession typically takes the form of a territorial unit seeking to withdraw from the federation." From this perspective, secession is the process of withdrawal of a territory and its population where that territory was previously part of an existing state. (33)

There is no special judicial definition for the secession of Kurdish people neither in Turkey nor Iraq. However, the Iraqi Supreme Federal Court's decision, regarding the constitutionality of the referendum, held in an autonomous Kurdish region in Iraq, rejects any kind of secession which is implicitly defined as a separation of any of the federal system's components in the Republic of Iraq, which are the capital, the regions, the central governorates, and the local administrations stipulated by Article 116 of the Iraqi Constitution. (34) In the same line, the Turkish courts have not presented any kind of definition of secession of Kurdish people from Turkey, yet there is a tendency to criminalize the demands of secession. The constitutional court of Turkey made a judgment to shut down the pro-Kurdish Democratic Society Party (DTP) and banned dozens of members from joining other political parties for five years. It also expelled two-party politicians. The court found the party guilty of collaborating with the Kurdistan Workers' Party (PKK), which is fighting for secession in the mainly Kurdish southeast of Turkey. (35) The same can be said to occur against Kurdish People's Democratic Party (HDP) by the Constitutional Court of Turkey, although it had ruled that the indictment had procedural omissions and returned it to the Court of Cassation. However, the Court of Cassation can re-submit the indictment after completing the necessary details needed by the constitutional court. (36) The European Convention on Human Rights (ECtHR) will have the same decision if the constitutional court of Turkey does not change its precedents. This prediction can be seen in a similar ECtHR

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33 *Reference re Secession of Quebec* (1998) 25506 [83] (SUPREME COURT OF CANADA)
34 (November 6th,2017) No. 122/Federal/2017 2 (The Iraqi Supreme Federal Court)
35 *Ürper and Others v. Turkey* [2009] 14526/07, [2009] (The European Court of Human Rights)
36 Osman Can and Stiftung Wissenschaft Und Politik, 'The motion before Turkey's Constitutional Court to ban the pro-Kurdish HDP'

decision that considered the mere disclosing of an underlying desire to separate is not an act of terrorism. (37)

Compared with the Catalonian experience, there is an understanding for the secession demand and definition, although it is not approved by the Spanish Constitutional Court. The Spanish Constitutional Court looked at secession as the same definition and conclusion formulated by the Supreme Court in Canada. (38)

[37] *Chapman V. The United Kingdom* (2001) (Application no. 27238/95) 8 (European Court of Human Rights)
[38] *Constitutional judgment against the Resolution 5/X adopted by the Parliament of Catalonia, of 23 January 2013.* (March 25th, 2014) 42/2014 (The Spanish Constitutional Court)

A. Secession and Terms of Separatism

The primary goal for secessionists is not to overthrow the existing government, nor to make fundamental constitutional, legal or political changes in the parent state. Instead, secessionists wish to limit the jurisdiction of the state so as not to include their own group and their territory. The noticeable difference between secession and revolution is that successful secession is aimed only at restricting the scope of the state's power, not dissolving it, which does not, like the revolution, require (though it may, in fact, result in) the overthrow of the government. (39)

Thus, secession does not challenge the very notions of statehood, citizenship, and sovereignty. On the contrary, it is apparent that legal regulations of secession have a tendency to dissimulate its revolutionary character while legitimizing its conservative dimension through state-building in the context of a new sovereign entity. In that connection, the 'secession' concept is substituted by 'dissolution' (Yugoslavia) or 'voluntary disassociation' (Bangladesh, Eritrea, Czechoslovakia, the Soviet Union). (40)

Nevertheless, there are overlaps between dissolution and secession. I would like to rethink the case of whether Yugoslavia was a dissolution or a dismemberment caused by parallel secessions. The difference between the two scenarios is noteworthy in an international law sense for the purpose of continuity of international treaties. Secession involves splitting away from an existing political union. However, it is not necessary to stand on the idea that the parent State shall not disappear due to secession, but it can be vanished by a series of multi-movements of secession. In principle, when one or more secessions happen, the parent State remains as the Continuator State under international law. (41)

At this juncture, secession is different than *dissolution* as *dissolution* consists of more than one secession occurring to one jurisdiction. This conceptual framework, d*ismemberment* (as a broad concept) will be used when parallel secessions happen within the same parent State, in order to include both cases where a continuator State is

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[39] Allen E Buchanan (ed), *Secession: The morality of political divorce from Fort Sumter to Lithuania and Quebec/ Allen Buchanan* (Westview Press 1991) 10

[40] Susanna Mancini, 'Secession and Self-Determination' in Michel Rosenfeld and András Sajó (eds), *The Oxford handbook of comparative constitutional law* (Oxford handbooks in law. Oxford University Press 2012) 481

[41] Bossacoma Busquets (ed) (n 12) 6

recognized, like Union of Soviet Socialist Republics (USSR) and those where dissolution occurs. All the new States are considered successor States (Yugoslav Federation). [42] In other words, in the event of dissolution, the parent State would no longer exist, and all the new States would become the successors of the predecessor State. [43] The essential dissimilarity between other terms of separatism and secession lies in the sovereignty of the existing political authority. The definition of secession used here emphasizes the formal process of withdrawing from a constituent unit in order to create a new sovereign state, or the integration within a neighbor Sovereign State as coming as will be discussed later. [44]

Although the case of Catalonia and Kurdistan may not cause confusion toward the dissolution of the parent State, the situation is strongly presented in the Iraqi Kurdish secession. Iraq currently suffers from a great political weakness based on the Iranian influence on the authority of Iraq and the *Shiite*'s loyalty to Iran. Thus, the case of multi-parallel secessions by Sunni, Shiite, and Kurdish groups could end the existing Iraqi political authority. Nevertheless, I have to admit that this extreme situation may not strongly present in the near future.

[42] ibid 7, 197
[43] ibid 6
[44] Bartkus (n 26) 9

B. Secession and Independence

Although secession is seen as a way to reach independence [45] or a more specific technical term than independence, [46] Allen Buchanan states that secession does not necessarily lead to independence; he includes the separation of a territory in order to join another existing sovereign state in the concept of secession, drawing on the example of Transylvania's desire to secede from Romania to become part of Hungary. [47] This idea of including dependent secession is needed to shape the independent relation with the secession. Statehood, therefore, is not the only possible outcome of secession. Secession can also happen when a group of people leave one state and join another neighboring state. Different from mere individuals' or group immigration from one state to another, secession in support of irredentist claims, "irredentist secession" involves the land moving with the inhabitant people to another state.

As stated above, secession is a process, not a final end result. Another approach of looking at this process is to think of secession as a journey, with a port of departure and a port of arrival, each with its own set of applicable rules. [48] With this irredentist secession, the starting point is the same as traditional secession, but it may end differently. As a consequence of traditional secession, the state splits in two: the state continues to exist as 'Parent State', but a new State, or entity, comes into existence concurrently. A constituent part of a State becomes independent. However, rather than create a new State, the separating part of a State may choose to join an existing State, a merge not only in people but also in the land. Such a case also amounts to secession. [49] From a legal perspective, this suggests the secession of territory, the modification of international boundaries, and a sovereignty transfer. No new state appears. In its place, irredentist secession modifies the extent of the territorial sovereignty of two, or more, States. [50] The latter example does not appeal to the traditional school of classical

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[45] Aleksandar Pavković and Peter Radan, *Creating new states: Theory and practice of secession/ by Aleksandar Pavković with Peter Radan* (Ashgate 2007) 5
[46] Bossacoma Busquets (ed) (n 12) 3
[47] Buchanan (ed) (n 39) 10
[48] Arnold N Pronto, 'Irredentist Secession in International Law' [2016] Fletcher forum of world affairs
[49] Daniel Thürer and Thomas Burri (eds), *The Max Planck Encyclopedias of International Law: Secession* (Encyclopedia entries, OXFORD PUBLIC INTERNATIONAL LAW 2009) [A.1]
[50] Pronto (n 48)

secession lead by Aleksandar Pavković, who considers secession as the creation of a new state with its own borders on the withdrawn territory. (51)

From a different angle, the withdrawn territory and population from one state to another into an already existing state (usually a neighboring country) is incorporation, 'redemption' or 'liberation' but not secession. In other words, secession from one state is incorporation by another state. The internal movement seeking association or integration with the other state would then be a new legal form which is not different from secession. A state claiming part of an adjacent state's population and territory would be another irredentist legal form on the same page. This might not be a challenge to the secession. For instance, the cases of Alsace, Lorraine, Trieste, Fiume, the Aaland Islands, etc. (52) Aaland Island, for example, is a part of Finland with a majority Swedish-speaking region where a separatist movement agitated for incorporation into Sweden. The Swedish perspective supporting the movement is an irredentist perspective that does not differ from the secessionist movement that seeks secession, not independence. Secession ends in liberation with Sweden. Another living example, the area Kashmir, India, is attempting to secede from India to become part of Pakistan. This case will be the newest secession that ending in redemption.

However, I have a strong belief that the classical doctrine cannot cope with cases such as those in Northern Ireland (with Ireland), South Tyrol (with Austria), Kosovo (with Albania) and Crimea (with Russia) since the classical doctrine focuses on the ending result of independence. Thus, this doctrine cannot justify the situation of a new state with its own borders including withdrawn territory that decides later to join a neighboring country. Will the classical doctrine then reclassify this situation again as not a secession? That is the reason behind supporting the comprehensive concept of secession and considering the redemption a later part of a secession. Therefore, it would be an error to define secession as separation from an existing state in order to become a sovereign state. Nonetheless, in most actual cases, secessionists seek sovereign status and hence it is with secession as a mode of achieving political independence that is the main concern. (53)

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51 Pavković and Radan (n 45) 9
52 Bossacoma Busquets (ed) (n 12) 4
53 Buchanan (ed) (n 39) 10

Drawing from the Kurdish example, there is no state called Kurdistan so far, and the Kurdish people are divided between Turkey, Iran, Iraq and Syria. So, the union of such parts together at the same time could be a case of secession. However, if a Kurdish State managed to exist before some, or one, seceding parts will try to join the Kurdish state. It would be a case of irredentism secession, not irredentism alone because this classification does not reflect the real action occurred for the Kurdish state and similar cases. This drives us to pay a close attention to the Kurdish secession because it presents a challenge of having one Kurdish state or several Kurdish states. This is the reason for studying the secession of Kurdistan in the first place.

1. Independence of Kurdistan

The Kurdish situation is difficult for the scholar in secession because it represents an advanced secession situation. However, it is important to know why the situation of Kurdistan is considered secession. This study tries to analyze the proper theory for Kurdistan to figure out the suitable theory that may explain Kurdistan's situation.

Kurdistan appears on a few maps; it is clearly more than a geographical term in the Kurdistan area, which is about 410 thousand km^2. It also denotes a human culture which exists in that land. To this extent, Kurdistan is a social and political concept. (54) This main factor distinguishes the Kurds' situation from any other case study of secession. Kurdish people are separated and distributed into four main countries: Turkey, Iraq, Syria, Iran, and some limited areas of Armenia, Azerbaijan, and Turkmenistan. This concept can be seen in the picture below. (55)

[54] Hurst Hannum, 'The Kurds' in Hurst Hannum (ed), *Autonomy, sovereignty, and self-determination: The accommodation of conflicting rights/ Hurst Hannum* (Rev. ed. University of Pennsylvania Press 1996) 178
[55] *Areas settlement Kurdish Southwest Asia* (Encyclopaedia Britannica 2020)

Figure 1: Area settlements of Kurdish
Southwest Asia, Encyclopedia Britannica
[November 15th 2020]

Based on this situation, Kurdish people in different states may not carry only the origin of Kurdish people but also with a second identity that increases the individuality of the Kurdish people. Is it possible for the Kurdish to reunite in one new state, or more than one state, based on the contemporary changes and the differences in culture of the inhabitants inside different states? For instance, the Kurdish people in Iraq will acquire Arabic, while Kurdish people in Turkey will obtain a different language. The same goes for Kurdish people in Iran. By taking into consideration that these differences will not only stop in linguistic diversities but also will extend to traditions and cultural differences. (56) So, these diversities' level can definitely impact the Kurdish secession story scenario.

[56] محفوض، عقيل (n 20) 19

1.1 Kurdish secession from Iraq

As stated above, Kurdish hopes were continued by the Treaty of Sèvres in 1920 despite the fact that Lausanne's Treaty replaced it. The earlier treaty left the future of the Mosul as a matter for direct negotiation between Turkey and Great Britain, then acting as mandatory power for Iraq. When these negotiations broke down the matter was referred to the League of Nations, whose Council, in 1925, awarded the territory to Iraq. (57) The award was made on the condition, as recommended by the League Commission of Enquiry, that "regard must be paid to the desires expressed by the Kurds that officials of the Kurdish race should be appointed for the administration of their country, the dispensation of justice and teaching in the schools, and that Kurdish should be the official language of all these services. The British Mandate came to an end in 1932 and Iraq was admitted to the League but, again, Iraq was required in its declaration upon the termination of the mandatory regime to give assurances for the protection of minority rights and in particular rights of the Kurdish minority. (58)

Since the end of the First World War, Kurdish movements have practiced armed rebellion in Turkey, Iran, and Iraq. However, it is only in Iraq that these movements are widespread and persistent, lasting through several Iraqi government changes until the present time.

1.2 Kurdish secession from Turkey

There are two levels of the Kurdish story; the minorities of Kurdish in each state would start the process to seek secession from the parent state. Each part of each state would accordingly end with a new-born state independently from any other Kurdish secession.

Kurdish people from Turkey are a part of Kurdish people of the Middle East who believe that Kurdistan is their historical homeland, the land where 194 thousand km^2 of the 410-thousand km^2 Kurdistan area is inside Turkey. Estimations suggest that two-third of Kurdish people in Turkey are *Sunni* and one third are *Shiite.* (59)

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[57] Yildiz (n 25) 11–12
[58] Bossacoma Busquets (ed) (n 12) 155–156
[59] محفوض، عقيل (n 20) 3

The moment of Ottoman disintegration is an ambiguous issue that transformed the Kurds' movement from the path of a group of people seeking independence and enjoying international support. This support is seen following the 1920 Treaty of Sèvres to a Turkish internal matter to the 1923 Lausanne Agreement. Therefore, the Kurdish movement to independence turned from a national movement that has the right to self-determination to an internal crisis that the Turkish state has to deals with by itself.

However, the Kurds were not satisfied with the new situation, and they tried to change the reality through several uprisings and movements. They remained continuous from 1925 and floated every number of years until the 1960s and '70s, during which The Kurdistan Workers' Party (PKK) took over the leadership of the Kurdish confrontational and political scene in Turkish and Kurdistan region. Since 1984, the PKK has been involved in the Kurdish–Turkish conflict, seeking autonomy and greater political and cultural rights for Kurds in Turkey's Republic. From a Turkish perspective, the Kurds consider an unstable formation that is amenable to integration into other ethnic and political contexts, and they do not have experience in self-government.

However, this image that Turkey formed of the Kurds was not identical to the reality of the Turkish movement, and therefore it did not lead to successful or stable policies in the Turkish issue, given that the Kurdish issue prompted the central government in Turkey to put forward initiatives and work to reach settlements in search of stability.

2. Independence of Catalonia

There has been a growing secessionist movement in the last few decades for Catalans who believe their wealthy region has a moral, cultural and political right to self-determination. Catalonia has long put more into Spain economically than it has received in return. While Catalans have long dreamed of secession and achieving their own independence, the issue has only risen to the surface in recent years.

In 2006, a law announced to expand local Catalonian government powers. This law issued defining Catalonia as a nation. [(60)] Compared with Kurds' demographical indication, most of the Catalan are concentrated in Barcelona in the northeast of Spain.

[60] 'Organic Act 6/2006 of the 19th July, on the Reform of the Statute of Autonomy of Catalonia of 1978: LA REFORMA DELS ESTADO DE LAS AUTONOMÍAS: RUPTURA O CONSOLIDACIÓN DEL MODELO CONSTITUCIONAL DE 1978', *Official Journal of the Generalitat* (2006)

The region is enhancing the local economy and gives relative prosperity compared to other regions of Spain, like the Basque region. When the financial crisis erupted in 2008, Madrid's austerity measures fueled the separatists' will for secession. Therefore, the law defining Catalonia as a nation was reasonable.

The said law has been appealed to the Spanish Constitutional Court. The Spanish Constitutional Court decision eliminated certain aspects of the 2006 law concerning Catalan's definition as a nation and pointed out that the Spanish Constitution protected the "indissoluble unity" after a long time to hand down its decision. (61) Almost three years later on January 23, 2013, The Parliament of Catalonia had passed the resolution number 5/X of 2013, adopting the declaration of sovereignty and right to decide Catalonia's people. This resolution has abandoned the traditional invocation of the right of self-determination. (62) Consequently, the Catalan Parliament Act had been declared to be unconstitutional by the judgment of the Spanish Constitutional Court number 42/2014 on March 25, 2014. (63)

However, this did not stop the Catalonian government from going forward. In November 2014, the Catalonian government set a consultative, non-binding secession referendum challenging the Spanish constitutional court. This referendum had ruled the process for seceding unconstitutional. The referendum resulted in more than 80% of participants voting for secession, but only 2.3 million of Catalonia's 5.4 million eligible voters took part. (64) Although this result was non-binding and symbolic, it had been encouraging the successors of the Catalonian government to ignore warnings from the Spanish central government and the Spanish constitutional court for three years. Then the Catalonian government went ahead with a unilateral referendum for secession in 2017.

Early elections were held for the Catalonian parliament in September 2015. The National Movement won a majority of 72 seats against the parties that were rejecting Catalan independence. In November 2015, the parliamentary majority pro-secession

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61 *Constitutional Court Ruling 31/2010, of the 28th June, on the Statute of Autonomy of Catalonia* [June 28th, 2010] 31/2010, [2010] (The Spanish Constitutional Court)

62 Resolution 5/X of the Parliament of Catalonia adopting the Declaration of sovereignty and right to decideof the people of Catalonia January 23th, 2013, the Declaration of sovereignty and right to decide (The Parliament of Catalonia)

63 *The Spanish Constitutional Court 2014* (n 38)

64 9N 2014 TU HI Participes TU Decideixes 10 November 2014 (The Government of Catalonia)

was able to pass a parliamentary resolution declaring the start of the "process of establishing an independent Catalan state." The Spanish Constitutional Court said it to be unconstitutional later. (65) However, this decision was about 16 days late of the referendum held on October 1, 2017.

In fact, Catalonia's regional government called for an official referendum on Catalan secession from Spain and independence of Catalonia and went ahead anyway. The referendum was held on October 1, 2017. Although the Spanish government announced with certainty that it would block any attempts for secession for Catalonia and the Spanish police, the central government tried to shut it down. The Spanish police efforts resulted in the percentage of participation to be less than 50% of the participants, but it could not affect the result because 90% of participants voted for independence, which is again an overwhelmingly supported secession. Because of the Spanish Constitutional Court decision about the unconstitutionality of the referendum, the central Spanish government in Madrid enforced Article 155 of the Constitution and displaced the local government of Catalonia and the regional government from all their powers and seized control of the region. (66) Thus, Catalonia, in its way to get its independence, lost even its autonomy.

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65 *Decision against Law on the referendum of self-determination by the Parliament of Catalonia* [October 17 th, 2017] 114/2017, [2017] (The Spanish Constitutional Court)

66 Article 155 of the Spanish Constitution, allows the central government to compel communities to uphold their constitutional obligations, to disband the regional government. It states that: "If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way seriously prejudicing the general interests of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction, therefore, may, following the approval granted by an absolute majority of the Senate, take the measures necessary in order to compel the [Autonomous Community] forcibly to meet said obligations, or in order to protect the above-mentioned general interests."Spain's Constitution of 1978 with Amendments through 2011 (Spain) Article 155

C. The Consent of the Parent State

Any independent state born out of a successful secession throe, or the neighbor annexing state integrated with the new-born entity, likely seeks to be recognized both by international organizations and the international community. Secession is every action that leads to a part of a State being separated, which poses the question of whether or not this happens with the consent of the existing state. [67]

The origin of this debate comes from the idea of understanding the international law principles behind supporting a change in the international community or standing agents on the one hand. On the other hand, it is necessary to differentiate between secession and other relevant dismemberment concepts. However, both are linked together.

The international community is basically a set of states. It is commonly understood that states are the main ruling part of the international decision. The threat of dissolving states is a threat for all members; this is why the members are reluctant to find the international community so widely tolerable in accepting the secession. However, self-determination is a gentle window to present the secession to the international community. This scene is the incentive and risky choice to support by the state because it may return back to the supporter to be subjected to the secession any time later. The nightmare for the state to end as a parent state getting torn up for several parts is standing against the approval of secession. The invented criteria of the consent of the parent state came as the safeguard for states of the international community to understand the new-shift self-determination of the people to secede. The paramount importance of the state and its sovereignty must be stressed. International law is merely a law based on the will and the consent of states. Rationally speaking, if the parent state itself approves the secession, why would other states reject? At least, the parent state still exists by granting its approval fingerprint. So, the parent state shall remain breathing and physically exist to exercise and to express its consent. Therefore, there is no fear of dissolving a member state as long as its consent is required.

[67] Thürer and Burri (eds) (n 49)

The easiest way to distinguish the secession apart from any other related dismemberments concepts is to adapt the strict, narrow sense. The stricter sense of secession, '*stricto sensu*', indicates that secession occurs without the consent of the parent state. This approach of defining secession is found originally in order to distinguish between secession and other terms of separatism. Relying on the prior fact that since 1945 there has not been a sole separation of a constituent part from a state to which the parent state has not, sooner or later, given its consent. [(68)] This approach drives James Crawford to claim that "since 1945 no State which has been created by unilateral secession has been admitted to the United Nations against the declared wishes of the government of the predecessor State." [(69)] According to Crawford, it is necessary to distinguish unilateral secession of part of a State and the complete dissolution of the parent state as a whole. In the dissolution scenario, no parent state remains whose consent to any new arrangements can be sought. It is true that no new State formed outside the colonial context has been admitted to the United Nations (UN), since its creation in 1945, over the opposition of the predecessor State. However, adopting this sense of secession may work well for the distinction between the dissolution of a state and unilateral secession of part of a state in international law, but this distinction is not totally true for the case of Kosovo in 2008 because Serbia has not yet granted its consent. Based on the latter case, this strict approach of secession faces uncertainty based on a unilateral and complete separation.

Most cases of secessions' movements are nonconsensual. The reaction of the state is usually not just refusing the agreement to the separation process but also violently suppress it. Thus, it is not surprising that in most cases when theorists ponder the existence or nature of a "right to secede," they are concerned with unilateral secession. [(70)]

In the same connection, some theorists try to justify this example by two ways to deal with this situation. The first option is to consider secession as a progressive process rather than a one-time, clear-cut event, which would mean that secession is not completed until the parent state approves its consent. The second option is to consider

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[68] ibid
[69] James R Crawford, 'The Creation of States in International Law' in JAMES CRAWFORD (ed), *The creation of states in international law* (2nd ed. repr. Oxford University Press 2011) 16
[70] Buchanan and Moore (eds) (n 5) 246

the situation in which the parent state does not approve the secession, and it is considered as attacks on the integrity of the state which would mean that secession turns into either a separation or a dismemberment. [71] This study adopts a third option to deal with this case. This option deals with the consent of the parent state as a negative element which is not necessarily needed to be fulfilled. This option redefines secession to become a broader sense than mere separation with the consent of the parent state. This comprehensive approach of secession includes the '*stricto sensu*' of unilateral withdrawal from a state of a constituent part and separation without the consent of the parent state to constitute secession, with its territory and its population approach.

Driving this consent to the Kurdish and Catalonian situation, this consent is not granted from the parent states to the secessionist movements. However, the importance of this consent to justify the secession, from an international perspective, is needed more in the cases of Catalonia than Kurdistan. I argue that Spain is internationally the closer parent state to the international norms of democracy and self-determination. So, it is harder for the Catalonian secession to convince the international community of their demands of secession. Unlike the Spanish situation, the Kurdish secession in Iraq, like the Kosovo secession from Serbia, can have the international approval regardless of the consent of the parent state. Especially, when the Iraqi central government oppression against Kurdish people is taken into consideration. The Kurdish secession in Turkey stands in the middle between Spain and Iraq based on the international position of Iraq, Turkey, and Spain because the latter one is supported by the European countries, and it is the least possible to consider the central government undemocratic. So there is no need for Iraqi parent state's consent to such secession. More about the international recognition will be covered later in Chapter three.

[71] Thürer and Burri (eds) (n 49)

D. Comprehensive Approach of Secession

The challenge with the approaches of secession is the forehead challenge in identifying the term of secession. They are important to note, because there is, so far, no clear definition of the notion of secession. They also help to show that different authors, when writing about them, may understand the term in different ways. (72) Nevertheless, it is at least encouraged in this study to place the phenomenon of secession comprehensively because of the importance in various areas of international and constitutional law. Secession, as presented earlier, is a conducive '*process*' involves splitting away from an existing political union to the creation of a new entity or a new State as discussed above. This matter is not exclusively the result all the time; Secession is one among other measures of political separation within a state, without necessarily establishing a new state. In this connection, the analysis of secession rationally connected with debates relating to minority rights, right of association, democracy, nationalism, and, last but not least, self-determination. This approach has a double-edged sword. It covers overall debates concerning secession as a part of a broader dynamic phenomenon between a state and its subnational communities. In the other hand, it construes secession as multi-functional device irrespective of the nature of secessionists' claims. Secession is not *prima facie* desirable, but to serve different purposes, depending on the context within which it operates.

At the end of the day, classical concepts and territorially-based minority rights of secession are not wide enough to cover all aspects of secession. It only falls in one part of the comprehensive concept of secession, which includes moral, political, and legal debates in both constitutional and international law theories related to nationalism, minority protection and self-determination. Otherwise, the narrow concept of secession will overshadow the justifications' efforts and undermine theories of secessions. (73) Therefore, the comprehensive approach of secession, as stated above in terms of secession's debate, outcome-based approaches, shall require a re-conceptualization of related concepts of statehood, sovereignty, and citizenship. By recognizing the concept of secession as a large wide concept which is bigger than various minority rights, larger than one entity squarely challenges the monopoly of state power and greater than the

[72] ibid
[73] See otherwise: Bartkus (n 8) 9

supremacy of state law by assuming that sub-state entities pose a form of quiescent sovereignty; It might be activated under certain conditions. Although studying secession in this way may stand against traditional perpetuity of the notion, as a structural element of state constitutions and contradict the idea of sovereignty as a strictly indivisible principle, the comprehensive approach of secession, in this connection, will blur the line between the realm of constitutional law and that of international law. [74]

[74] Mancini, 'Mancini 2012' (n 4) 483

III. Secession: Theoretical Views

Beginning with a scenario of a group of people living in a part of a State makes a demand for secession. What is its juridical status? Is there a right to secede? If yes, where is it mentioned?

To judge the case, several questions need to be asked. For example, who are the people? What is the state? How is the state governed? Where is the group? Why are they seeking secession? What justifies a group's right to secede from a state? What conditions must be in place in order for claims of secession to be legitimate? Each doctrine begs a question, or more, behind each point.

In the first place, the need for juridifying the right to secede is presented since moral rights lack legal recognition and codification. Until then, realistic power of politics overcome the seen by effectiveness and expediency. [75] The decision to secede represents an instance of political disintegration. Political disintegration is when the citizens of a sub-system withdraw their political activities from the central government to focus them on a center of their own. [76] Theoretical foundation political integration is:

> "the process whereby political actors in several distinct political systems are persuaded to shift their loyalties, expectations, and political activities toward a new centre, the institutions of which possess or demand jurisdiction over the preexisting subsystem."

By contrast, the decision to secede represents an instance of political disintegration, wherein political actors in one or more subsystems withdraw their loyalties from the jurisdictional center to focus them on a center of their own. [77]

Through the law, the conception of the creation of new States, or deciding to join another, is a more rational, fair, peaceful and secure conception because the traditional role of law, internal and international, as a system to avoid the rule of the strongest.

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[75] Marc Sanjaume-Calvet, 'Moralism in theories of secession: a realist perspective' (2020) 26(2) Nations and Nationalism 323, 324
[76] Bartkus (n 26) 3
[77] ibid 8–9

Unlike a moral right, a legal right involves institutionalization and the creation of mechanisms of recognition, adjudication, and enforcement. [78]

Many theories talk about justice and legitimacy as identical concepts based on justifications derived from normative definitions of justice and legitimacy. [79] Theories of secession describe the right to secede as an application of self-determination or as a natural right. They both are a moral right. Typically, authors of this moral approach are concerned with defining the morality of acceptable conditions of the right to secede by certain moral values [80]. In '*Just cause*' theory, 'unjust' situations create a 'remedial right' to secede [81]. In democratic theories, a *prima facie* right, that does not rest on injustice but the determination of the members of the seceding sub-unit. Finally, in liberal-cultural theories, it is based on the self-determination of national groups being a collective moral right under the democratic theory banner in this study. [82] Although the ideas presented in the subsequent topics seems to be a reproduction of existing ideas. However, these ideas are still standing and present a wide view of the justification of the secession theoretically. These ideas cannot be ignored nor disfigured.

Therefore, there are two ways to justify the right to secede [83]: Primary Right justification and Remedial Right justification. The former justification posits that a right unilaterally to secede exists *per se*, independently from the violation of other rights. The latter constructs the right to secession as a remedy for oppression, to the contrary, as derivative upon the violation of other rights.

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78 Bossacoma Busquets (ed) (n 12) 10
79 Johan Rawls, *A theory of justice: Original edition* (1971) 237–238
80 Like Harry Beran; Allen Buchanan; Margaret Moore; Wayne Norman; and Pau Bossacoma Busquets.
81 Like Allen Buchanan; Margaret Moore; Wayne Norman; Josep Costa and Michel Seymour.
82 Philpott, Daniel Avishai Margalit and Joseph Raz
83 Sanjaume-Calvet (n 75), 324

A. Primary Rights Theories

Primary right theorists confirm that no oppression is required for a group to be able to self-determine its own matters or to unilaterally decide if it wants to secede from a larger polity. The approach to these theories defends that secession is a natural right; thus, any group can claim self-determination. [84] It is noticed that this approach lies to consider the right to secede as a right independently established than the right of self-determination application. The primary right to secede rely basically on morality. Primary right theories banner created to gather two types of theories: nationalist and democratic theories. The majority of those who champion a primary right to secede presume that such political self-determination must come under a nationalist banner. [85] However, this study claims that self-determination is not exclusively for a single theory, as follows.

1. National Primary Right Theories

Nationalist theories of secession as a primary theory assume that state is an ideal political form to preserve national culture. This way, it is a legitimate state representing the identity of its inhabitants. Drawing from Wayne Norman's assumption, that states justice would be better served with strong national identities [86] and some followers. [87]

The rise of "nationalist" theory principle assumes that legitimacy rested on a state being coterminous with the nation. [88] Hence, Nationalistic theories of secession based on a moral value in the *nation*. This basic assumption covers the uneasy definition of the nation. [89] Fortunately, Wellman facilitates this mission defining the *nation* as a cultural group of people who identify with one another and who either have or seek to have some degree of political self-determination. [90] In this connection, the weight of national groups rests on the size, influence and extent upon their group membership. [91] It deserves to be noted, ironically enough, that some authors tried to secede with 'the

[84] Brando and Morales-Gálvez (n 11)
[85] Wellman (n 6) 1
[86] Norman (n 7) 12
[87] Cetrà (n 8) 13. See also Mancini, 'Mancini 2012' (n 40) 484
[88] Bartkus (n 26) 12
[89] Norman (n 7) 4
[90] Wellman (n 6) 98
[91] Mancini, 'Mancini 2012' (n 40) 483

nationalist theories' as a separate doctrine from primary right classification. [92] This study includes the nationalist justifications within primary, depending on their defense of a primary right to secede despite some remedial argument branches. [93] For example, Seymour rejects the existence of a primary right to secede in the form of external self-determination but defends a primary right of nations to internal self-determination. Therefore, according to him, minority nations should have a remedial right to external self-determination only in response to a prior breach of their primary right to internal self-determination. [94] However, this is an odd presumption and is not the case of the nationalist who makes the right to secede conditional on a prior violation of inter-state autonomy agreements. Secession can be one way to exercise the right to *external* self-determination*,* joining another fully sovereign State can be considered other ways of external self-determination. [95] Thus, Nationalistic theories of secession generally seen as primary rights.

A liberal touch has decorated this theory. The liberal-nationalism theory conserves its function as serving the nation, and the compatibility between individual rights (liberalism) and group-specific rights (nationalism). [96] Upon liberal-nationalist claim, liberal nationalism does not threaten democracy, but is instead a condition for democracy, because it ensures the solidarity, trust, [97] and a form of national accommodation around rights. [98] Liberal theory can, without much difficulty, accommodate consensual secession. [99]

As a general of understanding of nationalist theories, the legitimacy of secession is determined by two normative elements: the preexistence of a 'nation', and the existence of a relationship between the nation and a certain territory. [100] This issue raises practical challenges. For instance, it is not easy to exclusively link a territory to a specific cultural group of people. Moreover, even if all nations should be granted the right to establish their own state, in practice, to satisfy the ambitions of given

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92 Margaret Moore, 'The Ethics of Secession and Postinvasion Iraq' (2006) 20(1) Ethics int aff 55, 56
93 Brando and Morales-Gálvez (n 11)
94 Michel Seymour, 'Secession as a Remedial Right1' (2007) 50(4) Inquiry 395
95 Bossacoma Busquets (ed) (n 12) 21
96 Cetrà (n 8) 11
97 ibid 13. See also Mancini, 'Mancini 2012' (n 40) 484
98 Cetrà (n 8) 3
99 Buchanan and Moore (eds) (n 5) 246
100 Mancini, 'Mancini 2012' (n 40) 484

nationalities through secession, necessarily implies ripping apart of other nationalities. Furthermore, what is the legal status of trapped minorities within the separatist subunit? Nationalists have responded to this more sophisticated objection in various ways, but one prominent approach is to admit that nations are "imagined" communities and then to suggest that they are nevertheless real communities and appropriate objects of personal identification. [101] Justifying the legitimacy of secession on nationalist theories could also encourage nation-building programs, with the aim of dismantling existing groups and/ or preventing the formation of new ones. [102]

2. 'Democratic' or 'Choice' Primary Right Theories

'**Democratic' theories**, also called choice theories or elective theories. Democratic theory is based on political self-determination inspired by the freedom of association. [103] For some elective theorists, and the right to secede is a sort of instantiation of freedom of association. As an individual right exercised collectively, similarly to freedom of association, or as a group right more tied to specific groups. [104] Democratic theorists suggest, the positive facet of this freedom, that freedom of association should rationally apply when creating a state, to create new associations and to join ones already created. Since the right to secession is derived from the individual right to voluntarily choose associations and understanding the state as a political association of paramount importance. The second face of the coin, its negative facet, includes the right not to associate and to stop being part of those associations. Similarly, to the option for individuals or groups unilaterally and freely to leave an association, there could also be the possibility of unilaterally, but not unconditionally, exiting a State since freedom of association confers to all individuals the right to withdraw from an association, including the political association or the state *par excellence* because freedom of association involves the ability to associate with other freely agreeing individuals. This issue would give citizens, regardless of their bonds, much more autonomy than simply a right to secede from a country that treated them unjustly. Their emphasis is each individual of group members, not on the *collective* autonomy of nations, would have the unilateral right to secede at any point in order either to draw a

[101] Wellman (n 6) 101
[102] Mancini, 'Mancini 2012' (n 40) 484
[103] Wellman (n 6) 7
[104] Bossacoma Busquets (ed) (n 12) 26

new political alliance with others or even to withdraw and live in a new-born state, without any political association at all. This matter is the basis of any legitimate government. (105) Legitimate governments make decisions compulsory to all citizens, irrespective of whether they approve or disapprove of them based on earlier aggregated individual choices through democracy. Hence, for a state to be legitimate, citizens should at a minimum agree to be included and observe a core of common rules, consent to the state's authority and they must be granted the right to secede. The legitimate democratic state follows that, for choice theorists, the right to secede should be granted irrespective of a group's cultural or ethnic homogeneity, and even in the absence of a strong territorial claim by the separatist group. What really matters are a group's political abilities and its desire of its own state, that is, a group's will to associate in political and independent unity. (106) This distinct this theory apart from the liberal-national ones, If the individuals who form part of a group within a state no longer territorial' rather than a 'national' right to secession. In order to grant the right to secede merely to nations, to a large culturally distinct group, would not only crash with the principle of democracy but also produce uncertainty. Because cultural distinctness is often a matter of degree, making it hard to create clear-cut criteria to make a decision, for example, whether a group is a part of a whole one nation or a mix of parts of more than one nation.

Choice theorists construct secession as a primary right. This construction does not mean, however, that it is an unqualified right. For Harry Beran 'liberal political philosophy requires that Secession be permitted if it is effectively desired by a territorially concentrated group within a state and is morally and practically possible.' (107) Hence, the right to secede should be granted not only when the seceding group can draw the border of the subjected territory of the secession. This territory is large enough to undertake the responsibility of statehood, able to guarantee the rights of the trapped minorities mentioned above. The borders of a state and the territory do not overlap, (108) that is not culturally, economically, or military essential to the existing state, and that does not have a too large nor too small in comparison with a high share

[105] Wellman (n 6) 7
[106] Mancini, 'Mancini 2012' (n 40) 484
[107] Beran (n 9), 21
[108] David Miller, *On Nationality* (Oxford Scholarship Online, Oxford Univ. Press 2004) 112

of the economic resources of the existing state. [109] According to Christopher Wellman's view, freedom of association is an unqualified right to base the right to secede upon it. States in the international law, by default, must be territorially sharing; touching common borders in order to perform their functions, and contiguity would not be possible if states could coerce only those who consent. In Wellman's point of view, therefore, secession should never be allowed if the seceded territory interferes with the production of essential political functions or threaten the parent state from sustaining its political functions. In other words, the territorial boundaries of existing states can be reconfigured according to the preferences of inhabitants only as long as this does not disturb the benefits of political stability. [110]

Thus, democratic theories are based in principle on freedom of association and the individual right to voluntarily choose associations through consent to the state's authority, nevertheless, in practice, only apply to very few individuals and groups that are in a favorable situation that does not touch territorial and stability restrictions. Political stability, territorial contiguity, and the overall practicable restrictions of secession prevent many, maybe most, groups from enjoying the democratic right to secession. Moreover, choice theorists put forward as a basis of the argument that a political community is legitimate only if its members are voluntary in the act of cohesion. It is very unlikely to happen most the time; however, within a territorially clustered group, all individuals would actually agree to secede. This agreement means that a referendum in favor of secession would either force the individuals against secession to leave their territory or set the ground for an illegitimate political association, due to lack of a minimum degree of consensus. Hence, the consensus, as the ultimate standard of legitimacy for democracy, the new (post-secession) frontiers may end up being as undemocratic as the old ones were. [111]

Another challenge of democratic or 'choice' theories is that the democratic secessionist assumes that populations are not subject to changes and mostly stable entities, which is not true according to the case of today's globalized world. On the consequence of the doctrine of democratic or 'choice' theories, a group of migrants could settle in a given

[109] Beran (n 9), 23
[110] Wellman (n 6) 16
[111] Mancini, 'Mancini 2012' (n 40) 485

territory and legitimately claim the right to secede and to establish their own state. This prospective risk would probably incite states of large immigration flows to stop accepting immigrants, to impede the formation of homogeneous territorially concentrated groups, or to prevent new minorities from becoming politically organized and economically autonomous according to the indication of making and unmaking boundaries. (112)

At the end of the day, democratic or choice theories recurrence the weaknesses of national self-determination theories because in order to secede democratically, a group must express its will in a referendum or plebiscite. (113) Can the principle of secession be applied coherently to actual states? Whether a secessionist claim would, of course, depend partly on the fact that the majority of the people within some area wish to secede if the territory in question cannot be identified independently of the majority principle. As the territory of a given state within a federation or that traditionally occupied by a given nation within a multi-national state. Then, it looks like; the majority principle might give contradictory results. (114) That is why, in order to discourse a secessionist demand democratically, the first step should draw the part of the territory in which the referendum should take place and have the right to vote. This issue is important because there is an essential debate between the territorial unit and the historical tradition that links a given group to the territory. These two elements, tradition and territory, preexist consensus. The territory can only be defined as the area that has been traditionally occupied by a group of people, which has the right to continue occupying it and, as a consequence, to express its will in the referendum regarding secession. (115)

If tradition preexists consensus, secession cannot be justified totally on the basis of democracy but must be supported by other national territorials' norms, such as the historical link between a group and the territory it inhabits. Groups that traditionally inhabit a territorially clustered group and that express a determination to secede are, in the overwhelming majority of cases, ethnic or cultural minorities. Hence, in practice, in

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112 Buchanan and Moore (eds) (n 5) 1
113 Laurence Orel, 'referendum' in Michel Rosenfeld and András Sajó (eds), *The Oxford handbook of comparative constitutional law* (Oxford handbooks in law. Oxford University Press 2012) 505–507
114 Beran (n 9), 29
115 ibid

the overwhelming majority of cases, the right to secede ends up by being granted mainly based on nationality. So, it seems, the majority principle gives inconsistent results unless the potentially seceding region can be specified independently of the majority principle to be used for determining whether a presumption for permitting secession exists. (116)

B. Remedial Right Theory

Remedial right or '*Just cause'* only theory of secession sets out to follow and complement Lockean theory on the right of revolution: as a remedy of last option, people have a right to constitute a new government, in the secession world, a unilateral, moral right to secede would exist only as a react when they are subjected to serious injustices. (117) Remedial right justifications of secession, unlike national self-determination and democratic theories, assumes that secession is not a primary right of all peoples, but rather a remedial right that applies in a restricted number of cases. Although injustices do not determine the existence of a right to secede, they do condition the requirements to exercise it. (118) Remedial rights theorists criticizing that a well-functioning, liberal democracy will provide for fair procedures for reaching collective decisions about government policy and give every individual and every group the right of voice; therefore, there is no need for a primary right to secede. Rationally, secession should occur to the wrong application of democracy by a group where injustice is present.

Injustice can result from unfair treatment by the central government of the inhabitants of one of the polity's subunits: a lack of protection of their basic rights and security, a failure to safeguard the legitimate political and economic interests of their region, or a persistent, discriminatory redistribution, (119) or from an earlier annexation to which the occupied people has never consented. Especially, beyond saltwater colonization and military occupations, such as the annexation of the East-Turkestan state to China and Baltic states by the USSR. These are salient results of injustice and deserve to be included. (120) Injustice also includes the serious and persistent violations of the theory

116 Mancini, 'Mancini 2012' (n 40) 486
117 Bossacoma Busquets (ed) (n 12) 66–67
118 ibid 20
119 Mancini, 'Mancini 2012' (n 40) 486
120 Bossacoma Busquets (ed) (n 12) 167

of the international principle of self-determination of peoples shown in intra-state autonomy agreements by the state. In particular, Buchanan, pointed out that a strong argument for Catalonia to plead for secession is that Spain has continuously rejected to negotiate suitable or adequate autonomy. In general, according to Buchanan, international law should act as a true protector, and political promoter, of inter-state agreements on autonomy. Encouraging democratic deliberation and commitment respects the territorial sovereignty of states and calms down secessionist demands and prevent secession threats from working as an unneglectable right, right of veto. Therefore, injustice can lead to secession or decentralization instead if considerable measures to impede decentralization or to protect federalization are taken. (121)

The remedial theory includes unilateral secession construes the right to secede without consent as a close relative to the right of revolution as understood above. According to this understanding, the right to revolution is not a primary right, but rather a remedial one. It exists when injustices are exercised, then provides a remedy of last resort to escape oppression. In other words, it is a violation of other more basic rights, primarily individual human rights.

Similarly, according to the remedial right-only theory of the right to unilateral secession, a group comes to have the right to unilaterally secede only when secession is the remedy of last resort. This shall be seen in conditions in which that group is the victim of persistent violations of important rights of its members. (122)

Remedial right theories also raise a number of problematic questions. The first is the difficulty in defining injustice. *Injustice* is a lack of fairness or justice. Justice is the first virtue of social institutions, as truth is for systems of thought. Each person possesses an inviolability founded on justice that even the welfare of society, as a whole, cannot override. (123) It is still relevant from society to society and from person to another. Prolonged, cruel, unjust treatment or control, the border between "injustice economic exploitation", or a fair redistribution of the outcomes penalizes certain subunits. Even if the relevant state subunit is charged with bigger economic contributions than others, the ultimate advantages and drawbacks of unity seem more likely to reach a point of

121 ibid 192
122 Buchanan and Moore (eds) (n 5) 247
123 Rawls (n 79) 3

balance. Furthermore, one must take into justification the returns that the state's component units enjoy by virtue of belonging to it: cultural life, international image and weight, broader labor market etc. (124)

The second, a group may also come to have the unilateral right to secede under two other circumstances. First, if the state has granted the group autonomous status or other special rights and then defaults on this commitment. Second, if the territory in question was that of an independent state and was unjustly annexed, in which case secession can be viewed as the remedying of an injustice. (125)

Last but not least, in its most plausible forms, the remedial right-only theory of the unilateral right to secede is combined with a clear commitment to the permissibility of consensual secession. Thus, the remedial right-only position is not that secession is only justified as a remedy for injustices, but rather that unilateral secession is only thus justified. For this reason, the remedial right-only view is not as restrictive, nor as supportive of the preservation of existing state boundaries, as might first appear. (126)

Another separate branch of the remedial right theory is that the territorial claim of secession argues that the convincing secessionist claims must not essentially be grounded on what groups are "peoples" but must essentially be grounded on valid claims to territory. (127) In other words, the legitimacy of secession does not depend on certain characteristics that differentiate a given group from a state's majority. Secessionists must instead demonstrate that justice requires they be settled a right to a certain land because the concept of the sovereignty of a state's territory is no longer viewed as belonging to the ruling authority, the king or the prince, but rather to the people. In this sense, the state is only acting as the *agent* of the territory of people. In other words, what grounds legitimate control over the territory is the legitimate authority over the people. According to this view, a state that commits a major injustice toward a part of its people loses legitimate authority over them and the territory that they occupy. This is the reason why, according to remedial right theories, it is morally

[124] Mancini, 'Mancini 2012' (n 40) 486
[125] Buchanan and Moore (eds) (n 5) 247–248
[126] ibid 248
[127] Lea Brilmayer, 'Secession and the Two Types of Territorial Claims' [2015] ILSA Journal of International & Comparative Law, 325

permissible for a group that has suffered a major injustice in the parent state to secede. (128)

This approach is also a very problematic argument. A territorial claim might be 'just' for the majority of the members of a given group, but unjust for minorities. In fact, many central governments in occupied territories unjustly practice policies aimed to weaken the territorial, ethnic identity by transplanting 'colonizers' of different stock or from the dominant nation, as in the case of ethnic Russians in the Baltic states and East Turkistan in China, who became so rooted in the new territory as to become 'citizens' with full rights in turn. Citizens of this type are problematic, however, as they are likely to remain sufficiently tied to their formerly annexing state of origin to militate against full independence of their new state of citizenship. Because of this, basing the legitimacy of secession on the existence of a '*just'* territorial claim often advantages ethnic majorities within sub-state units, which leads to the same shortcomings present in both national self-determination and choice theories of secession. (129)

In short, these theoretical views describe the analysis aspect of the secession. Not all of them are necessarily applicable in all cases. However, the main reason I presented them is to study and to try to apply them to the selected cases, Kurdistan and Catalonia, to find if one of them, or more, can justify and present the legality of the secession on the said examples. Although they have some merit, these theories are not enough to do so.

[128] Catala (n 10), 76
[129] Mancini, 'Mancini 2012' (n 40) 486–487

C. Testing Theories on Kurdistan and Catalonia

In this topic, the said theories can be tested to find the best action of showing secession of Kurds from both Turkey and Iraq, and secession of Catalans from Spain to be right or reasonable. This search will present the suitability of the justifications for each case and whether one of them is abstract enough to be applicable to all cases. I will start by talking about Kurds in both Iraq and Turkey because Kurds are separated in different states and the said states are witnessing rises of secession, as seen. Later I will discuss the Catalonian case.

1. Theory of the Kurdish secession

Testing the theories of secession in Kurds situation will be presented in two subtopics: First testing theories of secession on Kurdish secession in Iraq, and then, testing theories of secession on Kurdish secession in Turkey.

1.1 Theory of the Kurdish secession in Iraq

Also, both remedial and primary justifications for the secession are present in the Iraqi Kurdish story. On one hand, the Kurdish people inside the Iraqi state used to be subject to oppressive actions. On the other hand, the natural theories that gather the Kurdish people to practice the external self-determination is also presented.

As the primary right theory, it is undeniable that demands for secession require the Kurdish people to self-determine their own matters or decide if they want to secede from Iraq unilaterally as a natural right. As stated earlier, this approach mainly includes two types: democratic and nationalist theories, and I will test the implementation of these theories on the Kurdish example in the following paragraphs.

Democratic theory is based on self-determination stimulated by the freedom of association for Kurds. The right to secede should be accordingly granted irrespective of a group's cultural or ethnic homogeneity. This doctrine is not totally advised in the Kurdish case of secession because it is initially called the Kurdish secession based on Kurds' nation. So, this theory is one of the least justified theories of the Kurdish secessionists in Iraq.

The nationalist theory carries two elements: the nation, and the nation's relationship to the land. Suppose the differences between the Kurdish tribes can be put aside, then this theory would be one of the most suitable justifications of the Iraqi Kurdish secession. The theory is based on the relationship between the land in the north of Iraq and the Kurdish nation, which is as a symbol of their "national Kurdish secession". [130]

However, the result from earlier unfair treatment by the central government toward the Kurds, who have been subjected to previous oppression and persecution, must possess the means to justify its secession from the oppressive regimes. Regardless of the geopolitical interests of the relevant forces, the Kurds have the right of remedial separation. Nearly 25 years ago, the Iraqi central government killed thousands of their civilians using chemical weapons on the Kurdish town of Halabja. Compensatory separation is the idea that peoples subjected to violent oppression should, as a last resort, have the right to secede as a legal expression of self-determination. In the 1980s, the Kurdish rebellions and the central government decided a hard way to deal with the issue. In the Anfal Campaign, Iraqi forces destroyed thousands of Kurdish villages and killed nearly **100,000** Kurds, many of whom were unarmed and who were bussed to remote areas where they were gunned down in mass executions. The central government also ordered the use of chemical weapons upon the Kurdish villages, like the Kurdish town of Halabja, was particularly horrific. In three days of attacks, victims were exposed to mustard gas, which bums, mutates **DNA,** and causes malformations and cancer; and the nerve gases sarin and tabun, which can kill, paralyze, or cause immediate and lasting neuropsychiatric damage. Doctors suspect that the dreaded VX gas and the biological agent aflatoxin were also employed. Some **5,000** Kurds were killed immediately. Thousands more were injured. [131]

Although the meaning of oppression to Kurds is still pertinent to society's opinion to another and from time to another, it is hard to ignore the central Iraqi treatment situation. As a result, the demand for independence has been found based on the "*unjust"* treatment is the closest justification.

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[130] Dylan Evans, 'The Kurdish Quest for Independence and the Legality of Secession under International Law' (2020) 19(2) Washington University Global Studies Law Review 291, 305
[131] ibid

1.2 Theory of the Kurdish secession in Turkey

Both remedial and primary justifications for the secession are present in the Turkish Kurdish story. One hand, the Kurdish people inside the Turkish state used to be subject to oppressive actions, and still for certain limitations. It is not only as a result from earlier unfair treatment by the central government of the inhabitants of Kurds of the polity's subunits, but also a lack of protection of their basic rights and security. The Kurdish people suffer from a failure to safeguard the legitimate political and economic interests of their region, a persistent discriminatory redistribution, and from the earlier annexation to which the Kurdish people have never consented, especially beyond the treaty of Lausanne in 1923 of Turkish *de facto* establishment over a wide part of Kurdistan. This issue may justify the unilateral moral right to secede as a reaction of serious injustices.

However, the meaning of oppression made to Kurds still is pertinent to society's opinion to another and from time to another. It is hard to identify the seceding claims' situation of injustice and economic exploitation based on the current improved treatment of Kurds in Turkey. It is considered that the involvement of the Kurdish origin in the Turkish political practice and urbanization creates results on the Kurdish region. Kurdish origin citizens are questioning the legitimacy of the remedial theory of secession. Furthermore, the demand for independence has been found earlier than establishing the current Turkey and even before any Turkish "*unjust"* treatment.

On the other hand, Kurdish people demand secession, as primary right theory, and confirm that no oppression, nor injustice treatment, is required for Kurdish people to self-determine its own matters or decide unilaterally to secede from Turkey. Here, secession is a natural right. Thus, any group can claim self-determination. The right to secede is a right independently established as an application of self-determination. As stated in the earlier section, this approach mainly includes two types: democratic and nationalist theories. I will test the implementation of these theories on the Kurdish example in the subsequent paragraphs.

Starting with Democratic theory, Democratic theory is based on self-determination inspired by the freedom of association for Kurds. While there is a positive side of this freedom, the freedom of association applies to create new associations because the right

to secede is derived from the individual's right to voluntarily choose associations, there is also a negative side which is their right to disassociate and stop being part of those associations (Turkish state). This burden will overcome the obstacles of the nationalist theory, the right to secede should be granted irrespective of a group's cultural or ethnic homogeneity, and even in the absence of a robust territorial claim by the Kurdish separatist group. What really matters is the group's political abilities and its desire of its own state, that is, a group's volition to associate political and independent unity.

However, this theory is one of the least justifications of Turkey's Kurdish secessionist for three main reasons. First, the Democratic theory means that a referendum favoring secession is not in a democratic form. This undemocratic conclusion is because the positive result of secession would force the individuals who are against secession, both Kurdish people or others who accidentally inhabited in the area, to leave their territory and become immigrates in their homeland. Alternatively, at least they would be forced to join the new Kurdish majority entity. The latter option makes the new post-secession entity an illegitimate association according to the theory per se because it lacks the minimum degree of consensus. Hereafter, the new post-secession frontiers may end up being as undemocratic as the old ones were.

Secondly, the democratic secessionist assumes that populations are not subject to changes and are mostly stable entities, which is not totally valid according to the case of Kurdish displacement since 1965.

Thirdly, the state of Turkey is a fair-functioning, liberal democracy because it provides fair procedures for reaching collective decisions about government policy and gives every individual and every group the right of voice. Therefore, there is no need for a primary right to secede as long as Kurdish origin citizens of the state of Turkey practice their will and succeed to become the policymakers. This is proven with the accreditation of Kurdish parties in Turkey like Peoples' Democratic Party (HDP). [(132)] Despite the fact that the case of HDP is very controversial, because of the situation of its leaders, HDP is still functioning in the democratic life.

In addition, there is the nationalist theory, which carries that a state should be coterminous with the nation. The nation, to exist and to seek secession, is determined by

[132] Peoples' Democratic Party, 'HDP' (Fabuary 12, 2021) <https://hdp.org.tr/> accessed Fabuary 12, 2021

two normative elements: the existence of a 'nation', and the existence of a relationship between the nation and a certain territory. The existence of a 'nation' is, for a certain limitation, claimed to be accomplished in the Kurdish example in Turkey because they have a different language and culture from other Turkish citizens. The relationship between the land and the Kurdish nation is also claimed to be accomplished because many Kurds regard the land of Kurdistan as a symbol of their nation, similar to how Muslims, Christians, and Jews revere Jerusalem as a symbol of their nation [133]. As a result, for a partial extend, nationalism can justify the secession of Turkish**.**

This result leaves us with no clear legitimate justification for secession movements in Turkey. Furthermore, leaving the secession movement without justification is only closing our eyes to the situation in the Kurdish secessionist movement. Moreover, the military actions between the Kurdish and Turkish parties should be disregarded as they distract from the main challenge. Instead, scholars need to be motivated to find a proper theory to justify the situation. This is the reason for finding a new theory that reflects the reality of justifying secession in the areas of Kurdistan in Turkey.

2. Theories of Catalonian secession

Finding the proper justification of the Catalonian secession from Spain needs to be seen in the light of the Catalonian background and the relationship between Spain and the Catalan authority in the previous and current periods. Historically, Catalonia is a separate nation from Spain that has had its own language and its own culture for decades. Recently, Catalonia is the richest sub-unit of Spain that pays a lot of its gross domestic product to the central government of Spain. This relationship is not seen in the constitution. The Constitution of Spain does not recognize the existence of the Catalan nation, which might be seen unjust treatment by the Catalan. However, remedial justification is not a proper justification because the ambiguous Spanish constitution is not enough to give reason for unjust treatment. The absence of the Catalan nation in the Spanish constitution is not the main reason that drives the people in Catalonia to seek secession. Catalonia has made several attempts at secession based on their natural right to secede and their reassurance in their strong economy. The economic responsibility of the Catalonia to support the other parts of Spain weakens the claim of unjust economic

[133] Evans (n 130), 305

treatment. Therefore, primary justification is more presented than remedial justification in the Catalonian secession.

Comparing with the democratic justification, as seen, there were several attempts to seek secession based on referendums. The democratic theory stands on the freedom of association, and the freedom of withdrawing from an association here in Spain. I do believe that secession's several failed attempts prove that the democratic theory is not the best doctrine to justify secession for two main reasons. One is that the percentage of these referendums' involvement is less than 50% of the inhabitants. Second, does the imagination of a successful attempt on the secession of a certain referendum justify another chance for holding a referendum to disallow secession? In other words, the referendum's result may change from time to time and is not a proper justification for the successful attempts in Catalonia. The Catalonian government makes decisions compulsory to all citizens, irrespective of whether they approve or disapprove of them based on earlier aggregated individual choices through democracy.

I do credit the national theory to justify Catalan's secession. The nationalist theory is closer to the justification of the secession based on the state of the Catalan nation's preexistence and the bond between Catalonia's nation and Catalonia's territory. Further, the choice theory's sense assumes that populations are not subject to changes and are mostly stable entities, which is not true according to the case of today's globalized world.

CHAPTER 3: SECESSION AND SELF-DETERMINATION IN INTERNATIONAL LAW

In order to understand secession, it is important to understand international law, politics, and constitutional law. Unlike the classic example of marriage and divorce, in union and separation, the freedom of association includes the right to constitute and join associations as well as the right to exit from part of any association. This freedom affords us liberty, equality, democracy, and self-determination, which explains why territories may want to leave their states. Political liberalism upholds the belief that secession should be tolerated, recognized, and, in certain cases, protected internationally.

I. The Peoples "Self"

It is generally accepted by the doctrine that "the right of self-determination" is summarized as letting the pe

As stated in the theoretical views discussed in chapter 2, what constitutes a people can be expanded, or parochialized, based upon the theoretical views of the people as a nation, a sub-community, a minority, or a group of individuals practicing a collective right. However, this view should be a reflection of the international perspective of people so as to draw a distinct community. [134] Modern international law offers three collective human rights to peoples: the right to physical existence, the right to self-determination, and the right to utilize natural resources. [135]

It can be inferred from these rights that the term *self* refers to a distinct group of people or nation that is distinguished from other-selves, people, or nations. As a result, there are a few possible approaches for approving a group's distinctness.

First, a group of people can be distinguished by their objective characteristics. These characteristics differentiate the group from the surrounding population. Characteristics include elements of a religious, ethnologic, linguistic, and geographic nature. This method has the virtue of supplying the international community with a set of verifiable criteria, which must be met if any group is to legitimately claim to be a *self* and therefore entitled to the process of *determination*. However, even to be entitled to other classifications in international law, a *nation* classification to determine a people is further impaired by its close association with the possession of statehood. Other scholars have therefore suggested the classification of *ethnic group*. Despite the fact that members of many communities are tied together through bonds of ethnicity, this term is not quite appropriate either. Walker Connor indicates its weakness: "[an] ethnic group may be very apparent to an anthropologist or even an untrained observer, but without a realization of this fact on the part of a sizable percentage of its members, a nation does not exist." [136]

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[134] Bartkus (n 26) 5
[135] Yoram Dinstein, 'Collective Human Rights of Peoples and Minorities' (1976) 25(1) The International and Comparative Law Quarterly 102, 105
[136] Bartkus (n 26) 14

Secondly, “group consciousness” is the set of shared ideas, moral attitudes, and beliefs which activate as a unifying power within society. In general, a shared understanding of social norms, even in a group of at least five consumers, [(137)] is an indispensable element of selfhood. The utility of employing the group's subjective perception of distinctness is the sole basis for implementing a claim to self. Determination is greatly impaired by the sheer number and diversity of perceptions capable of being experienced by a population concurrently. The same individual, for instance, may perceive his/her distinctness in terms of his/her membership in a fraternity/sorority, a mosque, a church, a village, a profession, or even a school of thought.

On top of that, a group of people who share injustice and oppression in the mother country can differentiated. This group would be more distinct if they shared common elements of language, history, law, and religion. In fact, this idea on this matter was profoundly influenced by the American colonists in 1776 who satisfied very few conditions of distinctness *vis-à-vis* the English population. Their separation from England was in fact justified primarily on the basis of geographic isolation, the incongruity in the economic interests of the parties, and, above all, a sense of injustice and oppression in the mother country's handling of their colonial affairs. In contrast, the German-speaking Swiss probably do satisfy most of the objective conditions of distinctness suggested above, yet it is questionable whether they possess a right, on those grounds alone, to leave the confederacy of which they form a part.

This *self* may fit in the borders of a country which include all the citizens of that country, which is the normal scenario, and may

(1) Expand out of a country

(2) Be limited to a certain part of a country

(3) Fit in the whole country

Each scenario entitles the people to a different story.

These cases demonstrate that it can be much more complicated to outline the general concept of the nation than the inter-subjective consensus from which a specific group is

[137] Eyad Alsamhan, ‘Rethinking of Consumer's Litigation in Unfair Competition’ [2019] Journal of Sharia & Law 105, 127

considered a nation as stated above. [138] The qualification for membership of a national community is not necessarily exclusive. In detail, people can be and consider themselves members of more than one nation at the same time. People can also identify more or less with one of them and can change their identification from one to another, in particular, the area of Catalonia in Spain, the region of Scotland in the United Kingdom, the region of Kurds in Iraq, Turkey, Syria, and Iran, and Quebec in Canada. All can be considered overlapping or nested nations. [139] It deserves to be noted that once an implicating secession process is initiated, the secessionist movement can create a form of identity that has a social instance of overflowing creating strong bonds between its members. This is a secession polarization. This was proven by a very recent study about secession and social polarization in the Catalonian experience. [140] This is what could be called the power of "the internal demands of the people." The ties between the people seeking secession formulates secessionist movements that face revoking responses from the parent state. This polarization strengthens the internal demands of the people. The opposite is also relatively true; it is expected to have less polarization in cases in which the state is more open to accommodate secessionists' demands. The location has a similar impact on this power as well as the treatment of the parent state connected with the constitutional demands of the people.

A. Location Impact

According to the size of the country, there is no consensus on the direction and dimensions of this factor, which suggests that the relationship between the size of the country and the economic performance is complex and unclear. In one study no empirical link was discovered between the differences in country size and economic achievement, except that smaller countries perform better in terms of trade openness. [141] In terms of secession, this means that newly independent smaller states expect little improvement in their growth and economic performance, undermining the argument that they would be better off by acting alone. By contrast, other studies

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[138] An ethnic group may be very apparent to an anthropologist or even an untrained observer, but without a realization of this fact on the part of a sizable percentage of its members, a nation does not exist.
[139] Bossacoma Busquets (ed) (n 12) 121
[140] Laia Balcells, José Fernández-Albertos and Alexander Kuo, *Secession and social polarization: Evidence from Catalonia* (vol 2021, UNU-WIDER 2021)
[141] Andrew Rose, *Size really doesn't matter: In search of a national scale effect* (NBER working paper series no. 12191, National Bureau of Economic Research 2006)

indicate that country size does matter for economic performance. [142] Thus, there is no agreement on the direction and dimension of this effect, implying that the relationship between country size and economic performance. However, the location has a different perspective. [143] The territorial principle in the field of secession is the role of the geographic location in the secession matter. Simply, it has a great role that may lead to change the international view, international relations, and the form or the scenario of practicing self-determination. This principle has great importance when studying the matter of secession comprehensively.

Geographic location has a great influence and motivation on the success of secession; however, it is certainly never the main reason of secession because political and economic reasons play the main roles in this substance. Geographic location may nevertheless not only facilitate, or obstruct, the separation from the seceding region from the parent state, but also have a significant impact upon the effective functioning of the new state in the surrounding areas when secession is fruitful. [144]

To study the impact of the geographic location of the seceding part of the country, it is so important to cover the positive impact of the geographic location with neighboring states on the one hand and the negative impact of detaching from the central government on the other.

1. The positive impact of the geographic location of the seceding territory

If the people of a seceding territory share certainties with one neighbor or more, this may motivate this territory to separate and join them. The extent of this impact may raise when the neighboring state or nation is giving a hand to this seceding territory. Giving a hand may not stop at the moral level but also reach to financial and armed support.

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142 Olfa Alouini and Paul Hubert, *Country size, Growth and Volatility* (Documents de Travail de l'OFCE 2010)
143 Andrés Rodríguez-Pose and Marko Stermšek, *The economics of secession: Analysing the economic impact of the collapse of the former Yugoslavis* (Discussion paper series/ Centre for Economic Policy Research International trade and regional economics vol 10134, Centre for Economic Policy Research 2014)
144 Krzysztof Trzciński, 'The Significance of Geographic Location for the Success of Territorial Secession. African Example' (2004) 11(1) Miscellanea Geographica 207, 207

The location of the seceding territory inside the parent state is also important. When the location of the seceding territory is at the edge of the parent state, it makes the chances of successful secession much higher for two main reasons.

First, it has immunity from military reactions. It is safer for the seceding territory to be on the edge of the parent state in case of carrying out armed operations by the central government forces. If military operations were taking place within the parent state, the peripheral location of the region, which has separated, would make it difficult for the fighting to seep over into its territory and likewise may increase the safety of the population residing there. (145)

Secondly, it has better economic chances. An edge location will expedite the functioning of the newly born entity, in case the former parent state closes the shared border or obstructs the flow of goods and people. It is also the area that the authorities in the newly born entity want to restrict contact to with the parent state to a minimum. (146)

The specific shape of a seceding territory may also have an excessive impetus toward the success of the secession. Narrow borders of the seceding territory or a narrow section of land with the parent state facilitates the activities and movements of secessionists while obstructing the mobility of government forces. This factor is already favorable for the success of secession. Moreover, the fact that the region borders with many states would definitely work as an accelerator for the separation. (147)

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145 (e.g. Somaliland). An edge location is an added value feature of some seceding regions in Africa: Somaliland, Casamance, and the Caprivi Strip.

146 Rodríguez-Pose and Stermšek (n 143)
147 Trzciński (n 144), 213–214

2. The negative impact of the geographic location of the seceding territory

While it is true that some specific situations of geographic locations may provide an advantage for the seceding territory, it may concurrently aggregate an obstruction for the success of a seceding territory or at least limit the function of the newly born entity. At the opposite end of what was mentioned above, the geographic location may abortion the seceding movement before it starts.

The secession of the edge is the usual case that tests a national minority-focused people geographically on the edge of the parent state's borders. Conversely, the secession of the center, the so-called "hole-of-a-donut secession," is an unusual case, involving secession of a region surrounded by the rest of the parent state. [148] This kind of secession should be carefully studied because it is an exceptional case to be considered cautiously, case by case. The impact of the location can carry some challenges as this simple model shown in figure 2 with nations A, B, and C may show.

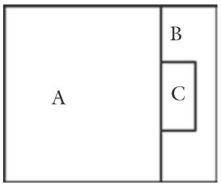

Figure 2: hole-of-a-donut secession [149]

The first challenge assumes that C forms a single nation in a multinational state. In this case, B could possibly secede in line with the positive impact of the geographic location, but C could not easily. That is, C has challenges because it is not located on the edge of the multinational state. The secession of C not only would create an unpleasant shape for the multinational state formed by A and B, but also C would be encircled by the parent state. Azerbaijan and the area of the Nagorno-Karabakh are examples of donut-hole seceding locations.

Several pro-secession strategies to C in figure 2 are possible. First, a negotiated or constitutional provision for secession instead of unilateral secession is possible. Second, there is a dissolution of the multinational parent state. Thirdly, an irredentist secession

[148] Buchanan (ed) (n 39) 14
[149] Bossacoma Busquets (ed) (n 12) 85

of C to a neighboring country with a corridor bridge through B in order to secede together is also a possibility. The *status quos* of nations A, B, and C form three different states that want to unite into a single multinational state. A would be the majority nation, C would not be located on the borders of the multinational state, and only B would have a moral right to secede. However, A or C could agree to unite upon the condition of being granted a legal right to secede. If such secession occurred, an international guarantee to the right of passage through the corridor area belonging to the parent state would be necessary in order to safeguard the land contact between the territory of the new-born state, or entity, and the rest of the world. To a certain extent, a similarity can be drawn to the cases of enclaves because both enclaves and hole-of-a-donut secession present mutual challenges.

These suggestions have not been accepted so far by the current Nagorno-Karabakh secession. On 27 September 2020, the world woke up to a border war between two states, Armenia and Azerbaijan. In fact, this was not the first time these two states fought. They have had deep-rooted conflicts more than mere border battles. They have a hatred that has grown from conflicting interests by ancient nations over 100 years ago. What is happening now is that big states are involved in this conflict. No one can predict what the consequence will be because it is like a time-bomb about to explode. It could lead to a regional conflict between Turkey, Russia, the European Union, and Iran for political interests.

3. Location impact analysis

From figure 3 which is a map of the Caucasus region, the viewer can see that it consists mainly of three states: Azerbaijan towards the east, Armenia towards the west, and Georgia in the north. It can also be seen that this area is the meeting point of Turkey in the west, Russia in the north, and Iran in the south. Armenia and Azerbaijan are sharing a long border.

Figure 3: Nagorno-Karabakh Area [150]

Furthermore, paying attention to the light area inside Azerbaijan, the Nagorno-Karabakh borders of the former Soviet region and the area unilaterally seceded region can be seen. The area of the whole conflict is about 4.4 thousand km^2 which falls inside the Azerbaijani border. However, the majority of the inhabitants of this area, Nagorno-Karabakh, are rooted in the Armenian nation. These people do not agree to be under the Azerbaijani control, but they seek to be a part of the Armenian land. Therefore, many conflicts over the past 100 years have occurred. [151]

At the beginning of the 20th century, the Caucasus region include two different minorities of Orthodoxies: Armenia and Muslim Azerbaijanis. For sure, the difference in religion and race was the reason for many fights that started in 1905 and kept running until the First World War (WWI) in 1914. During WWI, the Ottoman Empire was busy with the war. [152] The Armenian minority exploited this to establish their own state with the help of the Union of Soviet Socialist Republics (USSR), the protector of Orthodox

[150] Andrew Kramer, 'Armenia and Azerbaijan: What Sparked War and Will Peace Prevail?' <https://www.nytimes.com/article/armenian-azerbaijan-conflict.html> accessed 17 December 2020
[151] Azer Babayev and Hans-Joachim Spanger, 'A Way Out for Nagorno-Karabakh: Autonomy, Secession—or What Else?' 277
[152] Azer Babayev, Bruno Schoch and Hans-Joachim Spanger, *The Nagorno-Karabakh deadlock: Insights from successful conflict settlements/ Azer Babayev, Bruno Schoch, Hans-Joachim Spanger, editors* (Studien des Leibniz-Instituts Hessische Stiftung Friedens- und Konfliktforschung, 2662-3544, Springer VS 2020) 17

minorities. The response of the Ottomans was so cruel and resulted in what is known as the "Armenian Genocide." [153] Continuously over a period of time, the Ottoman Empire supported the Azerbaijani minority against Armenians until the end of WWI. With the loss of the Ottoman Empire in WWI, the Soviet Union gained the upper hand and redrew the area. They took the whole Caucasus area under its control and established a state for each minority, but all of them were under the rule of the Soviet Union. What appeared to be peace lasted for a certain period of time, but in reality this was not a true peace. Stalin, the leader of the USSR, built an area called "Nagorno-Karabakh." With an Armenian majority inside the Azerbaijani land with self-government authority, this area tends to join the Armenian state. This area remained silent because of the cruel Soviet control, but at the beginning of 1980s, the Soviet Union began to show signs of collapse. As a result, the states in this union commenced to declare their independence including Armenia and Azerbaijan.

Moreover, the area of Nagorno-Karabakh also sought for secession, but the Azerbaijani refused this strongly. This led to armed fights between the Armenian minority and the Azerbaijani forces starting in 1988 until the Parliament of the self-governed area Nagorno-Karabakh issued a referendum in December 1991. [154] As a result, the self-governed area Nagorno-Karabakh declared its independence changing its name to Artsakh with a flag similar to that of Armenia. This state aimed to join the Armenian state. However, this did not appeal to Azerbaijan, which totally refused this matter. On the other side, Armenia supported it. In 1992, the war started between the two-state Armenia, and Azerbaijan ended it with a cease-fire agreement in May 1994. The situation after this agreement was not satisfying for both sides, especially Azerbaijan. Azerbaijan did not only lose the area Nagorno-Karabakh but also has lost about an additional 9% of its land which fell under the control of Armenia, including the Lachin corridor, a mountain pass connecting the area Nagorno-Karabakh to Armenia. This situation led to several battles on the borders with loss of lives from soldiers. The later conflict on 27 September 2020 was the greatest conflict since 1994 on the borders with many lives lost from the military and civilians. The Azerbaijani attempt to get back

[153] Joanna Bocheńska (ed), *Rediscovering Kurdistan's cultures and identities: The call of the cricket* (Palgrave studies in cultural heritage and conflict, Palgrave Macmillan 2018) 83
[154] Azer Babayev, 'Nagorno-Karabakh: The Genesis and Dynamics of the Conflict' 21

lands from Armenia with force may lead to a regional fight. Turkey declared support for Azerbaijan while France declared that it would not leave Armenia alone. (155)

The suggestions for finding solutions were a bit complicated. Armenia suggested the return of the land to Azerbaijan only if they accept the enrollment of the area Nagorno-Karabakh to the state of Armenia with the land bridging between Armenia and the area Nagorno-Karabakh. The Azerbaijani solution was to return the Azerbaijani land with the area of Nagorno-Karabakh with the vow to protect the rights of Armenian minorities. The international community suggested a solution to Azerbaijan which was to give back their whole land including the area Nagorno-Karabakh with a referendum in that area to ask the people for their situation. Azerbaijan refused the latter solution because it already knows the result of this referendum and it would not be in its favor.

In conclusion, a geographical location has a great impact on secession. It is certainly hard to get secession in a hole-of-a-donut secession situation. Although the Nagorno-Karabakh secession has not presented so far, it is still early to jump to any conclusion as to how it might end in the area taking into consideration the uniqueness of the case and the political impact on international recognition.

4. Location and demographics perspective

The inhospitable, mountainous nature of much of Kurdistan has indirectly produced the most substantial evidence both for and against the persistent claims for Kurdish autonomy. (156) Besides the treatment of the Law to Fight Terrorism and the restrictions on the secessionist movement to express their opinion, the central government has taken further responses and actions to abort the separation project militarily and demographically.

Over the past few decades, the central Turkish government has attempted to reshape and change the social and ethnic structure within the framework of a general integration policy aimed at fusing the various formations and identities of other languages within the framework of a single Turkish identity and language with the aim of engineering and designing a society in the form of Turkish society for a single Turkish state. It can be seen as an assimilationist policy rather than an integration policy. Specific

[155] Kramer (n 150)
[156] Bossacoma Busquets (ed) (n 12) 153

displacement activities have been realized since 1925, and only recently with the United Nations Development Programme (UNDP) support have policies been launched for the return of the displaced people back to their villages of origin. (157)

The issue here relates to two levels of social engineering done by the Turkish. The first is foundational. The Kurds were one of Turkey's targets which were affected by adopting analogous and integrative policies into the Turkish cultural and ethnic identity along with immigration internal displacement policies into Turkey and external displacement policies to neighboring countries. However, this did not target the Kurds alone, but also the Armenians, Arabs, Greeks, and others.

The second level relates to containment security measures related to the Kurdish environment and national movements. It is related to forced displacement to other regions inside and outside Turkey and resettlement into specific areas within the Kurdish region and governorate. This shows a pattern of practical policies that push the Kurds to choose to immigrate on their own, whether for work reasons or safety.

In this context, the second level related to the attempt to contain the PKK is of interest. It is worth noting that the policies followed at this level to change the social and demographic engineering of the designated areas is a continuation of the policy of Turkification at the level of media, education, names of individuals, residential communities, and villages.

The latest studies show that Kurds' displacement stopped in 2010 regardless of the renewed fighting between the government and the Kurdistan Workers' Party (PKK) in the middle of 2015. (158) Until 2010, the Kurdish population was displaced from their villages and resettled in a specific station in order to facilitate dealing with them and protecting some groups from targeting fighters in return if they are pro-government. Besides that, areas without residents were mined to serve as security and military barriers to facilitate migration abroad. According to the difference of the latest displacement study in 2010 in Turkey in figure 4 below compared with figure 5 of the Kurdish demographical concentration, it is seen that the vast majority of IDPs are

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157 T. G Fraser, Andrew Mango and Robert McNamara, *Making the modern Middle East* (Revised and updated. Gingko Library 2017) 25,141,239-240,283

158 Internal Displacement Monitoring Centre (IDMC), 'Global Report on Internal Displacement' (MAY 2019) 46

Kurdish, and their displacement and current situation is tied to the failure to recognize the Kurdish identity.

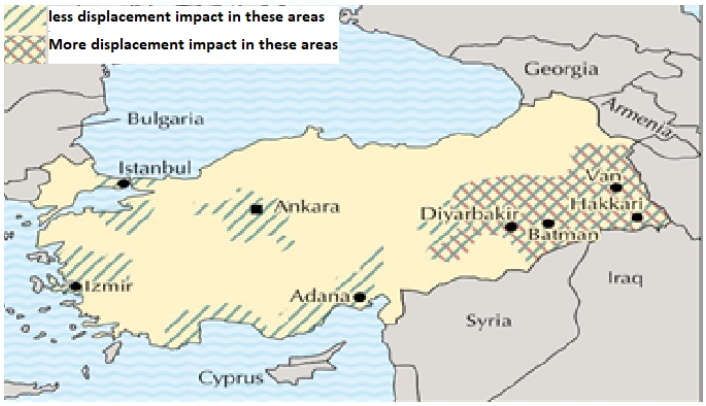

Figure 4: Birkeland, Jennings (Ed.) March 2011 - Internal Displacement Global Overview [159]

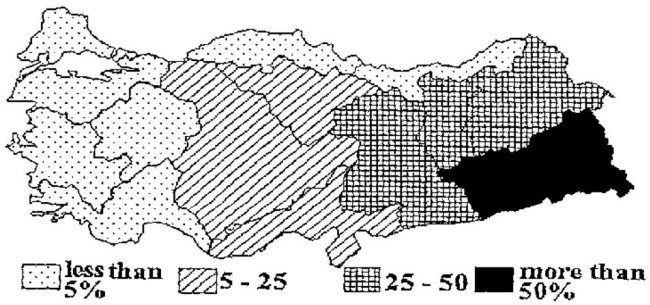

Figure 5: Sirkeci 2000 - Exploring the Kurdish Population Notes: Sub-regions, designed by regroupings of administrative provinces, are used here because small sample sizes of provinces do not allow us to see general picture. [160]

Another considerable concentration of the Kurdish population in 1965 is in rural areas as its lower urbanization rates (55%) indicate; 61% of the total population in Turkey live in urban areas. However, in the west, urban residents among Kurds (about 85%) are higher than Turkish residents (about 75%). A similar pattern is also obvious in the south with 75% of Kurds living in urban areas whereas the Turks' correct figure is 65%. This issue might be explained by the massive rural-to-urban migration of Turkish people from the east to urban centers in the west and south with few exceptions in other

[159] Nina Birkeland and Edmund Jennings (eds), *Internal Displacement Global Overview of Trends and Developments in 2010* (Internal Displacement Monitoring Centre 2011) 70
[160] Ibrahim Sirkeci, 'Exploring the Kurdish Population in the Turkish Context' (2000) 56(1-2) Genus 149, 158

regions. In the central area, 75% of Kurds live in rural areas whereas this figure is only 45% in the east. [161]

On the other hand, these percentages might have been changed in the last decade because of massive evacuations (of villages and hamlets) which pushed hundreds of thousands to the country's urban centers. After several centuries, the Turkish government found that the traditional means of confronting the Kurdish movement did not solve the Kurdish question. On the contrary, it increased social and political support for the PKK. This matter led to going beyond the usual visions in dealing with the Kurdish issue and adopting new policies that include broader approaches.

[161] ibid

B. The Right of Minorities

Secession is not necessarily the dream of minorities. There should be a firm belief that "minority rights" are different from nationalistic justification of secession. International concern for national or ethnic minorities contained within the multinational state is not the only element to examine to justify secession which could be demonstrated without appearing to authorize "self-determination" for all such groups, which impact on political independence. Based on this, the treatment of these minorities grab the attention of the members of the world community and highlight a kind of responsibility to justify secession. I believe that the said responsibility to pay attention only to minorities seeking a rearrangement of state borders, either through secession in a new-born state or irredentism with their brothers, while neglecting the majority groups of nationalist politicians who urge consolidation of the state and the domestic home arrangement will not be successful. Maybe this arrangement is not trusted because it is at the expense of minorities; however, thinking this way may not justify the multinational states.

The rights of minorities should not begin with secession exclusively. I argue that there is a general abstract insight into the "rights of minorities" that can be exercised for the purpose of self-determination and sustaining territorial integrity.

A comprehensive studied definition of minorities is that they are a small group of people in the population of a state, who have racial, religious, and linguistic characteristics different from the other inhabitants. They also show unity to conserve their culture, traditions, religion, and language. [(162)] A 2002 study suggests that 10%-20% of global citizens belong to minorities. [(163)] This suggestion is still standing according to the up-to-date United Nations Guide for Minorities. This means that 600 million to 1.2 billion people require special procedures to protect them. [(164)]

The modern interest of minorities by international law began after World War I when the peace treaties concluded with the four states defeated in the war (Germany, Austria,

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[162] الراحة و الريحان في القانون الدولي لحقوق الانسان, الجندي، غسان (2012) 107

[163] Li-ann Thio, 'Battling Balkanization: Regional Approaches toward Minority Protection beyond Europe' (2002) 2(43) Harvard International Law Journal 409, 409

[164] Commission on human rights Sub-Commission on the Promotion and Protection of Human Rights 1 January 2012 (United Nations Guide for Minorities)

Bulgaria, and Hungary) including provisions for minorities. [165] Furthermore, complete minority treaties were signed by the Principal Allied Powers in 1919 and 1920 with five states (Poland, Czechoslovakia, Romania, Yugoslavia, and Greece) [166] which may be understood as separating minorities apart from the four defeated states, like the Balkan states. [167]

Between the First and Second World War, the Permanent Court of International Justice, concerning the legal status of minorities, stated in an advisory opinion in 1935 that in the case of minorities schools in Albania:

"The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in the race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs." [168]

It can be understood from this and the court opinion that the minority system in international law has two principles: [169]

1. Complete equality within the state between the citizens of that state and the ethnic, religious, and linguistic minorities in it.

2. Provide minorities with the appropriate means to preserve their privacy and traditions.

After World War II, there were two main indicators that proved that international attention had stopped caring for the rights of minorities: [170]

1. After World War II, states preferred to focus on protecting the individual through an international human rights system, rather than focusing on a social group within a country.

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165 Dinstein (n 135), 113
166 ibid 114
167 الجندي، غسان (n 162) 107
168 *MINORITY SCHOOLS IN ALBANIA* (1935) FASCICULE No. 64 17 (PERMANENT COURT OF INTERNATIONAL JUSTICE AB)
169 الجندي، غسان (n 162) 108
170 ibid

2. The American Convention on Human Rights in the 1969 version lacks a provision concerning minorities. The drafters focus on political and civil rights for individuals.

However, the rights of minorities did not expire, according to international law, as evidenced by about 20 international treaties that were concluded after the Second World War and the state parties that pledged to respect the rights of minorities. (171) Besides that, the International Covenant on Civil and Political Rights (ICCPR) was enshrined in Article 27 thereof on the rights of minorities, which summarizes the rules established by the permanent International Court of Justice on the topic. It states as follows:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." (172)

Article 27 of the International Covenant on Political and Civil Rights has been invoked rarely, and one of the rare cases that the committee has examined regarding the rights of minorities is a complaint submitted by the residents of Hervé Barzhig against France, in which the complainants confirmed that they have a right to use their own language. They referred to the violation of Article 27 of the ICCPR, but France invoked that it declared a reservation on this article and the committee declared that it lacked jurisdiction. (173)

In the 1990s, international law developed a methodology for the issue of minorities at the global and regional levels. Globally speaking, the General Assembly of the United Nations adopted the Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities. This declaration states that minorities have the right to enjoy their culture, practice their religious rites, and use their own language

171 Dinstein (n 135), 117
172 International Covenant on Civil and Political Rights (ICCPR) 16 December 1966 (UNGA Res 2200A) Article 27
173 *Hervé Barzhig v. France* (1991) CCPR/C/41/D/327/1988 (The Human Rights Committee)

in public and private places. The declaration also enshrined the right of minorities to meet their relatives within their own country and in other countries. (174)

Regionally speaking, Europe has played a leading role in protecting minorities. This role is observed by the following:

1. The Charter for Regional or Minorities' Languages signed on 5 November 1992. The preamble states as follows:

   "Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;

   Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms" (175)

   As a result, there are two systems of undertakings upon member states. First, there are general undertakings (Part II of the charter) that cover whether all the regional or minority languages spoken within its territory apply overall regional or minorities' languages. Second, there are specific undertakings which are mentioned in the third part of the charter regarding measures to promote the use of regional or minority languages in public life (Article 2 of the European Charter for Regional or Minorities' Languages) Therefore, states can choose specific undertakings and have these undertakings presented to the Secretary-General of the Council of Europe. (176)

2. The Council of Europe made a Framework Convention for The Protection of National Minorities in February 1995. (177) The Framework Convention

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174 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities 18 December 1992, A/RES/47/135 (UNGA Res)
175 European Charter for Regional or Minority Languages 1992, Charte européenne des langues régionales ou minoritaires : Strasbourg, 5. XI. 1992 (Council of Europe) Paragraphs 2 and 3 of the preamble
176 ibid Article 15
177 Council of Europe, 'FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES' (1995) 34(2) International Legal Materials 351 accessed 21 August 2020

stipulated a pledge by member states to allow persons belonging to national minorities to preserve and promote their culture and maintain the essential elements of their identity, namely their religion, language, traditions, and cultural heritage The parties undertake to promote the conditions necessary to maintain and develop their culture and to preserve. [178] The Framework Convention also assures the right of minorities to establish and maintain free and peaceful contacts across frontiers with persons staying in other States. [179]

Although this Framework Convention is a leading convention, it has been criticized for its weak, open-ended formulations and weak monitoring mechanism. [180]

3. The Arbitration Commission of the Conference for Peace in Yugoslavia provided important ideas for minorities among the three issued opinions, [181] which are summarized as follows: [182]

   - The right of independence is exclusive to peoples under colonization.
   - Minorities acquire the right of cultural identity and exercise of collective rights.

4. A European mechanism dealt with human rights. For example, the European Court of Human Rights made a decision in the Chapman v. United Kingdom case about a Gypsy family who did not have permission to park a caravan on land they owned. The complainant said that the British authorities violated his right to respect for private and family life in line with the traditional Gypsy lifestyle, which is protected under Article 8 of the European Convention on Human Rights and Article 14 (violation of the prohibition of discrimination). Although the court in its decision on 18/12/2001 excluded the premise that Britain had violated Article 8 of the convention, it indicated at the same time

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178 Framework Convention for the Protection of National Minorities and Explanatory Report 1995, Strasbourg, February 1995 (Council of Europe) Article 5
179 ibid Article 17
180 Thio (n 163), 414
181 Maurizio Ragazzi, 'CONFERENCE ON YUGOSLAVIA ARBITRATION COMMISSION: OPINIONS ON QUESTIONS ARISING FROM THE DISSOLUTION OF YUGOSLAVIA' (1992) 31(6) International Legal Materials 1488 <http://www.jstor.org/stable/20693759>
182 الجندي، غسان (n 162) 111

that the member states of the agreement are obliged to take practical measures to facilitate the living conditions of the Gypsies. (183)

Moreover, the European Committee of Social Rights (ECSR) investigated the claim made by the European Roma Rights Centre (ERRC) against Greece in regards to respecting the rights of minorities. The committee, in the report of 2003, found that Greece had not made enough measures to promote the situation of the Roma. (184)

Both the Arab and African systems of protecting minorities ignore the protection of the rights of minorities in the contrast to both European and American systems. As observed above, even if there are no European or American texts to protect the right of minorities, both European and American mechanisms of protecting human rights delve deeply into the rights of minorities. However, it is worth noting that Article 37 of the Arab Charter on Human Rights stated that minorities should not be deprived of their right to enjoy their own culture or follow their own religious teachings. (185)

Regarding the minorities in the African system, the African Charter on Human and People's Rights, also called the Banjul Charter, does not refer to "minorities" as such although it does refer to the principle of non-discrimination.

183 *European Court of Human Rights 2001* (n 37)
184 *Centre européen des droits des Roms c. Grèce* (2003) RECLAMATION No. 15/2003 (European Committee Of Social Rights Comite Europeen Des Droits Sociaux)
185 Arab Charter on Human Rights 15 September 1994 (League of Arab States)

II. The Process of "Determination"

A fundamental distinction must be drawn between individual and collective rights granted directly to human beings for international human rights. Individual human rights, for example, freedom of expression or freedom of religion, are given to every single human being individually and personally. On the other hand, collective human rights, for instance, the right of self-determination or the right of peoples to physical existence, are packaged to human beings communally in conjunction with one another or as a group, a people, or a minority. It must be stressed that the group who enjoys the collective human rights communally does not possess a legal personality. The nature of these collective human rights requires them to be exercised jointly rather than severally. [186]

The particular demarcation of the concepts of self-determination, minority rights, and human rights has never been clear and lead to a rather confused understanding of the interrelationship of these concepts. [187] A confusion that has been promoted from the historical propensity to use whatever expression happens to be in vogue at a particular period to encompass all three mentioned concepts. Consequently, among the questions raised by the interrelationship of these concepts are (1) whether a doctrine of self-determination that includes a recognition of minority separatist claims obviates the need for additional protection of minority rights, (2) whether self-determination and minority rights are simply two species of the genus "human rights," (3) whether human rights are solely concerned with individuals and therefore entirely distinguishable from minority (that is, group) rights, and (4) whether an effective guarantee of minority rights by a State vitiates any claim to self-determination by the groups enjoying such protection within the State. Further confusion arises from the equivocal nature of the phrase self-determination; it is sometimes used in a context which suggests that it is a right and therefore, like individual human rights, warrants continuing international protection, and at other times it seems to describe a self-help remedy which is available to certain groups and needs only a general international endorsement for its legitimacy. [188]

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[186] Dinstein (n 135), 102–103
[187] Lee C Buchheit, *Secession: The legitimacy of self-determination* (Yale University Press 1978) 59
[188] ibid

As the right of self-determination is the legitimate mother of the right to secede in the case of considering it a primary right, the concept of secession discussed on the base of self-determination accordingly is *groupal.* This collective concept excludes any concept under the banner of *individual secession*, for instance, emigration or ending the sovereignty of a State over an individual without being forced to emigrate. Anarchist or libertarian thinkers have explored the idea of secession of a single individual, as distinct from group secession since secession seeks to end the sovereignty of a state over part of its territory and population. [189] The comprehensive concept of secession should never include individual secession because, as agreed above, secession may end in the new-born state. The ordinarily accepted definition of State goes together with the indispensable elements of population, territory, authority, and international recognition. [190] A single person could not be considered as a population and would not meet other basic requisites of statehood.

Despite this, the most common reading of self-determination, typically advocated by proponents of states, upholds the territorial integrity of states and consequently restricts the principle of self-determination to an internal dimension. Construed in this way, the principle of self-determination perhaps entitles a people to minority rights and structures enabling *autonomy* or similar arrangements, such as those in *federal states,* but does not give them a right to secession. [191]

Even if a suitable group of people is successful defined, the questions of what this group is eligible to do, and moreover, how they can practice legitimate cases of "determining" need to be answered. The principle of self-determination itself never exclusively demands that a group achieve absolute autonomy or even a Western-style democracy, nor even decolonization. [192]

The demands of the right to self-determination could conceivably be satisfied by the establishment of more or less strict federalism or by the granting of complete freedom of conscience where the cause of irritation is religious intolerance. Where the basis of the dispute is economic, a solution might involve allowing a measure of "economic

[189] Bossacoma Busquets (ed) (n 12) 7
[190] Pavković and Radan (n 45) 5, 33
[191] Thürer and Burri (eds) (n 49)
[192] Buchheit (n 187) 11

autarky" [193] while retaining political unity or political separation with the economic union as in the General Assembly's plan for Palestine. [194]

The political desires of a population may be expressed in several ways. Periodic elections of legislators or governors according to some prearranged constitutional status or affiliation, the voluntary division of an independent State, or free cession of territory to another State following the inhabitants' wishes are all instances of a peaceful implementation of self-determination.

The most secure position of the right of self-determination is to cast it as a "fundamental right." Such fundamental or natural rights may be seen as deriving from and protected by "natural law" in the medieval sense or as an exercise of an indefeasible prerogative belonging to each person qua person and retrained upon entrance to society. The importance of such classification is to justify the results that may occur at the end of the implementation of the right of self-determination.

The process of determining follows several ways:

(1) Reforms: Most of the implementations of self-determination are peaceful. Periodic elections of legislators, periodic elections of governors according to prearranged constitutional formula, and plebiscites to determine political status or affiliation. One example related to this challenge is consociationalism, which is constitutional measures intended to protect minorities or guarantee its fairness in deeply divided societies. When political divisions are firm and clear, the simple ruling majority can transform smaller groups into permanent minorities, whose political destinies do not control their determination. Some societies were characterized by wide pluralism. For example, the Netherlands, Canada, and Malaysia have tried to solve this challenge by various means, including guaranteed representation in government and forms of autonomy for different groups and give the minority the right to veto sensitive areas of public policy. However, such procedures are usually defined by the constitution. In

[193] ibid 11–12
[194] ibid 12

convocational systems, it may sometimes be taken in systems strong majority rule as a means of strengthening the relationship with minorities. (195)

(2) Secession: It has peaceful implementations of self-determination like the voluntary division of an independent state or free cession of territory to another state following the inhabitants' wishes. Practical and legal difficulties are entailed; however, when an assertion of self-determination is made forcibly by a population or part of the population in a state or territory. Within this category (depending on the size, motives, and success of the claimant group) are instances of rebellion, insurrection, revolution, secession, and movements for colonial independence.

(3) Revolution: Gross economic mismanagement and a harsh authoritarian political system have combined into a revolution in countries moving towards freedom, self-determination, and good governance. (196)

(4) Federation / Decentralization: In the context of an alternative, or initiative, on the part of a sub-state region to secede, citizens of that community are called to decide the faith of the federal state.

(5) Internationalization: Based on the bonds of the nations, changing the way the world is governed is not too far. The system of state sovereignty for world members is on the table in the context of the concept of self-determination.

[195] Craig J Calhoun, *Dictionary of the social sciences* (Oxford University Press 2003)
[196] Raed Safadi and Simon Neaime, 'Syria: The Painful Transition towards Democracy' in Ibrahim Elbadawi and Samir Makdisi (eds), *Democratic Transitions in the Arab World* (Cambridge University Press 2017) 207

A. The Right to Self-Determination under International Law

Studying self-determination must begin with entrenched parochial sentiment. The force of self-determination lays in a basic human desire to associate with one's immediate fellows, like for example, family, clan, tribe, or village. Starting with the moral demand of the principle arises the unjust treatment ruled by an "*alien*" people according to a "*just cause"* theory or from a primary right to secede according to the opposing side. The call of self-determination will be rooted in a sense of comfort and security in self-government because the "*alien*" government will always be harsher and supportive of aliens. This site will conflict with the economic, social, and military benefits in participating in larger groupings in the city, province, or state. [197]

It deserves to be started in the beginning that, according to the international norm of the right of self-determination, western countries refused to insert the principle of self-determination when drafting the Charter of the United Nations. However, the Soviet Union succeeded in getting it inserted in Article (1) paragraph 2 of the Charter of the UN. [198]

Article (1) paragraph 2 of the charter of the UN states the purposes of the United Nations are, as follows*:*

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." [199]

Although the charter of the UN recognized the right of self-determination of peoples, the charter casts doubt on the automatic independence of territories under trusteeship. This is seen in both Chapters XI: Declaration Regarding Non-Self-Governing Territories and Chapter XIII: The Trusteeship Council. For instance, paragraph B of Article 73 of the Charter of the UN states that:

"Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-

[197] Buchanan (ed) (n 39) 2
[198] Cassese (n 3) 37–43
[199] United States, *The Charter of the United Nations* (United States Government Printing Office 1945) Article 1 Para 2

government recognize the principle that the interests of the inhabitants of these territories are paramount and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

> (…)
>
> b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;"

The full measure of self-government shall not be understood as full independence, besides there is no time limit to supply these territories by self-government. This matter is entitled to the will of the state which assumes responsibilities for the administration of the territory. [200]

Nonetheless, this understanding collapsed when many developing countries got their independence. Therefore, the General Assembly of the United Nations adapted two resolutions. The first resolution 1514 grants independence to colonial countries and peoples and states that to transfer all powers to the people of those territories without any conditions, in accordance with their freely expressed will and desire. [201] The second resolution 1541 suggests that people can practice the right of self-determination either by independence or by joining an independent state. [202]

Furthermore, this right mentioned at the first common article of both the International Covenant on Civil and Political Rights (ICCPR) [203] and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) [204] supports the immunity of the right of self-determination. It states as follows:

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[200] الجندي، غسان (n 162) 101

[201] Declaration on the Granting of Independence to Colonial Countries and Peoples 1514 (XV) 14 December 1960 (UNGA Res 1514) para 5

[202] Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter 15 December 1960 (UNGA Res 1541) Principles V - IX

[203] International Covenant on Civil and Political Rights (ICCPR) (n 172) Article 1

[204] International Covenant on Economic, Social and Cultural Rights (ICESCR) 16 December 1966 (UNGA Res 2200A) Article 1

"1. All peoples have the right of self-determination. Under that right, they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its means of subsistence.

3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

It also deserves to be noted that the Western European countries tried to insert the right of self-determination as a principle, not as a right. Nevertheless, the developing countries succeed to consider the right of self-determination as a precondition necessary to practice all rights. [205]

Sometimes, the right of self-determination can exist in bilateral agreements. For example, the Paris Peace Accords in 1973 between the United States of America and North Vietnam approved the right of self-determination for the Southern Vietnam people. [206]

Also, in the advisory opinion of the International Court of Justice in the Western Sahara case recognized that "the right of self-determination leaves the General Assembly a measure of discretion concerning the forms and procedures by which that right is to be realized." [207]

The Arab Charter on Human Rights (ACHR) as well recognized the right of self-determination. The preamble states as follows:

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[205] Gerry Simpson, 'The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age' (1996) 32(2) Stanford Journal of International Law 255, 268–269
[206] Dinstein (n 135), 107–108
[207] *Sahara occidental* [1975] [1997] (INTERNATIONAL COURT OF JUSTICE) 12

"For the Arab World, from one end to the other, has continued to call for preserving its belief, having faith in its unity, struggling for its freedom, defending the right of nations, to self-determination, and to preserve their wealth, and believing in the Rule of Law, and that mankind's enjoyment of freedom, justice and equal opportunity is the hallmark of the profound essence of any society." [208]

It is also supported in the first paragraph in the first Article of the ACHR as follows:

"A. All peoples have the right to self-determination and to have control over their wealth and natural resources. Under that right, they have the right to determine their political status freely and to pursue their economic, social and cultural development freely." [209]

International law focuses, until recently, on the external side of the right of the people to self-determination (*decolonization*), taking into consideration that external self-determination is a part of the justification of secession and neglected the internal side of this right (the democratic entitlement of people). Most of the existing states nowadays were created during decolonization under the supports of the United Nations and in the application of the principle of (external) self-determination. Nevertheless, the process of separation of colonies or other non-self-governing territories from the parent state is not to be considered as secession. This way of looking at decolonization means that decolonization as a whole is relevant to the concept of secession. The reason for this is that, at the time of decolonization, these territories were no longer considered to be integral parts of the parent states. [210]

In this sense of understanding, it is not so much supported to have an unrestricted principle of self-determination to justify secession. Relatively, the principle is to balance between the territorial integrity and sovereignty of parent states. Therefore, after the Friendly Relations Declaration (1970) had elaborated, in detail, the principle of equal rights and self-determination of peoples, it limited the principle by:

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity

[208] Arab Charter on Human Rights (n 185)
[209] ibid Article 1 Para A.
[210] Thürer and Burri (eds) (n 49)

or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country." [211]

The clause intended to protect the territorial integrity of states. The principle of self-determination does not enable any action against the unity and sovereignty of a state. A state conducts itself in compliance with the principle of equal rights and self-determination of peoples as described above. In other words, when the principle of equal rights and self-determination of peoples is not complied with, the foregoing paragraphs shall be construed as authorizing or encouraging actions that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states, which may well be the opposite of what the drafters of the clause originally intended. [212]

According to this reading, peoples may invoke the right to self-determination either by seceding from a state and giving birth to a new one or achieving other aims. For instance, to stop internal coercion, overturn the state government, or establish autonomous regimes within the state subunits. [213] External self-determination, taking into consideration that external self-determination is a part of the justification of secession, is usually inactive. It may be activated when internal self-determination is violated. In this understanding, the right to secession is a conditional right with the violation of the principle of (internal) self-determination being the condition. As a consequence, the right is endowed with a punitive character in the sense of "if you misuse your power, you lose it." [214]

The European Union (EU) takes further steps over self-determination. The EU requires democracy as a condition for enrollment. The Eastern European states joined the

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[211] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (n 2) Principle V
[212] Thürer and Burri (eds) (n 49)
[213] Susanna Mancini, 'Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-Determination' (2008) 6(3 and 4) International Journal of constitutional law 553
[214] Thürer and Burri (eds) (n 49)

European Union (EU) and democracy was adapted as an acceptable condition by the Conference on Security and Cooperation in Europe (CSCE), which leads to link the right of people to self-determination with democracy, as what is noted in the coming parts of this chapter. [215] These states embraced democracy in 1989/1990 and join the EU in 2004 and later.

After careful attention, the government of Canada contends that the Human Rights Committee's jurisdiction, as defined by the Optional Protocol, cannot be invoked by an individual when the alleged violation concerns a collective right. It, therefore, contends that the present communication about self-determination for the Lubicon Lake Band should be dismissed. In fact, the decisions in the cases of Ivan Kitok v. Sweden [216] (No. 197/1985) and Ominayak v. Canada [217] (No. 167/1984) showed that the claimant, as an individual, could not claim to defend the self-determination enshrined in Article 1 of the covenant (ICCPR) because this right is assumed by people, not by a sole person. This principle was affirmed by the E. P. et al. v. Colombia decision No. 318/1988 on 25 July 1990. [218]

[215] الجندي، غسان (n 162) 102–103
[216] *Ivan Kitok v. Sweden* (1987) Communication No. 197/1985 (The Human Rights Committee)
[217] *Lubicon Lake Band v. Canada* (1990) Communication No. 167/1984 (The Human Rights Committee)
[218] *E. P. et al. v. Colombia* (1990) Communication No. 318/1988 (The Human Rights Committee)

C. The International Recognition

The international community is not static. Instead, it is on the move and affected by political life. Countries disappear, others arise, and new governments come by force into existing countries. In a way that violates the constitutions, the governments start their responsibilities from exile while internal revolutions and civil wars take place.

In all these cases, a new reality arises that provokes international recognition and produces legal effects that confer legitimacy in recent situations. International recognition is an essential element to create a new state or at least have the internal changes of the countries watched more closely.

Besides the territory, it is generally accepted that creating states must have other elements: people and authority. Despite the argument of whether it is a creator or detector element, recognition of states by the international community is essential in international law. Even though secession does not only create states but also joins a neighboring state. However, the international recognition has its forms that extend to grant recognition to insurrection, belligerency, a nation, national liberation groups, or secession movements in this scenario.

This recognition is controlled by a very complicated mixture of politics and international law. While politics is based on the changeable interests of states, international law is to justify unjustifiable changes in politics.

1. International recognition definition

Recognition can be defined as a legal act by the unilateral will of an international person towards a new entity with the intention of recognizing it as an international person, or towards a specific, realistic situation with the aim of giving it effectiveness in order to gain international legitimacy. (219)

Recognition is, first and foremost, an act of unilateral will. This act means that recognition is an optional act on the part of international persons. This unilateral will remains absolute even if it is granted or seeks for being granted collectively. In other words, even if this action is based on a request from the applicant for recognition, it is

219 Hersch Lauterpacht, *Recognition in international law* (Cambridge studies in international and comparative law III, Cambridge University Press 2013)

not compulsory to grant the recognition. Furthermore, whether this request is directed at a state or an international organization, like the United Nations (UN), nothing in international law compels international persons to recognize other people or to recognize the existing *de facto* situations. This collective recognition mode confirms that the legal result of recognition stems from it being an act of unilateral will. [220]

Recognition is carried out by an international person - the acknowledging person - whether it is a state or an international organization. Recognition can be granted to an international person, who is often a new state in the international community or a unique situation in an existing state whose existence has undergone changes due to a change in sovereignty.

The purpose of the recognition is to give the recognized person the status of an international person vis-à-vis the recognizing person. In all situations, whether recognition is directed at a country whose constitutional foundations have been integrated or even if the recognition is the result of a new de facto status of an existing international person, the purpose of the recognition is to pave the way for the legitimacy of the new situation on the part of the recognizing person.

2. The nature of recognition

There is no doubt that recognition is a political act initially because it is linked to the absolute will of the recognizing state. This political action indicates that the awareness of a government that there is a real crisis in a foreign state and its recognition of the existence of this situation leads to its acceptance of the legal consequences of its existence. [221]

The knowledge of the existence of the *de facto* situation and the acknowledgement of its existence is not considered legal recognition. Preferably, recognition is made when the foreign government's intention to accept the legal consequences that international law places on this situation appears.

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[220] David S Siroky, Milos Popovic and Nikola Mirilovic, 'Unilateral secession, international recognition, and great power contestation' [2020] Journal of Peace Research 002234332096338

[221] D. Turns, 'The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law' (2003) 2(1) Chinese Journal of International Law 105, 134

From the preceding, it is evident that recognition begins a political action with the sole will of the confessor. By its occurrence, this political action has its legal consequences in the international community. This conclusion means that recognition is of a mixed nature, as it is a political and legal action at the same time. Nevertheless, it should be noted that the legal result of recognition – as a political act – depends in principle upon the granting of the recognized state an international character, and it may extend – but not necessarily - to the establishment of international relations with it.

3. Forms of recognition

The recognition may be positive action; it may be implied in the way of expressing the will.

3.1 Positive recognition

Public recognition is a *de jure* formal recognition that is made by the recognizing state explicitly expressing its acceptance of the new state as a member of the international community. This expression may be based on a request from the concerned state wishing to obtain recognition, or it can only be on the initiative of the recognized state. The principle of confession is that it acted unilaterally on the part of the confessor. [222]

The public recognition may be individually issued by the competent authority in the recognizing state. It can also be collective as if a group of states decided to recognize the new state or entity. Another collective form when a public body issued the recognition in an international organization such as the United Nations General Assembly.

3.2 Implicit recognition

Implied recognition is de facto recognition resulting from dealing with the new state or entity as if it were an explicitly recognized state, such as concluding a commercial agreement with it or exchanging consular representation with it before officially recognizing it. [223]

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[222] ibid 130
[223] Siroky, Popovic and Mirilovic (n 220), 7

These examples come close to a realistic acknowledgement of a public acknowledgement. For there are forms of realistic recognition that are much weaker as when two parties do not recognize the other or recognize one another without the other entering into negotiations.

4. Types of recognition

It is possible to classify types of recognition on the basis of the recognized issue to state recognition, recognition of the state of war (belligerency), recognition of the revolution (insurrection), recognition of a nation, and recognition of national liberation groups.

4.1 State recognition

The state is created when its three pillars (people, territory, and sovereignty) are integrated and this is essential for any country. While the jurisprudence of constitutional law is satisfied with these principles, the jurisprudence of international law requires an additional element. Recognition is to give a state a description of an international legal personality. [224]

The recognition of the state reflects its ability to enter into international relations with other international persons, like states and international organizations. The reality of international relations confirms that fully-fledged political units do not automatically acquire membership in the international community. Membership in the international community rather depends on their acceptance and recognition by most of the existing international community, and this means that the new political units do not become a legal reality until after they are recognized, and relations are exchanged with them.

It can be said that the recognition of the state is a primary international agreement that allows the recognized entity, the state, or the new international person, to enter into relations with other persons, governed by international law. Hence, it can be said that recognition paves the way for the establishment of legal relations with the recognized, as there are no legal relations with a state that is not recognized. The basis of this recognition acquires a voluntary character, as a state does not likely recognize another without the latter's consent, and the state that has not recognized the international personality has no right to demand a legal claim that international persons must be

[224] Peter Radan, *On the Way to Statehood: Secession and Globalization* (Aleksandar Pavković ed, Routledge 2017) 51

recognized. [225] Though the underlying awareness that mutual consent is required for secession to be permissible is not the situation of the secession case of Kosovo in 2008. The authority of Kosovo declared independence from Serbia after a long time of autonomous administration under the auspices of the United Nations. This case leaves us to understand that unilateral secession is possible to get international recognition. It may be argued that this unilateral secession case shows an exception to the general rule prohibiting unilateral secession, namely that when there have been severe violations of human rights, a subunit can secede without the permission of the parent state. [226] While this argument based on the "Kurdish situation" that proves the opposite is less persuasive, the semi-absolute will is persuasive for granting recognition as seen later.

If recognition creates the state or discloses its existence and if recognition is an act of construction, then this means that the pillars of the state are four, not just three, and recognition is this fourth pillar. Another aspect is that recognition is a detector. If recognition is a revealing act, then the state only meets its three pillars. As for recognition, its role is limited to giving a green light for the recognized person to enter the international community, and more precisely, to enter into international relations with the recognizing person. Supporters of this trend support their view of the International Court of Justice's ruling in the "Corfu Channel" case between Britain and Albania, as Britain presented the dispute to the court despite Britain's failure to recognize Albania. The court recognized Albania's responsibility even though the court's statute limits its jurisdiction to states. Supporters of this trend concluded that recognition is nothing but recognition of the availability of the foundations of the state and does not affect its establishment. [227]

There is a third trend that sees recognition as a complex creating and revealing act. Recognition is a revealing act rather than a creating act because the state that is not recognized by an international person does not annul its de facto existence, at least vis-à-vis those who recognize it from other international persons.

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[225] Bossacoma Busquets (ed) (n 12) 249
[226] Siroky, Popovic and Mirilovic (n 220)
[227] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)* (DECEMBER 15th, 1949) (INTERNATIONAL COURT OF JUSTICE)

Countries take their positions based on their respective political calculations. Moreover, every state appreciates its part of the recognition of another state according to the interests of the recognizer. Consequently, the state that is recognized by some states is considered an international person towards those who recognized it even if it is unable to exercise its international prerogatives towards those who did not recognize it. Furthermore, based on our view of recognition that it reveals more about an existing state than a founder of it, the one who makes the recognition must ensure that the new state completes its three pillars. Recognition does not create a country, but rather an act that expresses the will of other states to accept dealing with a new person in the international community.

It is well established that recognition has no real value if the recognized state does not have all the elements of the state; recognition does not confer the new state with statehood as this characteristic existed before recognition. The state has existed and started its activity since its inception with the completion of its three pillars. As for recognition itself, it opens the door for the recognized state to enter into international relations with only those who recognize it.

As long as the recognition is of a revealing character in the first place, it has a retroactive effect. That is, the impact of recognition reverts to the time the recognized state is established, and it also follows from this view that the recognition is not subject to restriction with conditions. Even if conditions restrict it, the recognized state is obligated to observe these conditions without the lapse of previous recognition of them.

4.2 Recognition of the revolution (insurrection)

The state of the revolution can be recognized if it takes place in a country. Revolution here means the armed disobedience that does not amount to the civil war. Acknowledgement may be issued by the government of the country in which the revolution occurred, with the intention of removing its responsibility for the actions of the revolutionaries that harmed other countries in the event of the revolution's failure.

As a result of this recognition, it is impermissible to treat the rebels as traitors or criminals. (228)

Nevertheless, suppose a foreign country grants the recognition of the revolution. In that case, it does not entail giving the rebels the rights stipulated in international law for combatants, such as the right to visit and search ships of foreign countries. The recognized state is not bound to follow the duties of neutrality, the most important of which is refraining from assisting the country of origin.

4.3 Recognition of the state of war (belligerency)

The state of war may be recognized if the rebels have an organized government that exercises its powers over a specific region, and an army that follows the rules of war. The recognition of the state of war applies to the rules of war and neutrality. The legal recognition of belligerency and neutrality, such as a state of war, and a legal occupation have all been questions considered by international law at different points in time. (229)

4.4 Recognition of de facto government

Recognition of a state implies recognition of the legitimate government in which it exists. However, recognition can take place, primarily through de facto recognition, even in cases of illegitimate access to judgment.

A new government may come in an unconstitutional manner, such as a coup, or with the removal of the legal system through external aggression in cooperation with the opposition. In these cases, the new government is characterized as an actual government. Recognition of the de facto government is usually based on the political calculations of the acknowledging states, especially when the de facto government is able to gain practical and sustained control.

4.5 Recognition of a nation

This kind of recognition appeared during the Second World War after the Germans occupied the territories of some Allied countries and the leaders in the occupied regions moved to the Allied countries. They formed national committees that were recognized

[228] Michael Scriven, 'Roadblocks to Recognition and Revolution' (2016) 37(1) American Journal of Evaluation 27, 40–41
[229] Pronto (n 48), 111

by other countries as representing their defeated nations, so France allowed the Czech Committee and then the Yugoslavian Committee to form a national army and a military council that issue its decisions in the name of the nation. [230]

Under the same banner, national liberation groups can be recognized as state representatives. For example, the Palestine Liberation Organization was recognized by most countries as the legitimate representative of the Palestinian people even as they kept up combat against the Israeli occupation and some, especially Arab countries, are treating the organization's representative as a state ambassador. Also, the Democratic Front for the Liberation of Palestine kept up combat against the Israeli occupation. In addition, the Dhofar Liberation Front launched a ten-year insurgency against the Sultanate of Oman to create a Marxist state in this Arab country. In Iran, the Fedaian and its Islamic counterpart Mujahedin Khalq launched a guerrilla struggle against the shah of Iran. Finally, the Kurdistan Workers' Party (PKK), a Kurdish militant organization, emerged in 1978 to establish a socialist republic in Kurdistan. [231]

5. Recognition limitations

The question that is sometimes raised is if there is an obligation not to recognize the new state or entity in some circumstances. The commitment not to grant recognition (non-recognition) was confirmed in the work of the United Nations. For instance, the Security Council requested in 1965 and 1970 that members of the United Nations not recognize the situation resulting from the declaration of the independence of Southern Rhodesia from the white minority due to its violation of General Assembly resolutions that stipulated that the independence of that region be under a government representing the majority. Nevertheless, states deny the existence of such obligation and deal as they have absolute power to recognize or not, which confirms the contemporary view that recognition is a political act rather than a legal act.

The United Nations (UN) has an essential role in the international recognition of new states or a new secession to the international community by means of collective recognition. Contrariwise, the UN may impact on the acceptance of a state by the

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[230] Yael Tamir, *Liberal nationalism* (Studies in moral, political, and legal philosophy, Princeton University Press 1993) 71

[231] Asef Bayat, *Revolution without revolutionaries: Making sense of the Arab Spring* (Stanford studies in Middle Eastern and Islamic societies and cultures, Stanford University Press 2017) 171

process of collective non-recognition. The most familiar opinion is the Stimson Doctrine. According to Stimson's theory, the new state may not be recognized if its creation contravenes international obligations. One of the known examples of the recognition limitations is the case of the State of Manchukuo, which today the People's Republic of China calls Dongbei but historically was known to the West as Manchuria. Japan occupied the northernmost region of the Chinese area of Manchuria in 1932. Moreover, it established the State of Manchukuo. The United States declared that it would not recognize the state of Manchukuo on the basis of the violation of the 1928 General Treaty for the Renunciation of War, also known as the Pact of Paris or, more familiarly, as the Kellogg-Briand Pact, in which States renounced war. This doctrine was supported by a resolution of the Assembly of the League of Nations, calling upon its members not to recognize Manchukuo. In other words, Stimson's theory was supported by a decision issued by the League of Nations on 3/11/1933 stating that "the members of the League of Nations undertake not to recognize any situation, treaty, or agreement resulting from the use of means contrary to the Covenant of the League of Nations or the Brian Kellogg's covenant preventing recourse to war." (232)

Today, it is accepted that there are certain necessary customs upon which the international order is founded. These customs apply to the creation of states and the acquisition of territory. A norm of customary international law can be evidenced by Article 11 of the International Law Commission's 1949 Draft Declaration on the Rights and Duties of States, which reads, "Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of Article 9." (233)

States are under a duty not to recognize such acts under customary international law and in accordance with the general principles of law. This duty has long been established by the International Law Commission in its Act on the Responsibility of States for Internationally Wrongful Acts on 12 December 2001. (234) Resolutions of the Security Council and the General Assembly are declaratory in the sense that they confirm an already existing duty on States not to recognize such situations. In practical terms, in accordance with this doctrine, the United Nations has directed states not to recognize

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232 John Dugard and David Raič, 'The role of recognition in the law and practice of secession' 100
233 The General Assembly Resolution 375 (IV) (1949) 1949 (UNGA Res)
234 Responsibility of States for Internationally Wrongful Acts 2001 12 December 2001, Articles 40, 41 and 41 ss2

the claimant states created on the basis of aggression. For instance, in the Turkish Republic of Northern Cyprus, the Security Council has clearly and expressly called on states to deny [(235)] systematic racial discrimination and the denial of human rights. Also, the General Assembly has visibly asked states to abstain from granting recognition of South Africa's Bantustan States and deny self-determination of Katanga [(236)] and the same call to states was made by the Security Council for the case of Rhodesia. [(237)] In addition to that, after the Iraqi invasion and declaration of the annexation of Kuwait (declared Iraq's "19th province"), the Security Council asked states not to recognize the new situation resulting from Iraq's invasion of Kuwait. The Security Council reacted very quickly to the annexation by passing Resolution 662, [(238)] which condemned what it called the "merger" of Kuwait into Iraq and declared it "null and void," calling upon all states not to recognize the validity of the annexation. [(239)]

According to what has happened in international work and been established by international norms, a new state can enter into full international relations with the countries that recognize it. It can also enter into limited legal, political, and economic ties with countries that do not recognize it if these countries find a need or interest for them in these relationships. In all cases, the new state is bound by the existing rules of international law in order to be worthy of acquiring membership in the international community even if this acquisition is partial or limited.

Recognition is an essential instrument in how the secession process ends in a successful or unsuccessful manner, that is, in the recognition or not of subunits seeking to secede from their colonial rulers. For example, the independence of the United States of America from Britain by France's recognition of the United States in 1778 undoubtedly contributed to the success of the American Revolution. The independence of the Latin-American states from Spain is another example as well. [(240)] secessions unconnected with decolonization have also been validated by recognition or obstructed by the failure to obtain recognition. In 1831, Belgium seceded from its union with the Netherlands by a collective act of recognition

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235 Resolution 541 (1983) of 18 November 1983 (The Security Council)
236 Dugard and Raič (n 232) 101
237 The Security Council Resolution 216 November 1965 (The Security Council)
238 Resolution 662 (1990) 9 August 1990 (The Security Council)
239 Turns (n 221), 136
240 Dugard and Raič (n 232) 110

employed by the European Great Powers. [241] In the case of Panama, the United States of America (USA) granted recognition of the secession of Panama from Colombia in 1903 threatening to use force to prevent Colombia from insisting on its sovereignty over Panama. The US recognition of Panama was quickly followed by China, Germany, France, and Austria-Hungary recognition. [242] Also, the formation of the Republic of Croatia is generally viewed as a successful secession. It was following the secession of a federation in 1991 as an example of recognized secession. [243]

Unquestionably, this recognition was encouraged later by the international community after the establishment of United Nations, particularly after the adoption of Resolution 1514 (XV) on the Granting of Independence of Colonial Countries and Peoples by the General Assembly of the United Nations. [244] Conversely, the sanction of non-recognition has been used in secessionist situations to invalidate claims to statehood. Another example away from colonial secessions, the conflicts in the Democratic Republic of Congo, Somalia, and Angola have all had strong secession movements. However, the principle of territorial integrity prevailed over self-determination because of recognition failure. Many attempts seeking secession have failed mainly by the absence of recognition from a few states. A few are sufficient to ensure acceptance by the international community. For instance, in the case of Biafra, a rebellious province of Nigeria waged a bitter secessionist war from 1967 to 1970. Only five countries (Tanzania, Gabon, Ivory Coast, Zambia, and Haiti) granted recognition to Biafra, but they failed to enter into diplomatic relations with them. Although Biafra probably has the right of secession, the organization of African Unity invoked the principles of national unity and territorial integrity to justify its support for the Nigerian central government. [245] Therefore, with no involvement from the United Nations in the conflict, it became an African problem.

The same goes for the non-recognition of Bougainville's secession movement from Papua New Guinea. The story started when Bougainville declared its independence from Papua New Guinea on 17 May 1990, but the state of independence remained

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241 Lauterpacht (n 219) 68
242 William H Taft, 'The Treaty Between Colombia and the United States' (1921) 15(3) Am j int law 430, 430
243 123 and 126Dugard and Raič (n 232) 113
244 Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter (n 202)
245 David A Ijalaye, 'Was "Biafra" at Any Time A State in International Law?' (1971) 65(3) Am j int law 551

unrecognized. However, the Bougainville government exercised substantial control over the island for about three years. In February 1993, the military of Papua New Guinea took control over the capital of Bougainville, and the fight continued for a few years. However, the army of Papua New Guinea was unable to win the war. Violence only came to an end with the signing of a peace agreement between Papua New Guinea and Bougainville on 26 January 2001 after a failure of granting recognition. The constitution was approved in 2004, and elections were held in 2005. Then, the new government was sworn in Buka. [246] The same situation plagued the secession of Aceh from Indonesia. [247]

There are even more examples of failed secession movements due to non-recognition. The Chechnya conflict has a secessionist flavor, but Chechnya has been a case of failure of secession because of the withholding of recognition. [248]Abkhazia is another example of non-recognition where it attempted to secede from Eastern Europe, and the Security Council and the European Union in effect blocked secession by their disapproval. [249]

In conclusion, international recognition is essential for secession and for creating new states, despite the secession's specialty. Secession is discouraged when the base of the territorial integrity prevails over external self-determination. However, I believe that international recognition has a significant role in deciding how the journey of secession will end. The recognition can be granted to a newly-born state or a secession movement. Then, a subsequent admission of the entity to the United Nations constitutes a further act of collective recognition on a larger, more universal scale. Although recognition is an act of unilateral will, in the way of collective recognition, individual acts of recognition establishing an unlawful involvement in the domestic affairs of the parent state are eliminated, discouraged, or abridged to a minimum.

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[246] M. R Islam, *Secession crisis in Papua New Guinea: The proclaimed Republic of Bougainville in international law* ([s.n.] 1991) 464 and 475

[247] Rodd McGibbon, *Secessionist challenges in Aceh and Papua: Is special autonomy the solution?* (Policy studies vol 10, East-West Center Washington 2004) 12, 46

[248] Jonathan Charney, 'Self-Determination: Chechnya, Kosovo, and East Timor' (2001) 34(2) Vanderbilt Journal of Transnational Law 455, 465

[249] Dugard and Raič (n 232) 113

There are two forms of recognition: one by the recognizing person taking positive actions individually and collectively, and another implicitly by dealing with the entity in the way of building relations. Recognition on the basis of the recognized issue may be granted to state recognition, recognition of the state of war (belligerency), recognition of the revolution (insurrection), recognition of a nation, or recognition of national liberation.

In most cases, states have failed to retort to calls for recognition of statehood from peoples whose right to internal self-determination has been denied and whose human rights have been violated because respect for territorial integrity occupies a higher place in the hierarchy of values upon which the new legal order is founded. As shown above, there are several cases in which territorial integrity has been placed above humanitarian considerations. Collective recognition is a useful device for the creation of States in a secession scenario. Though the other side of this device is collective non-recognition, and this has not been infrequently used to obstruct secession.

The modern rules of secession have had a significant influence on the rules of recognition. Whereas states were free to confer recognition upon a secessionist entity claiming statehood that complied with the requirements of statehood, subject only to the prohibition on early recognition before, states today may not recognize a secessionist movement as a state unless the movement in question can demonstrate that it comprises a people entitled to exercise the right of secession which has been oppressed within the meaning of qualification contained in the1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States. This declaration follows the Charter of the United Nations and states among other things that "No territorial acquisition resulting from the threat or use of force shall be recognised as legal." [250] A parallel account is found in the General Assembly Resolution on the Definition of Aggression where it says, "No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful". [251]

[250] General Assembly Resolution 2625 (XXV) 1970 (UNGA Res) Para 10
[251] General Assembly Resolution 3314 (XXIX) 1975 (UNGA Res) Article 3 Para 5

The one-sided recognition of seceding sub-bodies can no longer be predicted other than in exceptional circumstances. The precedent of Panama is now relegated to the past. The individual states will not exercise their discretionary power of recognition in the absence of an indication from the United Nations or the relevant regional organization. Consequently, the recognition of secessionist sub-bodies appears to have become mainly a matter for collective decision making either by way of a public declaration of recognition or by way of admission to the international organization in question.

CHAPTER 4: SECESSION AND SELF-DETERMINATION IN THE CONSTITUTION

Secession arguments are affected by two contradicting background principles: first, the constitutional principle of state territorial integrity and secondly, the international right of self-determination of peoples. Both are interacting impacting the secession in different directions. Constitutions try to steer both ideas by assuring the territorial and homeland integrity and assuring the principle of self-determination for people, especially minorities, to make both working together to sustain the existence of the state. This is why this chapter will be divided into two parts: the first covers the right of secession and the second covers the constitutional expression of self-determination.

According to international law, the origin of the concept of secession is self-determination. Sometimes secession is classified as a "right" in the constitutions. Although secession is often seen as a "right," it is not a right in the traditional sense. It is not a right for individuals but rather a collective right, "third generation of rights," for a group or individuals who must have an internal framework for joint actions in order to apply the so-called "right of secession." In this understanding, the failure of the central government to provide the rights for citizens leads to questioning the capability of the government. Alternatively, the failure of the constitution to provide self-determination for the people leads to questioning the power of the constitution *per se*.

It is understandable that constitutional law supports territorial integrity. However, the constitution shall represent the basic law of the state, reflecting the peoples' needs. Thus, even if the territorial and homeland integrity is a constitutional principle, it shall go in line with the peoples' demands. Therefore, the first topic will discuss the secession in constitutional provisions. Otherwise, the constitution does not reflect the peoples' demand and breaks the social contract with the people. This matter will be presented in this chapter by studying social contract in the second topic in order to see how the basic law is the source of power, and if the constitution does not reflect' the people needs, it will break the social contract.

At the same time, the approaches of constitutions will be examined in terms of the treatment of the right of secession. In the case of secession of people in a state, it is significant to check the constitutional perspective of secession. Thus, the constitutional

approaches based on providing secession as a right of people in its provisions and how these impact on the secession process in the second part will be studied. On top of that, how self-determination resulting in secession will be processed in the form of a referendum as a certain measure of expressing the people's demand in secession will be shown. Furthermore, developed concepts of internal self-determination will be mentioned.

I. Secession in Constitutional Provisions

The argument of satisfying the self-determination demands based on secession can be resolved, or partly organized, by the constitution. The basic law of each state can regulate the two mentioned ideas, self-determination and territory integrity, in the constitution by stating the fundamental rights and principles of the people.

By checking the details of the constitutions around the world, constitutions may mention the right of seceding for people as a collective right. Therefore, constitutions can be classified into three approaches based on providing the right of secession: first, constitutions that permit secession and provide a clause in its provisions permitting the right of secession explicitly; secondly, silent constitutions that do not prohibit nor allow secession; and thirdly, constitutions that prohibit secession because speaking up to demand secession is unconstitutional.

The first two topics in the following sections include the study of constitutions that dealt with the secession topic either by permitting it or prohibiting it. In both of these situations, the constitution interacted with the challenge of secession. The last topic will talk about constitutions that never interact with secession known as silent constitutions. The last topic deals with the judicial review of the earlier doctrines.

A. Constitutions Permit Secession

Let us see the positive constitutional treatment of the secession clause. Constitutions may organize secession in the time of drafting it or through a particular amendment based on the necessity of joining the different nations or territory into one political body. In this regard, the right of secession is considered a requirement for establishing this united political body. However, it is a double-edged sword. Because it may be the reason for uniting the components, it can also tear it into pieces as well. This is why in drafting the constitution it is so critical to design a constitutional method for initiating secession, the process, and the final constitutional approval.

The approach of permitting secession is comparatively rare. However, some constitutions may explicitly state an article is permitting the rights, for example, the Soviet Union, Saint Kitts and Nevis, Uzbekistan, the Union of Burma, and Sudan.

The Soviet Union is one of the clearest examples of this approach. The constitution of the Soviet Union included rights to secede for its components in Article 17: “To every Union Republic is reserved the right freely to secede from the USSR.” [252] It is believed that providing this article shows the voluntarily will that every Union Republic had or used to have in joining the USSR. However, national integration has been maintained by political force, rather than law. Saint Kitts and Nevis's constitution of 1983 permits the secession of Nevis in section 115 that states “If under the provisions of a law ratified by the Nevis Island Legislature under section 113(1), the island of Nevis ceases to be federated with the island of Saint Christopher, the provisions of schedule (3) shall forthwith have an effect.” [253]

Uzbekistan's Constitution of 1992 with Amendments through 2011 mentions in Article 74 that “The Republic of Karakalpakstan shall have the right to secede from the Republic of Uzbekistan based on a nation-wide referendum held by the people of Karakalpakstan.” [254]

Furthermore, Myanmar’s 1947 Constitution allowed secession after a ten-year period for all the units except for the Kachin and Karen states. Chapter 10 of the Constitution on September 24, 1947 allowed for secession by stating that “Chapter X, Right of Secession, Article 201: Save as otherwise expressly provided in this constitution or any Act of Parliament made under section 199, every state shall have the right to secede from the union under the conditions in the future prescribed.” [255] Also, in the earlier 1995 constitution of France, Article 76 allowed states to exit the French community. [256] The same can be said for Article 4 of Liechtenstein's Constitution of 1921 with Amendments through 2011in which states in the second paragraph that “Individual communes have the right to secede from the State. A decision to initiate the secession procedure shall be taken by a majority of the citizens residing there who are entitled to vote. Secession shall be regulated by law or, as the case may be, a treaty. In the latter event, a second ballot shall be held in the commune after the negotiations have

[252] Constitution (Fundamental law) of the Union of Soviet Socialist Republics 5 December 1936 (the Supreme Soviet of the USSR Kremlin, Moscow) Article 17
[253] Saint Kitts and Nevis's Constitution of 1983 1983 (Saint Kitts and Nevis) section 115
[254] Uzbekistan's Constitution of 1992 with Amendments through 2011 1992 (Uzbekistan) Article 74
[255] The Constitution of the Union of Burma 24 September 1947 (the Union of Burma) Chapter 10
[256] 1958 Constitution of France 1958 (repealed 1995). 1995 (France) Article 76

been completed." [257] In addition to that, the 2003 Constitution of Serbia and Montenegro stated in Article 60 that "upon the end of 3 years, member states shall have the right to initiate the procedure for the change in its state status from the state union of Serbia and Montenegro. The decision on breaking away from the state union of Serbia and Montenegro shall be taken following a referendum." [258]

Sudan's Constitution of 2005 stated in article 222, as follows:

"1. Six months before the end of the six-year interim period, there shall be an internationally monitored referendum, for the people of Southern Sudan organized by Southern Sudan Referendum Commission in cooperation with the National Government and the Government of Southern Sudan.

2. The people of Southern Sudan shall either:

a. confirm the unity of Sudan by voting to sustain the system of government established under the Comprehensive Peace Agreement and this Constitution, or

b. vote for secession." [259]

In another example, the constitution of Ethiopia in the latest version from 1994 gave every nationality in Ethiopia the right not only to self-determination but also to secession by providing for the right of secession for any nations in provisions like Articles 39 and 62 (3). Following states the provisions of:

"Article 39: Rights of Nations, Nationalities, and Peoples

1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.

2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its language; to express, to develop and to promote its culture; and to preserve its history.

[257] Liechtenstein's Constitution of 1921 with Amendments through 2011 1921 (Liechtenstein) Article 4 (2)
[258] [CONSTITUTIONAL CHARTER OF THE STATE UNION OF SERBIA AND MONTENEGRO] Febuary 4, 2003 (The State Union of Serbia and Montenegro) Article 60
[259] Sudan's Constitution of 2005 2005 (Sudan) Article 222

3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.

4. The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

   a. When a two-thirds majority has approved a demand for secession of the members of the Legislative Council of the Nation, Nationality or People concerned;

   b. When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;

   c. When a majority vote supports the demand for secession in the referendum;

   d. When the Federal Government will have transferred its powers to the Council of the Nation, Nationality or People who has voted to secede; and

   e. When the division of assets is effected in a manner prescribed by law." [260]

Article 62 (3) states that "It shall, in accordance with the Constitution, decide on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession." [261] Nevertheless, other elements of Ethiopia's authoritarian system have been sufficient to prevent secession from actually occurring and appearing. [262]

In the permitting approach, the constitution or domestic constitutional rules prescribe the nature and procedures of secession whether it is allowed for all components of the state, like USSR, or just granted to some subunits like Nevisian, South-Sudanese, and Karakalpakstanian. The constitution also regulates the process for initiating secession by those who express the will of secession, whether it is the subunit demanding to

[260] Ethiopia's Constitution of 1994 (Ethiopia) Article 39
[261] ibid Article 62 (3)
[262] BBC, 'Tigray crisis: Ethiopian government 'forced into conflict" (Friday 28 November 2020) <https://www.bbc.com/news/av/world-africa-55101674>

secede or the whole country because of the modification of the territorial integrity of the state, and it regulates the constitutional authority that shall approve the secession and the constitutional court or the constitutional entity that is entitled to solve disputes about secession.

The typical process is through a referendum. This process will involve the consent of the population in the subunit as expressed through a first-hand referendum. It may expand to get the whole parent state into the same process of referendum or another means of approval. The full state approval is what is considered "consent." The decision of secession requires the approval by the parliament or some other step taken from the parent state. Hence, it can be said that recognition paves the way for the establishment of legal relations with the recognized as there are no legal relations with a state that is not recognized. Though the underlying awareness is that mutual consent is required for secession to be permissible, that is not the case after the secession of Kosovo in 2008. The authority of Kosovo declared independence from Serbia after a long time of autonomous administration under the auspices of the United Nations.

The territorially-concentrated minority desires to join a state with some guarantee of good treatment, and providing the right to secession will serve as a guarantee to a territorial minority that they will be well treated. This minority will be more in favor of secession under these conditions. On the other hand, they might wish to seek independence at the time of the constitutional negotiation.

On the other side, rights to secession are hazardous because they will lead political forces to demand secession as a way of obtaining more benefits from the central government. However, if the subunit, territorially-concentrated minority, is strong enough to secure independence, it may not need to agree with the center at all. This situation suggests that a right to secession will only be demanded by politicians for a unit that is too weak to stand on its own at the moment but might be stronger in the future.

Institutional solutions should encourage a secession clause in fair terms. For instance, the subunit shall pay back to the center its share of national debts and set up a specific date for the referendum. If the secessionists do not gain support, it will disappear from the option set for the future.

This conclusion considers cases in which a subunit has the right to withdraw from a central authority formally because the center will demand a steep price for including the right. There will be other, more immediate benefits that must be sacrificed in the multidimensional negotiation over the constitutional treatment of secession which is increasing in frequency. Obtaining a future right to secede sometimes means forgetting certain benefits today. Politicians in favor of a right to secession must convince their people that it is worth giving up on other benefits and also convince the center to grant the right. These considerations help us understand why rights to secession are rare. Undoubtedly, secession clauses might have made breakups both easier and more peaceful. (263)

[263] Tom Ginsburg and Mila Versteeg, 'From Catalonia to California: Secession in Constitutional Law' [2019] Alabama Law Review 923, 952

B. Constitutions Prohibit Secession

Another approach to the constitutional treatment of a succession clause – that is increasing in popularity – is for the constitutions to forbid secession. When the central government fears that a subunit has enough strength to make a credible secessionist claim, it might want to ban this option by writing a prohibition in the constitution. The prohibition challenges the legality of any secessionist demand and suppresses such movements in the name of the constitution. It is thus easy to see why central governments want to ban secession constitutionally. This approach can be through two ways, either implicitly by stressing on the territory integrity value or by prohibiting secession explicitly through a clause.

The integrity of the territory is the constitutional principle that stands against secession. Thus, declaring the territorial integrity or indivisibility of the state homeland spontaneously prevents the claim of the existing right of secession. However, some states do not stop at prohibiting secession but criminalize the secession movement, like Turkey as seen later, or stop explicitly prohibiting secession in the constitutions' provisions. For example, of the latter way, the constitution of China explicitly states in Article 4 the prohibition of secession saying "All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited. The state helps the areas inhabited by minority nationalities speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities." [(264)] Myanmar's Constitution of 2008 with amendments through 2015 clearly also prevents secession in Article 10 that states: "No part of the territory constituted in the Union such as Regions, States, Union Territories and Self-Administered Areas shall ever secede from the Union." [(265)] Ecuador, in its constitution, stressed banning secession twice in both Article 4 and 238. Article 4 states that: "The territory of Ecuador is unalienable,

[264] China (People's Republic of)'s Constitution of 1982 with Amendments through 2004 (State of China) Article 4

[265] Myanmar's Constitution of 2008 with Amendments through 2015 2008 (Myanmar) Article 10

irreducible and inviolable. No one shall jeopardize its territorial unity or foment secession." [266] Furthermore, Article 238 provides: "Decentralized autonomous governments shall have political, administrative and financial autonomy and shall be governed by the principles of solidarity, subsidiarity, inter-territorial equity, integration and public participation. Under no circumstances shall the exercise of autonomy allow for secession from the national territory." [267] Regional autonomy is often supposed to strengthen regional identity and embolden secessionist claims. An explicit prohibition of secession can act as a focal point for the central government in resisting such claims. [268]

A total of 50 countries, including Brazil, Bulgaria, France, Germany, and India, have an explicit ban on political parties that threaten either the territorial integrity of the state or national unity and sovereignty. [269] For example, Bhutan's Constitution in Article 15 does not accept the registration of political parties unless they reference territorial integrity. [270] Likewise, many other constitutions deny secession like in Article 5 of Azerbaijan's Constitution of 1995 with amendments through 2016, which states: "The Republic of Azerbaijan is wholly and indivisibly the Homeland for all the citizens of the Republic of Azerbaijan." [271] Also, Ukraine's Constitution explicitly affirms Crimea as "an inseparable part of Ukraine" in Article 134, which states: "The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine." [272] In the Bulgarian Constitution of 1991, Article 44 allows conditional freedom of association as long as it is not contrary to the country's sovereignty and national integrity or the unity of the nation. [273] Afghanistan's Constitution is not so different in Article 1 which stresses: "Afghanistan shall be the Islamic Republic, independent, unitary and indivisible state." [274] followed by Article 59 which states that: "no individual can act against independence, territorial integrity,

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266 Ecuador's Constitution of 2008 with Amendments through 2015 (Ecuador) Article 4
267 ibid Article 238
268 Ginsburg and Versteeg (n 263), 952
269 Tom Ginsburg and International Institute for Democracy and Electoral Assistance, *Constitution Brief: Secession* (2018) 4
270 Bhutan's Constitution of 2008 2008 (Bhutan) Article 15
271 Azerbaijan's Constitution of 1995 with Amendments through 2016 1995 (Azerbaijan) Article 4
272 Ukraine's Constitution of 1996 with Amendments through 2016 1996 (Ukraine) Article 134
273 Bulgaria's Constitution of 1991 with Amendments through 2015 1991 (Bulgaria) Article 44
274 Afghanistan's Constitution of 2004 2004 (Afghanistan) Article 1

sovereignty as well as national unity." [275] Another example is the constitution of Iraq. Although some articles claim that Iraq's constitution is silent toward secession and have built their studies upon this, [276] there is a case to be made that Iraq's constitution implicitly prohibits secession based on Iraq's Constitution of 2005 in the first Article, which states: "The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq." [277] This understanding is proved by the Federal Supreme Court of Iraq as seen later.

One might think that drafting a constitution with a prohibition approach can stop secession. In fact, many states explicitly deny the right of secession; the costs of this approach makes the secession more difficult to deliver but can never completely suppress it. If supporters for secession are very strong, the explicit prohibition approach will definitely make the process more violent and more difficult. The fact is that the potential demands for secessionist are ubiquitous for different justifications. The constitutional approach can play a role only in whether the seceding demands are made and if so, how they play out. [278]

The illegality of the secessionist claims makes the work easy for the central government to justify cracking down on secessionist movements. It also ensures that it has the means to punish regions in which politics takes a secessionist turn. On the one hand, the prohibition of secession denies subunits the use of legal and constitutional paths to get their demands from the perspective of the subunit. Subunits render the constitutional bargain self-enforcing. With a prohibition of secession, it is difficult to threaten or bargain to exit in case the center encroaches upon the subunit's powers. Negotiating may, as a result, focus on different elements of regional autonomy, such as fiscal powers, international recognition, areas of legislative competence, or violent actions, rather than on the secession provision. Unsurprisingly, secessionist movements are likely to encounter resistance from the government, and the conflict may burst into violence.

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[275] ibid Article 59
[276] Ginsburg and Versteeg (n 263), 976
[277] Iraq's Constitution of 2005 2005 (Iraq) Article 1
[278] Ginsburg and International Institute for Democracy and Electoral Assistance (n 269) 2

C. Silent Constitutions

Silent constitutions do not prevent nor allow secession. At the same time, the mass majorities of constitutions remain silent and prefer not to mention secession in the constitution. I firmly think this approach was adapted either because this was not in the minds of the constitution drafters. Alternatively, they are intentionally not bringing up secession in the constitution out of fear of making the nightmare politically real. In other words, they do not want to make it the inspiration for tearing up the unity and integrity of the territory. Then again, the subunits may be so weak that they are not represented within the constitutional bargaining process, which is another reason why the constitution does not mention the rules on secession.

Constitutional treatment of secession is frequently increasing overall, but increasing numbers of silent constitutions are converting to prohibit the approach of permitting succession in the constitution with only a small number of constitutions allowing for secession. There are 15 current and historical constitutions that were adopted in nine countries that allow secession. Additionally, 60 constitutions have a reasonably explicit prohibition against secession. Just over 200 constitutions (204) have stressed on territorial "indivisibility" while the great majority remain silent on the matter. [(279)]

Finding examples of silent approach is comparatively wide, but this study tries to find examples about the silent constitutions that confuse the situation of the secession. When a constitution is silent on secession, secessionists may seize on this ambiguity to make a case for secession and argue that the right to secede is inherent in the federalist system, as secessionists did in the United States, for instance. In the United States of America (USA), the constitution does not provide an explicit clause talking about secession. It did not provide a right to secession nor did explicitly prohibit it. This created a constitutional misperception and political crises for many decades, eventually leading to the Civil War in the 19th century [(280)] and political crises recently during the COVID-19 pandemic. [(281)] The same situation goes for the United Kingdom (UK).The UK is now struggling with a strong secession movement in Scotland. In 2014, Scotland held a

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[279] ibid

[280] Ginsburg and Versteeg (n 263), 936

[281] Rob Cox, 'Breakingviews - Cox: Great Lockdown begs Great American Breakup' *REUTERS* (APRIL 15, 202012:03 PM) <https://www.reuters.com/article/us-health-coronavirus-usa-breakingviews-idUSKCN21X30O> accessed 7 December 2020

referendum on independence as there is no explicit clause permitting or prohibiting secession. In the United Kingdom, the referendum claimed its legal basis in an act of the parliament of the UK but was the reason for a secessionist party in Scotland's regional parliament. Despite the result of the referendum which was a majority "no" vote that paralyzed the secession process, the secessionist movement remains alive.

Figure 6 below tallies between 1900 and 2018, 24 subunits out of a total of 16 states seceded. 25% of these 24 secession cases occurred in states where their constitutions prohibited secession, 13% of these secession cases occurred in states whose constitution did not address the issue, and 63% in states whose constitutions permit secession. This indicates a statistical relationship between the secession mentioned in constitutional provisions and the actual occurrence of the secession.

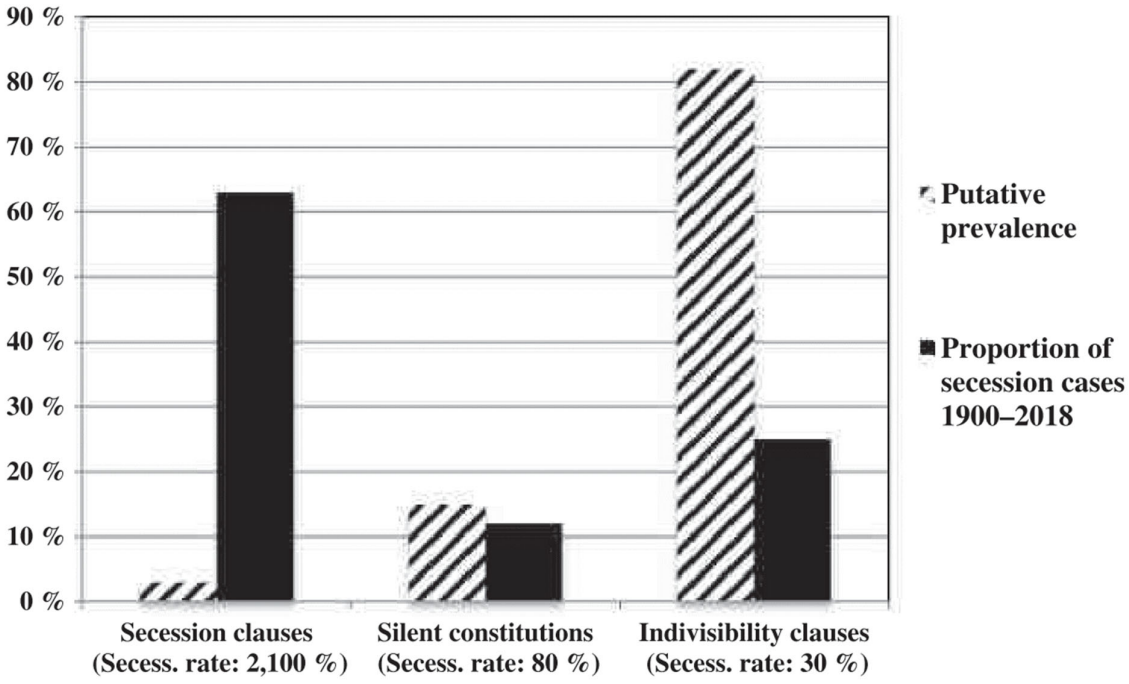

Figure 6: Constitutional arrangements towards secession according to their putative prevalence and proportion of secession cases 1900–2018. [282]

[282] Anthony Beauséjour, 'Cases of Secession Since 1900 and Their Governing Constitutional Frameworks Towards Secession — Empirical Paper Series on Secession and Constitutionalism, Part 2 of 2' (2019) 13(3) ICL Journal 237, 249

Compared to an explicit prohibition that makes the central government not tolerate secession, constitutional ambiguity might be successful for secessionist movements to mobilize. Nevertheless, constitutional ambiguity again is likely to make the process of secession more difficult. In particular, the reaction of the central government cannot be easily expected and may lead to violence. As already mentioned, in the United States, the constitutional ambiguity about secession caused political crises for many decades, eventually leading to the Civil War in the nineteenth century. [283] Most central governments tend to disapprove of and attempt to prevent secession.

[283] Ginsburg and International Institute for Democracy and Electoral Assistance (n 269) 4

D. Deciding the Form of Constitutions

Sometimes it is very hard to decide whether the constitution implicitly prohibits secession or is silent toward secession. This confusion can cause violence or civil war inside the country because secession movements can make very emotional demands and straightforwardly turn to a violent movement. Also, in the case when a smooth secession journey starts under an explicit constitutional provision, there is still a need to ensure meeting the essential conditions and that the process is conducted in line with constitution correctly supervising any required referendum of a national electoral commission. Therefore, secession claims can end up being considered by the constitutional court or the apex court. This means that the court will be set up to judge the constitutionality of secessionist claims and to determine the meaning of constitutional silence, an implicit prohibition, or conditions. Taking into consideration that not all countries have a constitutional court, courts are crucial arbitrators in secessionist disputes. Courts have played an important role in setting out the legal framework for secession in both international law and comparative constitutional law. Courts in both federal and unitary systems are often involved in resolving a sharp territorial division and in preserving national integration; their decisions can affect the incentive to secede or not.

Understanding the complexities and consequences of considering the constitution to allow for secession or not, then, is not a matter of mere ideological thinking, but an issue that has far-reaching implications. With the increasing incidence of independence referendums around the world, the interaction between secession and constitutionalism will be more important than ever. Secession brings profound and decisive changes to both the emerging country and its native country, but also to the global geopolitical system. Although only a fraction of the referendums actually lead to a breakup, this phenomenon is so critical, but nearly impossible to predict, that sophisticated theoretical models should come in handy when the time comes.

The role of constitutional courts in resolving secessionist disputes is not limited to clarifying the meaning of unclear constitutional texts, but it ensures that the original conditions are met and that the process is done correctly. Overseeing the referendum may also require the support of the National Election Commission, and the courts can support that.

The judicial review of the referendum is the accepted process of justifying the results of the referendum. This review shall be based on legislation, taking into consideration the situation of the common law systems. Some referendums were decided by specific laws regularly adopted by parliaments (e.g., the British and Norwegian referendums on EC membership). It has become clear those referendums, like elections, can transform from being highly democratic to the exact opposite depending on the conditions surrounding their practice. Therefore, implementing referendum legislation has succeeded everywhere and filled a void in some countries which had previously experienced referendums in the absence of such legislation (e.g., the United Kingdom, Canada, and France). A vote taken under special circumstances like with a qualified majority or quorum of participation have occasionally been introduced as a way of protecting minorities against immoderate popular choices.

1. Forms of judicial review

On logical grounds, a group's right to self-determination can never emerge again in full force hours after a referendum or valid elections are held. The overall system requires at least some degree of coexistence with one's choice although most agree that a one-time choice does not bind the group forever. Also, the current dominant government will be reluctant to risk its position in a referendum or election when it assumes that it won, it will not even get a temporary respite from the demands of its opponents based on the right to self-determination. This is what will be discussed in this topic.

The constitutional review of the secession shall not be different from the normal constitutional review. The object of judicial review is to prepare and regard rules for the legality of the process of secession, mainly like a referendum. The type of the judicial review which depends on the legal source of the referendum, whether it has constitutional power or legislative, and the legislative power as not all legislation has the same rank have to be considered. Some legislations have a constitutional nature even if it is under a preliminary law. Although the constitutional entities who are exercising judicial review, including constitutional courts mostly, authorities can sometimes be political entities, like the Federal Assembly in Switzerland. In this matter, there might be an administrative court which checks the regularity of the process, like the constitutional courts in countries in charge of reviewing the issue such as in Spain and the Supreme Court in Iraq.

The judicial review might be *de facto* or compulsory. For instance, in France since 2008 under Article 11 of the Constitution, it states: "A referendum concerning a subject mentioned in the first paragraph may be held upon the initiative of one-fifth of the Members of Parliament, supported by one-tenth of the voters enrolled on the electoral register. This initiative shall take the form of a Private Member's Bill and shall not be applied to the repeal of a statutory provision promulgated for less than one year. The conditions by which it is introduced and those according to which the Constitutional Council monitors the respect of the provisions of the previous paragraph are set down by an Institutional Act." [(284)]

Alternatively, some countries depend on action by some authorized actor (like Spain and Iraq) who may submit an appeal. This capacity could be limited to political parties (such as Spain) or certain authorities. In Jordan, for instance, it is limited to the Ministers' Council, the Senate, and the House of Representatives. [(285)] In other countries, any person directly involved (like in the Netherlands) can question constitutionality.

The judicial review in Canada has found itself challenged with questions of secession and has come to some exceptionally distinctive conclusions. In Canada, the Supreme Court held that Quebec may not unilaterally secede, but the government would be committed to arranging secession in the case where there was a clear majority in the territory in favor, as determined by a clear expression of will in a referendum (Canadian Supreme Court, 1998).

In Spain, the Constitutional Court rejected Catalonia's endeavor to hold an independence referendum outright, holding that the right to self-determination and mention of Catalan sovereignty do not allow for unilateral secession. [(286)] Similarly, Iraq's Supreme Court both enjoined and held illegal the Kurdistan independence referendum after the result. [(287)]

The time of judicial review may be before the vote or after the vote. Before the vote, a priori control is a rule for checking the formal regularity of referendums (e.g., the USA

[284] France's Constitution of 1958 with Amendments through 2008 1958 (France) Article 11 (3)(4)
[285] Jordan's Constitution of 1952 with Amendments through 2016 1952 (Jordan) Article 60 (1)
[286] *The Spanish Constitutional Court 2014* (n 38)
[287] *The Iraqi Supreme Federal Court 2017* (n 34)

except for California, and Italy) regardless of the result. After the vote, the formal regularity of referendums and their conformity to higher ranking legislation is not checked because the people as the source of authority have shown their opinion explicitly. This opinion conflicts with earlier sovereignty. However, most states with constitutional reviews seem to put them in a later stage, after the vote or after the declaration of a referendum law. For example, the United States and Switzerland (both at the sub-state level) are the only two countries that practice reviews at a later stage, along with Italy, Ireland, and Portugal, but the latter two also have pre-emptive control.

In summary, constitutions are essential strategies for controlling secession movements across subunits of the country. In general, secessionist movements occurs irrelevantly when the constitution permits or prohibits secession. However, the approach plays a significant role in deciding the process of secession, peacefully like Sudan or violently like Kurdistan and Nagorno-Karabakh. It deserves to be noted that violence may occur from the central government even if there is no aggression made by the secessionists. [288] Undeniably, there is some evidence that countries that do offer a right to secession tend to have less violent conflict over disintegrations that occur because constitutions that permit secession are more likely to stipulate procedures to be followed if subunits seek to secede. In contrast, preventing succession and the silent approach will lead to a violent process if the approach does not reflect the people's need. Thus, the constitutional approach and other elements like geographical location can become critical for secessionist movements as these affect whether the secessionists adapt their path, whether the process is peaceful or violent, and whether they experience success or failure.

No matter what approach is adopted, it is essential to point out how the constitution is providing the needs of the people. A constitution can place great weight on national unity and territorial integrity while remaining silent on the question of secession. However, in a small number of cases, it confronts questions of secession directly by either granting or prohibiting secession. Some countries that have granted rights to subunits to secede, including the Soviet Union, South Sudan after 2005, and

[288] John M Mbaku, 'International Law and the Anglophone Problem in Cameroon: Federalism, Secession or the Status Quo' [2019] Suffolk transnational law review, 5–11

Yugoslavia, have broken apart, but it would be wrong to attribute this fact to the secession provisions *per se*.

The major design choice that most countries face is whether to prohibit secession explicitly or to remain silent on the matter. The suitable approach may depend on the particularity of the context of history and geography. For states with no sensitive history of territorial schisms, there is little need to refer to secession at all, and silence is an appropriate choice. In other countries, a reference to territorial integrity, perhaps adding a duty of citizens to uphold the same, can help to emphasize the indivisibility of the country.

2. The Turkish constitutional view

The Turkish constitution speaks of Turkish citizens. In Part II: Characteristics of the Republic of the Constitution of Turkey, Article 2 states that: "The Republic of Turkey is a democratic, secular, and social state governed by the rule of law; bearing in mind the concepts of the public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Ataturk, and based on the fundamental tenets outlined in the Preamble." (289)

The official language is one and the same, the Turkish language. In Part III: Integrity of the State, Official Language, Flag, National Anthem, and Capital of the Constitution of Turkey, Article 3 states that: "The Turkish State, with its territory and nation, is an indivisible entity. Its language is Turkish." (290)

Said articles do not recognize national and ethnic pluralism except for what was included in the 1923 Treaty of Lausanne in Article 40, thereof, which included Armenians, Greeks, and Jews. As follows:

"Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein." (291)

Hence, there is no recognition of multilingualism, meaning that there is no recognition of Kurds as an ethnicity or Kurdish as a language.

It deserves to be noted that the Law to Fight Terrorism No. 3713 issued on 4/12/1991 (292) constituted a legal framework for military, security, and political operations with a constitutional cover against the Kurdish opposition, which the state

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289 Constitution of the Republic of Turkey 7 November 1982, Constitution of Turkey (State of Turkey) Article 2
290 ibid Article 3
291 Andrew Carnegie, *Carnegie Endowment for International Peace: The Treaties of Peace, 1919-1923* (Treaty of Lausanne II, Carnegie Endowment for International Peace 1924)
292 LAW TO FIGHT TERRORISM [Published in the Official Gazette on 12 April 1991], ANTI-TERROR LAW Act No. 3713: (State of Turkey)

considered a threat to national security in accordance with the provisions of Article 1 of the Law to Fight Terrorism, which states as follows:

"Terrorism is any activities done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat. An organization for this Law is constituted by two or more persons coming together for a common purpose. The term "organization" also includes formations, associations, armed associations, gangs or armed gangs as described in the Turkish Penal Code and special law's provisions." [293]

This definition carries a consequential danger that enables the authority to use its powers against any activity that it deems within the scope of this broad definition, which leaves the judiciary in a difficult situation in performing and interpreting the law as mentioned earlier for what is called "terrorism."

The law has been used in various aspects, such as arresting journalists and demonstrators on charges of propagating terrorism and promoting separatist calls. Looking at Article Two of the same law, it says in its text:
"Any member of an organization, founded to attain the aims defined in Article 1, who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he does not commit such a crime, shall be deemed to be a terrorist offender. Persons, who are not members of a terrorist organization, but commit a crime in the name of the organization, are also deemed to be terrorist offenders and shall be subject to the same punishment as members of such organizations." [294]

You find that it considers that the members of a terrorist organization can be withdrawn from any person who commits any activity – without committing any violence or a

[293] ibidArticle 1
[294] ibidArticle 2

serious crime – just because the activity is considered within the definition of Article 1 of the law, simply for disclosing an underlying desire to express separation.

Admittedly, this is what human rights organizations have talked about which is the arbitrary use of terrorism laws in the prosecution and imprisonment of demonstrators in Turkey against the Kurds and the secessionists. [295]

This constitutional perspective is understandable because the territory's integrity has always been the classical litigant for the secession in constitutional arguments.

3. The Iraqi constitutional view

There is an opinion that sees that the constitution of Iraq is silent on secession. [296] However, I have a strong belief that Article 1 of the Constitution implicitly prohibits secession. [297] The Federal Supreme Court of Iraq supports this understanding.

Nine judges from the Federal Supreme Court held an interpretation session headed by Judge Medhat Al-Mahmoud after the request of the Secretary-General of the Iraqi Council of Ministers on 5 November 2017. The request was issued based on the powers of the Council of Ministers to go to the Federal Supreme Court in accordance with Article 93(2) of the Iraqi Constitution which states that the Federal Supreme Court shall have jurisdiction over interpreting the provisions of the Constitution. [298] The request was to interpret the term "one federal state" [299] mentioned in the First Article of the Iraqi's constitution in light of Article 116 of the Constitution.

Article 116 of the Iraqi Constitution states that: "The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations." [300] The Court finds that the Constitution prevents any separation by

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[295] *Amnesty International report 2015/16: The state of the world's human rights* (Amnesty International 2016) 140

[296] They even jumped to conclusion like " The silence is not accidental: during constitutional negotiations, there was little doubt that Kurds harboured secession dreams and little chance that they would be allowed to obtain a clause permitting it explicitly. Thus, silence can be characterized as a result of parties being unable to reach agreement on secession"Ginsburg and Versteeg (n 263), 976

[297] Iraq's Constitution of 2005 (n 277) Article 1The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq"

[298] ibid Article 93(2)

[299] In Arabic "هذا الدستور لضمان وحدة العراق" means litrary that this constitution is a guarantee for the united solid raq.

[300] Iraq's Constitution of 2005 (n 277) Article 116

any region or province from the Federal State of Iraq. [301] This decision is concluded based on the constitutional interpretation by its texts. For instance, article 109 of the Iraqi Constitution stressed that "The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system." [302]. Therefore, the court interpreted the articles mentioned under the provisions of the constitution itself in Article 109 and considered that the provisions of the constitution guarantee the unity of Iraq. This decision was issued by a majority of members and in contravention of its members. [303]

I have a firm belief that the misunderstanding of the implicit prohibition of secession or mistranslation of the First Article of the constitution drives some [304] to think that there is no reference to the inability of a region to leave, nor is the territory declared to be indivisible. [305]

[301] *The Iraqi Supreme Federal Court 2017* (n 34)
[302] Iraq's Constitution of 2005 (n 277) Article 109
[303] *The Iraqi Supreme Federal Court 2017* (n 34)
[304] Ginsburg and International Institute for Democracy and Electoral Assistance (n 269)
[305] They even jump into conclusions like "silence is not accidental: during constitutional negotiations, there was little doubt that Kurds harboured secession dreams and little chance that they would be allowed to obtain a clause permitting it explicitly. Thus, silence can be characterized as a result of parties being unable to reach agreement on secession."Ginsburg and Versteeg (n 263), 967

4. The Spanish constitutional view

The autonomy laws were to be drawn up by the region's representatives in the national parliament, approved by popular referendum in the respective province, and then passed by the Spanish parliament for the king's signature. Since each law had to be passed separately by the national government, there was a possibility of asymmetric arrangements, meaning that some regions might have a greater degree of independence than others. Catalonia was one of them. At the time, it adopted its Statute of Autonomy, which established numerous government institutions (including its police force), broad public policies, and government symbols (such as the Catalan flag). At the time of drafting, there was relatively little desire for secession. [306]

The constitutional view of the secession is not a secret any more in Spain after the constitutional court explicitly declared the unconstitutionality of the secession generally, and explicitly for the Catalonian situation. As has been asserted, the Spanish Constitution maintains the Spanish nation's indissoluble unity and, subsequently, it does not recognize the right to secession.

The story started when the Catalan nation petitioned for the natural right of political and legal right of self-determination for reasons of democratic legitimacy and the exercise of the right to self-determination or specifically the right to good governance. The right to self-determination would be strictly democratic and particularly guarantee plurality and respect to all options for deliberation and dialogue within the Catalan society. In 2006, the law passed to expand self-government powers. This law defined Catalonia as a nation, which angered the opposition Popular Party that appealed it in the Spanish Constitutional Court. Later on, the Constitutional Court decision eliminated some aspects of the 2006 statute relating to Catalonia's definition as a nation. The Court further pointed out that the Spanish Constitution protected the “indissoluble unity” of the nation. Thus, the constitution was ambiguous as to whether Catalonia could be seen as a nation; the Court clarified it was not. Interestingly, the Court decision led to mass protests and renewed mobilization for independence. Specifically, when it became clear

[306] Carlos Flores Juberías, ‘The autonomy of Catalonia’ 235

that the Court interpreted the ambiguous provision as a prohibition, this triggered widespread mobilization. [307]

Therefore, the pronouncement which appeared as a result could be considered the expression of the public majority. This issue would be the essential guarantee of the right to good governance. However, this way of thinking would not challenge Spain's unity unless it led to controversial legislation steps, and that is what happened. On 23 January 2013, the Parliament of Catalonia passed Resolution number 5/X of 2013, adopting the Declaration of Sovereignty and Right to Decide Catalonia's People; this resolution abandoned the traditional invocation of the right of self-determination.

The Catalonian identity is deeply rooted in this resolution as a historical inheritance; this is explicitly seen in the preamble of the resolution where it states:

"The people of Catalonia, throughout its history, has democratically expressed its commitment to self-government, in order to strive for more progress, welfare and equal opportunities for all its citizens, and to reinforce its own culture and its own collective identity. Catalonia's self-government is also based on the Catalan people's historical rights, centuries-old institutions, and the Catalan legal tradition. Catalan parliamentarism has its origin in the Middle Ages, with the Assemblies of Peace and Truce (assemblees de Pau i Treva) and the Count's Court (Cort Comtal). The 14th century saw the creation of the Diputació del General or Generalitat, which progressively gained more autonomy and eventually developed into the government of Catalonia's Principality during the 16th and 17th centuries. The fall of Barcelona in 1714, following the War of Succession, lead to the Decree of Nova Planta of King Philip V, which abolished Catalan public law and the Catalan institutions of self-government." *(308)*

In the same argument, the previously mentioned Resolutions number 1514-XV of 1960 and number 2625-XXV of 1970 of the United Nations, considered this new version of the right of self-determination to be only applicable in the case of secession of colonially subjugated communities, military-occupied nations, or creation of an

[307] Ginsburg and Versteeg (n 263), 973
[308] Resolution 5/X of the Parliament of Catalonia adopting the Declaration of sovereignty and right to decideof the people of Catalonia (n 62)

independent state or those communities which belong to a repressive state that violates human rights as mentioned at Article 1.2 of the 1945 Charter and Article 1.1 of the International Agreements on Civil and Political Rights from 1966 (ICCPR).

On the other side, this resolution does not appeal to the State Attorney of Spain. In the same year of 2013, the State Attorney filed a challenge to the enactments without the force of law and the Autonomous Communities' decisions, acting on behalf of the Government. (309) Twelve honored judges of the Spanish Constitutional Court held the request in case number 42/2014, on March 25, 2014. The constitutional question was to enactments without the force of law and to decisions of the Autonomous Communities (Title V of the Organic Law on the Constitutional Court) against Resolution 5/X adopted by the Parliament of Catalonia on 23 January 2013 approving the Declaration of Sovereignty and Right to Decide of the People of Catalonia. The attorneys of the Parliament of Catalonia were party to these proceedings and submitted their pleadings. (310) In fact, the grounds against the controversial Resolution 5/X issued from the Parliament of Catalonia were that it conflicted with the opinion of the representatives of the Parliament that passed the Resolution as unconstitutional because it is contrary to Articles 1(2), 2, 9(1), and 168 of the Spanish Constitution and Articles 1 and 2(4) of the Statute of Autonomy of Catalonia.

By following the details to the last word, after reading the said constitutional Articles, the following details are seen.

The second paragraph of Article 1 of the Spanish Constitution states that: “National sovereignty is vested in the Spanish people, from whom emanate the powers of the State.” (311)

Article 2 of the Spanish Constitution states that: “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all

309 Constitutional request number 1389-2013
310 *The Spanish Constitutional Court 2014* (n 38)
311 Spain's Constitution of 1978 with Amendments through 2011 (n 66) Article 1(2)

Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all." [312]

Article 9(1) of the Spanish Constitution states that: "1. Citizens and public authorities are bound by the Constitution and all other legal provisions." [313]

Article 168 of the Spanish Constitution states that:

> "1. If a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Introductory Part, Chapter II, Division 1 of Part I, or Part II, the principle of the proposed reform shall be approved by a two-thirds majority of the members of each House, and the Cortes Generales shall immediately be dissolved.
> 2. The Houses elected thereupon must ratify the decision and examine the new constitutional text, which must be passed by a two-thirds majority of each House's members.
> 3. Once the amendment has been passed by the Cortes Generales, and it shall be submitted to ratification by referendum." [314]

In addition to said articles, the details of the Statute of Autonomy of Catalonia Articles say that:

Article 1 of the Statute of Autonomy of Catalonia states that: "Catalonia, as a nationality, exercises its self-government constituted as an autonomous community following the Constitution and with this Estatut, which is its basic institutional law." [315]

Article 2(4) of the Statute of Autonomy of Catalonia states that: "The powers of the Generalitat emanate from the people of Catalonia and are exercised according to this Estatut and the Constitution." [316]

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[312] ibid Article 2
[313] ibid Article 9(2)
[314] ibid Article 168
[315] Statute of Autonomy of Catalonia Full text of the Statute of Autonomy of Catalonia approved on 19 July 2006 (the Constitutional Committee of the Congress of Deputies) Article 1
[316] ibid Article 2(4)

There is no clear contradiction with the declaration of sovereignty and the Catalan people's right to decide. This resolution was passed and declared the Catalan people as a "political and legal sovereign unit." Moreover, Resolution 5/X was adopted in accordance with Article 146 of the Rules of Procedure of the Parliament of Catalonia, adapting the processing of resolutions presented to the Chamber by Members of Parliament or Parliamentary Groups. Parliamentary review of these resolutions was approved. The preamble and list of principles, according to their wording, may be presumed as addressed both to the Government of the *Generalitat* and the citizens of Catalonia, as expressly foreseen, for the proposed resolutions, in Article 145 of the Rules of Procedure of the Parliament; the foregoing is readily accepted by the procedural representatives of the Spanish Government and the Parliament of Catalonia.

On the other hand, even though the "Sovereignty Declaration" is claimed to be conflicting with Articles 1.2 and 2 of the Spanish Constitution and Articles 1 and 2.4 of the Catalan Statute of Autonomy, and connected to these, contrary to articles 9.1 and 168 of the Spanish Constitution again from the governmental perspective, the Constitutional court shall regard that in the proper constitutional path for the purposes of this constitutional process. The reforms of unconstitutional resolution to be attributable to an Autonomous Community must refer to a legal act and constitute an expression of the former's institutional wish. In other words, it must not be presented as a procedural act in the relevant procedure a contrario. [317]

As a result, the Catalan Parliament act has been declared to be unconstitutional by the judgment of the Spanish Constitutional Court number 42/2014. There is no normative basis that is inaccessible to a reform of the Spanish Constitution. Furthermore, it regards the right to decide as a political target protected by freedom of expression and the right to participation in political issues established in the *Magna Carta*. A recognition of sovereign status in favor of the people of Catalonia, which is not anticipated in the Spanish Constitution for nationalities and regions covered by the State, is incompatible with Article 2 of the Spanish Constitution; the partial subject that is entrusted with this power would be therefore able, at its discretion, to breach what the Constitution has declared as a based principle "the indissoluble unity of the Spanish Nation." In this situation, the Court has declared that "the Constitution (Articles 1 and 2) is based on the

[317] *The Spanish Constitutional Court 2014* (n 38)

unity of the Spanish nation, constituted as a social and democratic state of law, whose powers are born from the Spanish people, who enjoy national sovereignty. This unity is reflected in the State's organization for the entire territory of Spain." Therefore, recognizing sovereign status in favor of a part of the Spanish people contradicts this constitutional precept. [318]

For the High Court of Spain, the right to decide is quite different from the right of self-determination, and it has its special nominalization: it is not a conferring of sovereignty but the right of the citizens of Catalonia to decide on their political future. Therefore, as preparation measures, it would be even possible to call consultation or a referendum before the opening of a process of constitutional reform which could not lead to a reconsideration of the identity or the unity of the sovereign subject from the start or, even less, a reconsideration of the relationship which only the sovereign subject can establish between the State and the Autonomous Communities (nationalities or regions of Spain).

Based on this, the democratic principle of Article 1 of the Spanish constitution and with a lack of limits to the constitutional reform, several directions can be found in the Spanish legal system employing, apart from the constitutional revision from Article 168 of the Spanish Constitution, [319] a declaration that may be allowed with a consultative nature regarding the beginning of this process. In addition, the counselling referendums of Article 92 of the Spanish Constitution especially state: "Political decisions of special importance may be submitted to all citizens in a consultative referendum. 2. The King shall call the referendum on the President of the Government's proposal after previous authorization by the Congress. 3. An organic act shall lay down the terms and procedures for the different kinds of referendum provided for in this Constitution." [320] This article shows the range of the state which could be applied to the autonomous populations and the delegation of the state competencies to allow referendums of Article 149 (1)(32) of the Spanish constitution gives "Authorization of popular

[318] ibid
[319] Spain's Constitution of 1978 with Amendments through 2011 (n 66) Article 168
[320] *The Spanish Constitutional Court 2014* (n 38) Article 92

consultations through the holding of referendums." This is in line with the events in Scotland with the Order of Council. [321]

In November 2012, a referendum was held in which 37% of the region's citizens voted in favor of the option of independence from the Spanish state. Meanwhile, Catalan Prime Minister Artur Maas announced in January 2015 that early referendum elections would be held in September of the same year to conclude Catalonia's secession from Spain. However, in June 2015, the Constitutional Court annulled the symbolic referendum, arguing that it violated its Constitution.

In September 2015, early elections were held, and the National Movement won a majority of 72 seats to 63 for the parties that rejected Catalan independence. In November 2015, the parliamentary majority was able to pass a parliamentary resolution declaring the start of the "process of establishing an independent Catalan state." While the Constitutional Court accepted the Spanish government's appeal to decide on the constitutionality of the decision. There was a five-month precautionary moratorium on any measures seeking to implement the decision of the Catalan Parliament. On December 31, 2016, the Spanish Prime Minister declared his categorical rejection of the possibility of any referendum on the Catalan region.

In 2017, the regional government of Catalonia called for a real referendum on Catalan independence. The referendum was held on October 1, 2017 although the Spanish government announced with certainty that it would block any attempt at independence for Catalonia. Turnout was less than 50%, but voters once again overwhelmingly supported independence. Then on October 27, 2017, the regional parliament declared independence from Spain. This action sparked a backlash from Madrid's central government and invoked Article 155 of the Spanish Constitution, allowing the central government to compel communities to fulfill their constitutional obligations and dissolve the regional government in late October. Madrid's central government declared control of the Catalan police force to prevent any regional government from arresting a few of Catalonia's political leaders and following the others. The Catalan regional leaders took advantage of the lack of prohibition of outright secession to press for

321 Great Britain, *The Scotland Act 1998 (Modification of Schedule 5) Order 2013* (Statutory instruments 2013, no. 242, Stationery Office Limited; William S. Hein & Company 2014)

independence. The various constitutional court decisions and actions of Madrid's central government that halted these attempts seemed to encourage secession, not unity.

II. The Internal Needs of the People to Justify Secession

This part of the study will explore the subject of the internal needs of the people in order to shape the justification of secession from a different angle based on its close connection with the establishment of the state or entities governing the group of people in a specific region. It will also facilitate examining the application of whether it is conceivable to adopt it as a comprehensive and general basis for the reality of secession on the one side or delegating particular secessionists to undertake the achievement of the goals of the group of people seeking secession on the other. Alternatively, it will be shown if the social contract that links between the parent state and group of people seeking secession is still standing or it has already been broken.

A. Theories of the Social Contract

In order to comprehend the reason for countries to show the difference in their constitutional treatment of secession, it is useful to conceive of the constitution as a political bargain, negotiated by a small set of decision-makers representing a central government (which is referred to as "the center"). However, constitutional theorists have long thought of a constitution as a social contract between the people and their government. [322]

The term social contract has appeared since ancient times; it is not a modern term created by politicians in modern countries of the world. The beginnings of this term's appearance were with Socrates, where Socrates asked to form a political community (namely, parliament) in which he made participation in it limited to some groups in society, namely the elite and the working class, and excluded women from participating in this society that possesses the tools of power. Aristotle indicated that the state is the one that gives the individual his true existence and that human nature is what drives people to the political meeting because everyone has personal needs that aim to satisfy them. This satisfaction cannot be achieved individually, which causes him to cooperate with others.

[322] Ginsburg and Versteeg (n 263), 945

Then came Ibn Khaldun, the true founder of sociology, [323] who analyzed the necessity for the existence of something that regulates the relationship between the ruler and the ruled, indicating that the establishment of power is a natural and social necessity. Since the desire for rule is dominated by the character of domination and tyranny, [324] soon the members of society demanded the organization of this political power as a result gathering in the hand of one person called the president the control of the power. Despite the deep roots of the concept of the social contract, it was not revealed in its contemporary form in our modern era until it was designed on scientific grounds by the following sociologists. The modern idea of the social contract was based on the belief of the necessity to transcend the natural state of nature for human beings and the desire to establish an organized society to establish the civil rights of citizens. The goal behind establishing the idea of a social contract is to find an objective equation between the ruling authority and the ruled people. As long as there is a society dominated by relations, a framework must be put in place that regulates these relationships. It is desirable to establish an organized society according to fixed rules and agreement on the basic principles of justice and property protection. The concept of the social contract is nothing but an organized formulation of the concept of the natural right of human beings to reach a society that has a firm foundation based on justice and fairness and to move away from the fierce struggle that man has waged with nature since ancient times to obtain his rights and needs.

Social contract theories can be presented briefly to achieve the purpose of linking them to the topic of research work related to separation and the right to self-determination as follows.

1. Thomas Hobbes' theory

The idea began that people live in absolute freedom and that there is nothing to stop their desires of fulfillment and requirements of their needs. For this, there were no controls or rules that respect the interests of others who live around an individual. Self-interest dominates human relations all the time. If the situation were continuing in the state of psychological egoism that exists within every human soul, humanity would

[323] Fatimah A Al-Sulaim, 'bn Khaldun The True Founder of Sociology: His Theories and Contributions to Social Thought' (2010) 38(4)
[324] Ibn Khaldūn, *Muqaddamah* المقدمة (درويش عبدالله tr, first, Dar Yaqub 1379) 247,260,302,308,329

have perished because the conflict of interests and the insistence of all parties to reach what they seek for mean aggression, violence, and thus exposure to death. Hobbes deduces from his mechanistic theory of human nature that people are necessarily and exclusively self-interested. All individuals pursue what they see as serving their interests only, which they consider their best interests, and everything people do is driven solely by the desire to improve their conditions and satisfy the largest possible number of their desires. (325)

Hobbes also believes that people are rational. They have in them the rational ability to follow their desires as efficiently as possible. From these introductions to human nature, Hobbes continues to build a convincing case for why it is necessary to come up with some form of contracts to which all parties are bound in the fulfillment of duties and the commitment to rights between human beings to each other and to encourage positive social interaction and rapprochement rather than dissonance and the reaping of negativity that is unleashed. This is what is called the "social contract," and it is forming the basics of the modern states and societies. For Hobbes, the social contract was yet another synonym for the term state or society. (326)

The ruling authority represents the first party in the contract and the people are the second party. However, the contract here has another implicit meaning, namely "the pledge", which depends on mutual trust between the contracting parties to implement what was stipulated in its terms in the future. In other words, this contract consists of two separate agreements. First, people must agree to the creation of society through the collective and reciprocal renunciation of the rights they had against each other in the state of nature. Secondly, they must give one person or group of persons the authority to enforce the initial contract. (327)

Although there are many opinions about the interpretation of Hobbes' theory of what the social contract is, it implies that the contract does not constitute a government, but rather it is a contract between a ruler who has absolutely all power in the management of the society and the people who pledge to surrender their rights in power (except for

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325 Thomas Hobbes, John Bramhall and V. C Chappell, *Hobbes and Bramhall: On liberty and necessity* (Cambridge texts in the history of philosophy, Cambridge University Press 1999) 15

326 Gordon J Schochet, 'Thomas Hobbes on the Family and the State of Nature' (1967) 82(3) Political Science Quarterly 427, 436

327 Ian Ward, 'Thomas Hobbes and the Nature of Contract' (1993) 25(1) Studia Leibnitiana 90, 107

one right only people do not possess it, which is the people's right to life) and the ruler is not held accountable by them. In return for these absolute powers, the ruler pledges to establish justice among all classes of the people and to protect the safety and welfare of its members.

In other words, to ensure the people's escape from the state of nature, they both must agree to live together under common laws and establish an enforcement mechanism for the social contract and the laws that constitute it. Since the sovereign is an investor with the power and authority to impose penalties for breaches of contract that are worse than not being able to act as one pleases, people have a good reason, albeit in self-interest, (328) to adjust themselves to the stunt of morals in general and justice in particular. Society becomes possible because, while in the state of nature there is no force capable of "overcoming them all," there is now an artificially superior, traditional, and more powerful person who can compel people to cooperate. While living under the authority of a sovereign can be cruel, it is at least better than living in nature. No matter how bad people object to the extent of the sovereign's mismanagement of state affairs and the organization of their lives, they never justify resisting that authority because it is the only thing that stands between them and what they most want, avoiding the state of nature. (329)

Let us explain what Hobbes means by the term the authority of a sovereign. Conventionally speaking, the social contract is a set of conditions and specifications that govern the relationship between the two parties concluding this contract, so that there is a formal picture of each party's commitment to his rights and duties. According to this argument whereby people agree to live together and contract to embody the sovereign with absolute power, (330) after the conclusion of these contracts, society becomes possible, and people are expected to fulfill their promises and cooperate with each other. The social contract is the primary source of all that is good and what people depend on to live well. The choice is either to abide by the terms of the contract or to revert to a state of nature, which Hobbes says no sane person can prefer. (331)

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328 ibid 104
329 S. A Lloyd, *Morality in the philosophy of Thomas Hobbes: Cases in the law of nature/ S.A. Lloyd* (Cambridge University Press 2009) 108–114
330 ibid 24
331 Schochet (n 326), 436

Hobbes's theory of the social contract was met with severe criticism, as it encouraged, as evidenced by its features, the exercise of tyrannical power, which he called dictatorship, in the management of the country's rule, which is something that all peoples of the world reject. However, in fact, many of his critics could not read between the lines in his theory which incorporated the historical dimensions of his era. In his time, the Church held complete control over the affairs of the country in the context of political events in England. He was able to defend the continuation of the traditional form of power that his society enjoyed for a long time by limiting the power of the Church to religious matters only and prohibiting it from political affairs, thereby making it subject to the state. Thus, he did not intend the authoritarian political rule of a particular person. [332]

Thomas Hobbes' theory ended with the claims of absolute sovereignty. From this point of view, Hobbes appears against the right of minorities to break this sovereignty, which is all the more reason to consider it against their secession from a sovereign government. The only way in which the individual's natural rights extend into a social context is the weakness of the sovereign. [333] Hobbes argues that the obligation of the subject to the sovereign only lasts as long, and no longer, than the power lasts that is able to protect them. By this understanding, Hobbes social theory allows people to withdraw their loyalty from a state that does not protect its members, especially from persecution by the state itself.

In the end, Hobbes permits people to protect themselves against extermination when the political society cannot protect them. Hobbes also provides fully developed accounts of how people can define who constitutes a community with a right to secede or the mechanisms, democratic or otherwise, that give legitimate expression to secessionist aspirations.

2. John Locke

For Hobbes, the necessity of absolute power in the form of a sovereign stems from the sheer brutality of the state of nature. The state of nature was completely unbearable, and

[332] Lloyd (n 329) 186
[333] Lee Ward, 'Thomas Hobbes and John Locke on a Liberal Right of Secession' (2017) 70(4) Political Research Quarterly 876

in the absence of authority and living in the innate natural life of this soul, life would be in permanent chaos characterized by a struggle for survival, which leads to the spread of chaos and therefore rational people would be ready to subject themselves to even absolute power in order to escape from it. In contrast to Hobbes, Locke praised this instinct of people and described it as a force characterized by good behavior on their part, and not a chaotic force. The pre-political state of nature is a state of freedom where individuals are free to pursue their own interests and plans, without interference, and due to the law of nature and the restrictions it imposes on people, it is relatively peaceful despite there being no civil or government authority to punish people for their transgressions of laws. (334)

Therefore, each and every human being has absolute natural rights that are not created by society or political systems, which arise later on the natural systems. People created political systems. The innate natural relationship between people is the one that establishes a natural society. The natural society in which controls relations between human beings is met before the establishment of the state. By virtue of this nature, they possess rights that have absolutely nothing to do with the existence of the state, and these rights are represented in the right to life, the right to freedom, and the right to own property. (335)

As for John Locke, he indicated that there is no sovereignty of one person over another, and he believes in the personal freedom of the ruled. He does not agree with the absolute power represented by the person of the ruler. Rather, the state of nature and the formation of society create "one political body under one government" and submit to the will of that body "two treaties of government". (336) People join such a body, either from its inception or after it has already been established by others, only with explicit consent. Having established a political community and government by their consent, people then acquire three things that they lack in the state of nature: laws, judges to adjudicate laws, and the executive power necessary to enforce these laws. Therefore,

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334 John Locke and John W Adamson, *The educational writings of John Locke* (2nd ed. CUP 1922) 14

335 John Locke and Ian Shapiro, *Two treatises of government: And a letter concerning toleration* (Rethinking the Western tradition, Yale University Press 2003) 47

336 James L Dietz, *Economic history of Puerto Rico: Institutional change and capitalist development/ James L. Dietz* (Princeton University Press 1986) 3

people give the authority to protect themselves and punish violators of the law of nature to the government they created through the charter. [337]

Given that the end of the "union of men in the commonwealth" is the preservation of their wealth, their lives, freedom, and overall well-being, Locke can easily imagine the conditions under which the agreement with the government is destroyed, and people have the right to resist the authority of a civilian government, like the king. [338] When the executive branch of government passes into despotism, for example, by dissolving the legislature and thus depriving people of the ability to make laws to preserve themselves, the resulting tyrant places himself in a state of nature, specifically in a state of war with people, and then they have the same right to self-defense as it was before the charter was concluded to establish the community in the first place. [339] In other words, the justification for the authority of the executive component of government is to protect the people's property and welfare, so when this protection does not exist or when the king becomes a tyrant and acts against the people's interests, people have the right, if not an explicit obligation, to resist his authority. The social pact can be dissolved, and the process of creating a political community can begin anew. [340]

Since Locke did not imagine the state of nature as bleak as Hobbes did, he could envision conditions in which people would be better off rejecting a particular civil government and returning to the state of nature, with the goal of building a better civil government within its scope. Thus, it is the view of human nature and the nature of morality itself that explains the differences between Hobbes and Locke's views of the social contract.

Every act of secession includes an element of what Locke calls "dissolution" and in the same sense is introduced by revolution, armed or nonviolent. People are absolved of their duty of obedience to the government when "illegal intolerance" is perpetrated on the people's liberty or property. The people's right to resist oppression could include a particular community's right to form a secessionist government with a new legislature. Given Locke's insistence upon rights protection as the raison d'être of political society,

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[337] Locke and Shapiro (n 335) 293
[338] Elizabeth Shaw, Derk Pereboom and Gregg D Caruso, *Free Will Skepticism in Law and Society* (Cambridge University Press 2019) 211
[339] Locke and Shapiro (n 335) 319
[340] ibid 137–143

it is quite conceivable to recognize the right to secede for distinct "subordinate communities." [341]

In this understanding, Locke's theory provides sources for both a remedial justification for secession and national self-determination secession. Locke proposed a theory of natural rights that can form the basis of what is identified today as a remedial right. Locke also maintained explicitly that individual membership in the political society is irrevocable except through emigration. The link that ties the people with the governor is conserving the property and the religion of the people. Thus, the case of an act of oppression eliminates the obligations for members of that persecuted group. The logic of Locke's natural rights argument suggests that he would likely support secession on the ground of oppression if the persecuted people are territorially concentrated on the basis of a remedial right. In other words, if a governor invokes the people's property or attacks their religion, the loyalty of the people does not have to be granted to the government, and they can go back to the natural life without a political society. If these persecuted groups were not sufficiently territorially concentrated enough to make secession a viable option, Locke may at the least endorse their right to join other communities through emigration, or even form their own political communities somewhere else.

3. Jean Jacques Rousseau

Rousseau has stressed in his famous book known as *The Social Contract* that the people are the ones who have power and sovereignty, and the deciding word is what the people say, not the governments. [342] The state's positions are appointed by the authority of the people who grant and held the responsibility for that authority at the same time. The contract for Rousseau is a contract concluded by the people from the people among them, for the one unites with the whole. In other words, the will of the individual dissolves into the collective will that has sovereignty in which the ruling authority places itself under the collective will's authority. [343] In this way, it differs from the

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[341] Ward (n 333), 884

[342] Jean-Jacques Rousseau, Susan Dunn and Gita May, *The social contract: And, The first and second discourses/ Jean-Jacques Rousseau ; edited and with an introduction by Susan Dunn ; with essays by Gita May … [et al.]* (Rethinking the Western tradition, Yale University Press 2002) 10

[343] Jean-Jacques Rousseau, *On the social contract* (Second Edition, Hackett Publishing Company Inc 2019) Book I, Chapter 9

contract with Hobbes, concluded between individuals, and it differs from the Locke "Trust," that the authority is the people's trust granted to the ruler, and they can regain it at any time when trust is broken. (344) As for the state and all elected public figures, they are powers governed by the authority of the collective will represented by the people. In Rousseau's theory of the social contract, the people give themselves to society with all of their rights, including their money. However, he emphasized contrarily that the state does not strip the people of their property, but rather guarantees the legitimate appropriation of each individual because the purpose of the social contract is to preserve the rights of the contractor. (345)

As Rousseau pointed out in his theory, no matter what form of government, sovereignty always remains with the people. In this way, he calls for a type of democratic rule despite the lack of its components in his era. He wanted to lay the foundations that recognize equality, freedom, and property. (346)

Rousseau believes that the motivation behind the people's desire to create governments or the emergence of a social contract is that the gathering of people was a product of economic factors and the emergence of business, and invention appeared with it. Other values, such as greed, competition, and inequality, are concepts of the value of personal property. (347) As a result of the last value, personal property has the most significant impact on the emergence of other negative values in human dealings with each other and on the emergence of the concept of social classes from the division of people into property owners and workers. The property owners saw that it is in their interest to establish a government that protects their property from those who do not possess or those who claim their ability to seize it by force. Therefore, the government was established through a contract that provides for equality and protection for all without exception even though the real purpose behind establishing it is to confirm the differences. The social inequalities regarding personal property are the leading cause of the suffering of peoples in our modern era. (348)

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344 David Boucher and P. J Kelly, *Social Contract From Hobbes to Rawls* (1994) 20
345 Christopher Bertram, *Routledge philosophy guidebook to Rousseau and The social contract* (Routledge philosophy guidebooks, Routledge 2003) 76
346 Rousseau, Dunn and May (n 342) 200–202
347 Boucher and Kelly (n 344) 167
348 Rawls (n 79) 52

According to Rousseau, the political society represents the common good of the community, and sovereignty arises from the people. Therefore, the social contract should be formed between the people bound by unity of origin, interest, or convention. These bounds enable constructions from the determination of the people. This determination constructs the right of self-determination of the people to secede. This is the reason behind the emphasis on the need for homogeneity within the community. In light of secession, there is a social contract between the people themselves who have less homogeneity, have changed for any reason, or never had it from the beginning. Consequently, not all states can easily maintain this homogeneity because if the state is too small, it is too weak in comparison to other states. Contrary, if the state is too large, it is hard to maintain the unity of the determination of the people.

4. Understanding the internal needs of the people

Returning to Hobbes, Locke, and Rousseau, they did not consider the problem of secession explicitly, and their political theories provide the conceptual framework to understand certain forms of secession.

Starting with Hobbes, he states to escape from the natural situation of civil war, the people give up their all-natural rights in order to achieve security and stability in the political society. Hobbes' concept that consent cannot be revoked and retreated without the consent of the sovereign renders Kurdish, Catalan, and other secessionist movements to become only legitimate through a constitutional amendment. This solution goes in line with the decisions of the constitutional courts or the supreme courts of the parent state. 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 optimize the achievement of security and self-preservation. However, citizens can withdraw their consent in the case where their natural rights of life, liberty, and property are infringed. Thus, the legitimacy of the Kurdish secession stands only with the authoritarian regime while 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.

Then, Rousseau's solution is the simultaneous use of each individual's right to leave the contract. This highlights the fact that the unilateral declaration of independence is not acceptable, due to the legally binding nature of the social contract. (349)

A summary of the main differences and agreement between the theories of Hobbes, Locke, and Rousseau follows. Hobbes sees the natural state of a human being as a brutal, selfish instinct. Locke adopts a middle definition of the human condition between Hobbes and Rousseau. Rousseau describes this natural state as an ideal state that brings happiness and security to the human being. For Hobbes and Rousseau, the

[349] Rory Gillis and others, 'A Social Contractarian Perspective on the Catalan Demand for Independence' 2(LSE UPR 2017/8) LSE Undergraduate Political Review 92 <http://eprints.lse.ac.uk/101347/1/LSE_UPR_social_contractarian_perspective.pdf> accessed Febuary 13th,2021

ruler's authority is absolute, while the ruler's authority is not absolute but rather restricted for Locke. [350]

Even if natural rights theory allows for a political power to return to individuals upon the dissolution of society, I argue that groups of individuals can reconstitute themselves into separate independent sub-units based upon pre-existing characteristics. The proposition that individuals cannot revert to the state of nature except in extremis does not mean that they cannot construct a smaller state.

Regarding the ownership of sovereignty, Hobbes finds it is for a specific individual or a small group of individuals while Locke believes in the sovereign ownership of individuals and authorities. Rousseau supports the idea that sovereignty belongs to the people together. Hobbes does not support changing the government (authority); otherwise, the state of primitive chaos does return to societies. Contrarily, Locke stands with changing the government if the people were not satisfied or not meeting the needs of the people that chose it. Rousseau supports the government from another standpoint; he sees it as the representative of the people to implement its desires or the wishes of the collective will.

In order to understand any kind of secession over the legitimacy that the Kurdistan, Catalonia, or any other secessionist movements could have within the social contract, the ties between the secessionists must be understood. By understanding the ties and bounds of the people, the secession right to organize a social unit, the need to gather the people with bounds, whether unified around ethnic, religious, linguistic, or cultural ties. The determination of the tied people works both as a moral perpetuating will and as a procedural mechanism with a constitutive association as its genesis. The ties as seen are complex and different from one society to another, but all have a need even if different, so they can be called the needs of the people.

For Locke, the failure to protect property and religion are the grounds that qualify the persecuted people to withdraw from the political society. However, neither the remedial justification nor these grounds are the real justifications for the secession.

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[350] Jean-Jacques Rousseau and Victor Gourevitch, *The social contract and other later political writings* (Cambridge texts in the history of political thought, Second edition, Cambridge University Press 2019)

The failure to meet the needs of the people constructs the merit of internal movement to achieve it. This is why it should be called “the internal needs of the people.” The internal needs of the people require constant moral will to achieve these needs while at the same time it performs a constant mechanism for the relationship with the sovereign-government. The “internal needs of the people” are more than merely a sum of individual needs. Therefore, the referendum is a mechanism to uncover the needs of the people. Rousseau argues that in suffrage, the closer the result is to consensus, the closer it is to the general will. Large divisions, instead, are the symbol of the decline of the state.

The ideas of Hobbes’ resisting against weak political society, Locke’s remedial justification, and Rousseau ties between people are essential to construct the internal needs of the people’s power, the power that may break the social contract between the secessionists and the parent state in case of secession. This power is getting stronger in Catalonia and Iraqi Kurdistan more than Turkish Kurdistan. This power can be measured by the referendum concerning this matter. This is seen in the following topic.

B. Referendum

According to the future of representative democracy, there are different types of democracies: direct democracy, representative democracy, constitutional democracy, and monitory democracy. [351] The first type, direct democracy, means that all citizens are invited to participate in all political decisions. This form of democracy was no longer practiced after ancient Athens, where only adult males who had completed their military training could exercise it, but women, slaves, and plebs could not. In this form of democracy, citizens are continuously involved in the exercise of power, and decisions are by majority rule. The second type is a representative democracy, where representatives are elected by the people and entrusted to carry out the role of governance like many countries nowadays. Constitutional democracy is the third type where a constitution outlines who will represent the people and how. Australia is a constitutional democracy, and it has had some secession movements like the 1933 Western Australian secession referendum and the First Party of Tasmania, which aimed for Tasmanian secession. Finally, there is monitory democracy where political scientist John Keane suggests that a new form of democracy is evolving in which the government is constantly monitored in its exercise of power by a vast array of public and private agencies, commissions, and regulatory mechanisms. [352]

1. Election and Referendum

No one can ignore that a referendum is the classical practice of a direct democracy, which is still alive nowadays. The referendum is a mechanism of direct democracy by which the people are asked to vote directly on a matter or a policy. It differs from the election, which is a vote to elect persons who will make decisions on behalf of the voters. Although the difference between the matters of voting for something and voting for a person is seemingly clear, it may be questioned, such as when a referendum has occurred, formally or *de facto*, a vote of confidence or about the accession or permanence in the power of a person. [353] This is not exclusively the case in authoritarian regimes, but it also takes place in democratic contexts. For instance, the

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[351] Sonia Alonso, John Keane and Wolfgang Merkel, *The future of representative democracy* (Cambridge University Press 2011)

[352] John Keane, *The life and death of democracy* (Simon & Schuster 2009)

[353] لمى علي ، الظاهري and علي مجيد ، العكيلي, الحماية الدستورية لفكرة النظام العام (المركز العربي للدراسات والبحوث العلمية للنشر والتوزيع 2018) 134–135

constitutional referendum used by Charles de Gaulle in France held in France on 27 April 1969. [354]

The referendum is a classical measurement in constitutional law, but its importance in liberal democracies has increased significantly in the recent period used in more than 150 constitutions in the world. [355] Both its provisions and regulations in constitutions or other legislative texts and its effective practice at the national but most of all subnational level (e.g., state or region) have greatly increased, albeit substantial country differences persist. [356]

Referendums are often qualified as "plebiscites." Since a plebiscite is commonly regarded as highly manipulative, the term has a negative sense. The term 'plebiscite' is sometimes extended to all government-initiated referendums, especially if *ad hoc*, insofar as they would automatically trigger a vote of confidence. Conversely, the word has also traditionally been used more neutrally, to refer to popular votes on sovereignty issues like secessions. [357]

It deserves to be noted that an election can be a way for the referendum. The campaign for a party may include a promise of holding a referendum for a certain purpose like the Scottish National Party in Scotland. The Scottish National Party has promised to set a second independence referendum if it wins Scotland's parliamentary election in spring 2021.

In the following section, what can be understood from a referendum of secession and what the legal basis and consequences of a referendum by people in the country are will be explored.

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354 The aim of this referendum is to make changes to the government decentralization and modifications to the Senate. It was rejected by 52.4% of voters, and failure of the amendments led to President Charles de Gaulle's resignation..

355 constitute project organisation <https://www.constituteproject.org/search?lang=en&q=referendum&status=in_force&status=is_draft> accessed 10 October 2020

356 Orel (n 113) 503

357 ibid 502–503

2. Alternative or supplement of representation

It is generally accepted that the creation of legislation, law, and legal texts are created by people as popular legislation directly from people and applied to them. Later on, this method provided certain challenges in the application in large extended communities. The previous viewed popular legislation, or at least legislation ratified by the people, was the only valid form of legislation. This has changed dramatically to exclude this practice of only the people are competent to choose their legislators to legislate. As a result, the basic law organized this matter and other matters related to people participation in expressing their opinions in the state. This result is the main point of debate of whether referendums institute a supplement or an alternative to representation.

This conceptualization framework is so important to know in the field of secession. The core issue put simply is when secession is commenced and established by a referendum, it is important to establish if this referendum is an expression of the people represented in the whole sovereign nation or if it as a birth certificate of a new representation, pure sovereignty, of the people's self-determination from the seceding area that cannot be ignored or compromised by the former democratic representation.

Arguments on both sides mix theoretical and practical considerations. According to the Federalist authors, considering referendums as an alternative way of representation would lead to incompetent decisions and endanger individual liberties through the domination of the majority. 'Pure' representation is not seen as contradicting popular sovereignty since the people could choose its rulers and hold them accountable through re-election. [358] On the opposite side, the Anti-Federalists believed that the recognition of referendums as an alternative expression of the standing representation required that the people should as far as possible govern themselves and that no check should bear on popular majorities. Several cases show the support of the first doctrine. The referendum is an alternative way of representation, like South Sudan, when it declared its secession by a referendum in former Sudan, and Norway's secession from Sweden. On the opponent side, there are several cases where the referendum did not manage to

[358] Anthony A Peacock, *Vindicating the Commercial Republic: The Federalist on Union, Enterprise, and War/ Anthony A. Peacock* (Lexington Books 2018) 36

convince constitutional law scholars that it is an alternative way of representation. For instance, there were referendums on succession that were not successful, for instance, one in Namibia in 1971, one in Western Sahara in 1975, and the referendum in Texas about the ordinance of secession on February 23, 1861.

Every case casts its own fingerprint on this matter; the constitutional solution to this challenge should be adapted in the constitution for each case. The constitutional debate shows mainly the possibility to combine direct and representative ways in the constitutional perspective. This solution came to the surface during the French revolution, with the solemn declaration of the convention that "*Qu'il ne peut y avoir de Constitution que celle qui est acceptée par le Peuple,"* [359] which means that there can be no constitution except that which is accepted by the people. However, the question of the referendum really emerged more than one century later in the context of strong criticisms against representative government. [360] This differentiation proves its importance in secession matters. If a referendum is taken as an alternative of representation regarding a secession demand, then the question becomes how long the referendum's result should stand.

3. Referendum democracy and frequency

While the constitutional debate is mainly about the possibility of combining direct and representative democracy, democratic theorists would rather discuss the referendum as a possible way to improve the quality of democracies, which entails first of all the question of whether it is truly a democratic device. From the beginning of the referendum practice, this has been a problematic issue, and critics have often pretended that it was a form of government less democratic than representative democracy. Elected officials would be better at producing policies that accurately reflect the will of the majority because they can aggregate preferences while the referendum, as a device of semi-direct democracy, does not allow the collective elaboration of policies by the people (unlike citizens' assemblies). Because of this, legislation approved by referendum, unless it comes from the parliament, would almost inevitably reflect minority views (those of its proponents). From a different point of view, it has also been

[359] La Constitution du 24 juin 1793 21 September 1792 (France)
[360] Orel (n 113) 503

argued that the referendums do not reflect the will of the majority due to abstinence, which is higher than it is in the elections.

Additionally, it increases exponentially when its use becomes frequent. Voters often answer a different question, as usually happens when they express their vote of confidence in officeholders, the so-called "plebiscitarian deviation." [361] Also, they only follow party lines or minorities easily manipulate them with sharper opinions and organizational or financial superiority. On the other side, the classic argument is that a referendum will lead to the tyranny of the majority against minorities because it "knows nothing about the settlement," and it only gives a choice between "yes" and "no." Those who generally believe this also doubt that referendums can generate more legitimate decisions and resolve disputes.

It is clear enough, from a global perspective, that the increase in referendum use reflects the rise in the number of independent states and the use of the referendum during the state-building process in these countries, as well as the spread of democracies around the world. The state-building process includes secession referendums, so this drives us to question if it is okay to make another referendum after a failed secession result of a referendum.

To answer this question, the examples of the referendums of secession should be examined. In Canada, the formula for secession shows that there have been several referendums held. In Spain, they have held numerous non-binding referendums for Catalan independence from December 2009 until 2014. The last controversial referendum was held in 2017. According to the Catalonian government, the last referendum was officially a binding referendum but unconstitutional according to the Spanish Constitutional Court. The majority of voters, who do not make up the majority of Catalan society, voted in favor of independence by 90%, and participation of the people was 43%. The Spanish Constitutional Court declared the referendum unconstitutional again after the declaration of independence by the public in October 2017. [362]

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[361] Michel Rosenfeld and András Sajó (eds), *The Oxford handbook of comparative constitutional law* (Oxford handbooks in law, Oxford University Press 2012) 505

[362] Tzagkas (n 29)

This step would not have happened unless the Catalan government were also organized and ratified by its parliament, dominated by Catalan separatist parties since 2015. Thus, when a secession party wins an election working in harmony with the local government, it will make the internal demands of the people stronger to hold a successful "yes" secession.

The same goes with the Scottish National Party's (SNP) pro-secession party in Scotland; it will mandate to hold a second secession referendum if it wins the elections of 2021. Although a referendum was held on 18 September 2014 for Scotland's secession, another referendum is sought to be established for the same question of Scotland's secession. If there were a second referendum, it should proceed following the 2014 pattern.

The matter of sovereignty was not settled in Scotland because it was left largely in abeyance as sovereignty was seen as an old-fashioned concept. Both Scottish secession of 2014 and the UK Brexit of 2016 referendums brought back the matter of sovereignty in stark terms to understand the Scottish right of self-determination, and the UK right to take Scotland out of the European Union (EU). Scots are increasingly polarized around these issues of sovereignty, which have become central to Scottish politics. (363)

The story started when the first secession referendum was held after the SNP acquired the majority seats of the Holyrood Edinburgh, Scotland's capital, with 69 seats of the 129 seats in the 2011 Scottish Parliament election. The reason for this majority is the SNP's declaration to forward a Referendum Bill. (364) The State of precedents might repeat this experience once again in 2021 or soon after (365) based on the poll carried out by Savanta ComRes and published in The Scotsman newspaper. (366) The SNP is

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363 David McCrone and Michael Keating, 'Questions of Sovereignty: Redefining Politics in Scotland?' [2021] The Political Quarterly 1 accessed 4 January 2021

364 Scottish Parliamentary Corporate Body, *Meeting of the Parliament: Wednesday 24 April 2019* (Wednesday 2019)

365 because the Scottish Parliament is passing legislation that will allow for a six-month postponement of Scotland's election Akash Paun, 'Failure to prepare is not a reason for governments to postpone elections' (8 January 2021) <https://www.instituteforgovernment.org.uk/blog/postpone-elections> accessed Febuart 3, 2021

366 Scotsman Reporter, 'The Scotsman partners with Savanta ComRes in new Scottish poll series during election countdown: The Scotsman is partnering with leading research consultancy Savanta ComRes to publish a new series of polls in the countdown to next year's Scottish Parliament election.' *The Scotsman* (16 th

expected to win 71 seats of 129 seats in the Scottish parliament, eight seats more than it won in the last election in 2016. [367]

Despite the UK acceptance of the Scots polls of 2011, the UK refused the secession project asserting that the UK is a "family of nations," rather than a unitary state. Legally speaking, the Scottish Parliament cannot pass legislation related to the Union between Scotland and England based on the Scotland Act 1998 provisions that:

> "The following aspects of the constitution are reserved matters, that is,
> a) the Crown, including succession to the Crown and regency, and
> b) the Union of the Kingdoms of Scotland and England." [368]

However, the Central government accepted the devolution for a referendum to the Scottish government that was followed by discussions between the UK and Scottish governments, which ended in the Edinburgh Agreement in October 2012. Under this agreement, the UK government agreed to pass a section 30 order that would transfer the power to legislate for a secession referendum, and both governments agreed on certain principles and conditions for the vote. The section 30 order was ratified in both Houses of the UK and the Scottish Parliament between the end of 2012 and the beginning of 2013, coming into force on 13 February 2013. Consequently, the Scottish Parliament ratified the Scottish Independence Referendum bill 2013, which provided the legal base for the referendum and set out how the referendum would operate. The bill became law on 17 December 2013. The referendum operated on 18 September 2014, and it resulted in 55% against to 45% in favor to remain in the UK, with a turnout of 85%, the highest in any UK election or referendum in over 100 years. [369]

December 2020) <31 January 2021> accessed https://www.scotsman.com/news/politics/scotsman-partners-savanta-comres-new-scottish-poll-series-during-election-countdown-3070866

[367] Reuters Staff, 'Scottish nationalists set for record majority, boosting independence push' *REUTERS* (JANUARY 14, 2021) <https://www.reuters.com/article/uk-britain-scotland-poll/scottish-nationalists-set-for-record-majority-boosting-independence-push-idUKKBN29J13Y> accessed 31 January 2021

[368] *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland* ([Scottish Government] 2012)

[369] Akash Paun, Jess Sargeant and Kelly Shuttleworth, 'A second independence referendum: When and how could Scotland vote again?' (December 2019) <https://www.instituteforgovernment.org.uk/sites/default/files/publications/second-independence-referendum-scotland.pdf> accessed Febuary 4, 2021

During the campaign, the referendum was described as a "once-in-a-generation opportunity" in the Scottish government pre-referendum white paper as the Scottish government issuing body warns the Scottish voters: "If we vote No, Scotland stands still. A once in a generation opportunity to follow a different path and choose a new and better direction for our nation is lost. Decisions about Scotland would remain in the hands of others." [370] The result showed at that time to have settled the issue of Scotland secession. However, it has not proven to be the case so far.

The negative result of the secession referendum attempt in 2014 did not remove the secession project from the SNP's agenda nor from the sense of Scots either. A polarization has occurred toward this matter accelerated by Brexit. Based on the recent study entitled "Secession and Social Polarization: Evidence from Catalonia," once an implicating secession process is initiated, the secessionist movement can create a form of identity that has a social effect and stereotyping. This form of identity is a secession polarization. This secession polarization illustrates the over-time persistence of secession. Based on the Catalonian conditions, secession polarization results could be applicable to cases similar to Spain, where secessionist movements face revoking responses from the parent state. This polarization strengthens the internal demands of the people. The opposite is relatively true also, and it is expected to have less polarization in cases where the state is more open to accommodation to secessionists' demands, for instance, the secession of Scotland in the United Kingdom before Brexit, which is seen as the result of the Scotland secession referendum in 2014. However, after the UK vote for Brexit in 2016, the UK voted to leave by 52% to 48%, [371] but Scottish voters backed the remain option in the EU referendum by 62% to 38%. [372] The question now is whether the Scots should have the chance to take its future into its own hands rather than being tied to the UK and its conservative government and if they leave the UK, whether they should rejoin the EU as an independent member state.

As mentioned above, in November, the Scotland government lead by SNP started promoting an agenda and promised that Scotland would have an enrollment plan to EU

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370 Scottish Government issuing body, *Scotland's future: Your guide to an independent Scotland* (Scottish Government 2013)
371 BBC, *EU referendum: Scotland backs Remain as UK votes Leave* (BBC 2016)
372 Chris Prosser and Ed Fieldhouse, *A tale of two referendums – the 2017 election in Scotland* (The British Election Study Team August 2nd, 2017)

once independence from the UK was achieved. While this move indicated problem-awareness, it lacked the backing of concrete, underpinning policy. [373] The fact that the majority of voters in Britain, especially Wales and England, were in favor of Brexit, or leaving the European Union, has raised many problems. The Scottish people rejected Brexit because of the government and people's preference to remain part of the European Union and benefit from the freedom of movement, trade exchange, financial aid, research funding, universities, and other advantages that Scotland enjoyed when it was part of the European Union. On the other hand, the approval of the Scotland membership in the European Union is not guaranteed based on the fear of the negative impact of the Scotland secession on the economy of Scotland. To be a member of the EU, Scotland should have a budget deficit of no more than 3% of gross domestic product (GDP), [374] which is not the case in Scotland. [375] In addition, some European countries refuse to support Scotland's succession. For example, Spain does not support it because it fears that Catalonia may be inspired by their success, and France stands with Britain politically. [376]

However, the EU enrollment challenge is not a challenge for the Scotland government because NSP has joined a collaborative research project on decent work to look at the quality of work in Scotland and get a better picture about the labor market. The EU can provide a period to Scotland to reach the EU standards of budget, and this period is provided to Scotland in order to overcome the budget deficit like what was done for Croatia. In addition, the shock of the Brexit decision created a very different political landscape. [377]

The prime minister has failed to confirm that mayoral, council, and police commissioner elections in England occurred as scheduled on 6 May 2021. The delay of this project is because of the pandemic of Coronavirus (COVID-19). The Scottish Parliament was ratifying legislation that allowed for a six-month delay of Scotland's election. This delay was not exclusive for Scotland; a similar bill was also expected to

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373 HARTWIG PAUTZ, SALLY A WRIGHT and CHIK COLLINS, 'Decent Work in Scotland, an Agenda-Setting Analysis' (2021) 50(1) J Soc Pol 40

374 Tim Worstall, *Scotland's Budget Deficit The Largest In Europe - Couldn't Join The EU If It Wanted To* (Forbes August 25th, 2016)

375 Severin Carrell, *Independence could cost Scotland's economy £11bn a year, forecast suggests: Economists say impact of leaving UK's common market would hit two to three times as hard as leaving EU* (The Gardian Febuary 3rd, 2021)

376 Hugh Schofield, *Why Paris doesn't want a Scottish Yes* (BBC August 17 th, 2014)

377 PAUTZ, WRIGHT and COLLINS (n 373)

be introduced in the Welsh Parliament. However, this file has strengthened the polarization of secession by comparing the local government's attempts to deal with the situation compared with the other UK governments [(378)]

In the elections to the Scottish Parliament in May 2021, by the time of finishing this thesis, the Scottish National Party won the most seats (64 seats of 129 total seats) with 44.2% of the vote. It deserves to be noted that the total number of SNP elected was one more than in 2016, however, SNP almost succeeded to construct an overall majority. [(379)]

A second secession referendum does not appeal to the UK government. I argue that a second secession referendum, or any other further one, should take place on a similar base to Scotland's secession in 2014. In other words, it should be based on an agreement between the UK and Scottish governments. Legally speaking, the Scottish Parliament cannot pass legislation regarding the Union between Scotland and England because of the previously mentioned Scotland Act 1998 provisions. [(380)] If an agreement were reached that a second referendum could be held, then following the 2014 precedent, the power to legislate for this should be devolved to Holyrood using a section 30 order which is a type of secondary legislation that can amend the powers of the Scottish Parliament and requires the consent of both the UK and Scottish Parliaments. [(381)]

From the contemporary reading of the situation, the people in Scotland are going for a second secession referendum, and on the other side, the UK government wishes to stop any second referendum concerning secession in the 2021 Scottish Parliament election. This situation should go again in line with the 2014 precedent when the SNP's majority at Holyrood, which enabled it to claim a mandate for the first independence referendum.

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[378] "The following aspects of the constitution are reserved matters, that is— a) the Crown, including succession to the Crown and a regency, b) the Union of the Kingdoms of Scotland and England."Glenn Campbell, 'Covid: How the coronavirus pandemic is redefining Scottish politics' *BBC* (22 September 2020) <https://www.bbc.com/news/uk-scotland-scotland-politics-54250302>

[379] House of Commons 2021, *Scottish Parliament Elections: 2021* (House of Commons 2021 2021)

[380] Great Britain (n 321)

[381] Paun, Sargeant and Shuttleworth (n 369)

Therefore, there are three choices for settling this situation. The first choice is holding a second secession referendum. In order to justify a second secession referendum, another agreement between the Scottish government and the UK government should consider agreeing on what circumstances should be attached to any agreement to devolve the authority to establish a referendum to the Scottish Parliament – predominantly regarding when the referendum should be held. The UK government is likely to refuse such a request. This scenario is the least predictable choice because the UK Conservative government wishes to stop any second referendum concerning secession. Like his predecessor Theresa May, Prime Minister Boris Johnson argues that the 2014 vote settled the independence question and that no further vote should be held. Also, the Conservatives made opposition to a second vote on independence a central pillar of their campaign platform. The party's 2019 manifesto committed to strengthening the Union, which is banned by the agreement.

The second choice is to hold a consultative or symbolic referendum like the one that happened in Catalonia in 2014, when the Catalonia Government proceeded in the beginning with a non-binding referendum on secession from Spain in 2014 and then years later, it succeeded to hold another attempt of a legally binding referendum in 2017. The chances of such a choice for Scotland are most likely to take place in the future, or at least a request of this. However, this would reach the Supreme Court in London, like in the Constitutional Court of Spain judgment. Here the Supreme Court in London may adapt a narrow approach to devolution and take a wide approach to constructing what 'the effect' of the consultative referendum action is. This understanding may make even a non-binding referendum on secession to be viewed in light of its political ramifications and the effect on the Union that a referendum for secession could have and would be jurisdictionally decided to be out of the Scottish Parliament's authority. [382]

The third choice, which I personally hope does not occur, is to stop the campaign of the SNP on a legal basis exactly like the symbolic referendum conclusion above. The Supreme Court in London may not only adopt a narrow approach to devolution against

[382] Stephen Tierney, 'A second Scottish independence referendum without a s.30 Order?A legal question that demands a political answer' (21 March 2017) <https://www.centreonconstitutionalchange.ac.uk/opinions/second-scottish-independence-referendum-without-s30-order-legal-question-demands-political> accessed Febuary 3, 2021

the consultative' referendum but also deliver a judgment against the membership of the SNP in the Scottish parliament based on the responsibility of the Scottish toward the United Kingdom concerning the devolution. This choice is most likely to happen by seeing a request from the central government submitted to the court to delay of elections of 2020. I do not recommend this choice because this court decision may increase the polarization of the Scots and create chaos, like after the decision of the Constitutional Court of Spain which resulted in civil discontent and the imprisonment of several leading Catalan politicians and the imposition of direct rule from Madrid over the region. [383]

C. Democracy and Self-Determination

Secession is a way that states can meet their obligation to provide self-determination to sub-national groups. While most examples of secession lead to statehood, it is by no means an inevitable conclusion. Not all claims for self-determination are proclaimed at the international level. "Internal" self-determination, which takes place entirely within the constitutional system of a state, is possible, even relatively common. Democracy is an internal self-determination.

The principle of self-determination used to be understood in a different way as a principle against colonial rule. Particularly, this principle speaks against invasion and occupation of other territories by foreign powers. It includes a principle of protecting the free determination of the current sovereign states that ensures their democratic forms of government and as a principle, recognizing the free determination of certain groups within or between sovereign states.

Dividing the international view of self-determination into internal and external self-determination can help in organizing the different understanding of the international recognition of the right of self-determination. This classification could cover external self-determination as a principle to claim secession or association with another sovereign state. It also includes internal self-determination as a principle to claim representation or self-government within the parent state.

[383] Paun, Sargeant and Shuttleworth (n 369)

The internal side of the international principle of self-determination of people is closely related to the principle of democracy, considering it can be broadly defined as "internal self-determination means the right to authentic self-government, that is the right for a people really and freely to choose its own political and economic regime."[384] International law is responsible for establishing a framework, within which internal rules can operate, concerning the birth of new states and the change of territorial boundaries.

Recognition of the self-determination of peoples by international law has always been selective and limited. Many multinational liberalists and democratic constitutional states are not so flexible toward territorial integrity and intolerant in external self-determination, secession movements, by the people located within their boundaries. People normally seek protection from international law for their secession claims. However, they should not ignore that the international law-makers are a complex group of sovereign states, with limited numbers of international organizations that are less effective than states. Therefore, protecting the principles of territorial integrity and (internal and international) stability are the dominant principles. In other words, these international lawmakers are opposed to recognizing a broad, democratic right to self-determination. What is more, many illiberal and non-democratic states are accepted by international law and are recognized as members of the international society.

Contemporary international law generally does not grant an explicit right to external self-determination to minorities. In its place, it tends more towards internal self-determination, specifically towards the protection of minorities. In other words, international law recently leans towards the internal side of the right of self-determination, the democratic entitlement of people.

However, the principle of democracy is not a fundamental principle and not a peremptory norm of international law either, and is neither recognized nor guaranteed globally. Additionally, the presence of a democratic government is not a necessary condition to be a member of international society. Specifically, there is no requirement to be considered a democratic form of state in order to be a member of the United

[384] Bossacoma Busquets (ed) (n 12) 147

Nations. [385] On the one hand, the UN General Assembly has adopted many resolutions to promote and consolidate democracy.

Nevertheless, on the other side, the right to democracy appears timidly in a recommendation of the same UN General Assembly No. 57/1999 of 27/4/1999 of the Commission on Human Rights, which referred to the relationship between the democratic style of government and respect for human rights. It also affirms what the rights of democratic governance shall include. It states as follows:

"Recognizing that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing and that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives." [386]

On top of that, Resolution No 55/96 adopted by the UN General Assembly on 4/12/2000 talks about promoting and consolidating democracy. [387] Therefore, some international law experts believe that democracy is the only legitimate form for governments in international law. [388]

The practice of the UN and its Human Rights Committee cannot be denied. Conversely, there has been resistance to escalating the right to internal self-determination towards international approval of the principle of democracy. International law is admittedly hesitant to connect the principle of self-determination of peoples to the principle of democracy. Contemporary international law does not provide the right to external self-determination to minorities. Instead, it focuses more on internal self-determination, in line with the protection of minorities. [389]

On the opposite, some philosophers endeavor to distinguish between national self-determination and the principle of democracy. This distinction was drawn from the fact that an undemocratic nation-state would deny the right of members of the nation to self-

[385] ibid
[386] Promotion of the right to democracy 27 April 1999, E/CN.4/RES/1999/57 (UN Commission on Human Rights) para 3
[387] Promoting and consolidating democracy 4 December 2000 (UNGA Res A/RES/55/96)
[388] الجندي، غسان (n 162) 218
[389] Bossacoma Busquets (ed) (n 12) 148

government, but never their right to national self-determination. The desire for national self-determination is different from, and sometimes even contradicts, the liberal democratic struggle for civil and political rights. Truly, records of history show that individuals were often yearning to secure recognition for their nation, even at the cost of abandoning their civil rights and liberties. (390) However, this equivocation is not relevantly true. This issue is proven by the Human Rights Committee when it views the realization of the right to national self-determination as an essential condition for the effective guarantee and observance of individual human rights. (391) Therefore, the interconnection between national self-determination, democracy, and basic individual and collective rights should be maintained under the big umbrella of the principle of self-determination of peoples.

390 Tamir (n 230) 71

391 Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies 1994, HRI/GEN/1/Rev.1 at 12 (UNGA Res)

1. Testing democracy of Catalonian in Spain

Drawing from the above, a state can be considered democratic even if it does not respect the self-determination of its minority nations as witnessed by the fact that the Eastern European states enrolled to the European Union (EU) and adapted democracy as an acceptable condition by the Conference on Security and Cooperation in Europe (CSCE). It shows that democracy is, in contrast, a fundamental legal principle in Europe. Democracy is one of the basic values of the European Union stated in Article 2 of The Treaty on European Union. [(392)] The EU is built on representative democracy. [(393)] Only democratic states can be members of the EU. [(394)] The Council of Europe was one of the first international organizations to request democracy for acceptance and continued membership. The Council has mechanisms to punish violations of the principle of democracy, such as suspending the representation of the violating member state. As a result, the criterion of democratic governance has shifted from a moral principle to an international obligation, and the right of peoples to self-determination can be achieved through democratic governance. [(395)]

Spain is a member of the EU, so it adapts democracy as an accepted condition by the Conference on Security and Cooperation in Europe. It shows that democracy is a fundamental legal principle in Spain and one of the basic values of the state. This is the situation of Catalonia based on Spain's membership in the EU. This is why there is a need to test and check the democracy of Kurds in both Turkey and Iraq in the subsequent topics.

2. Testing democracy of Kurds in Turkey

Predicting the future comes with the careful analysis of the present. The governments of the Justice and Development Party are distinguished from other Turkish governments in succession since the Turkish Republic's establishment by their recognition of the existence of a "Kurdish issue" in the country. The current president, Recep Tayyip

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[392] EUROPEAN UNION, *Treaty on European Union: Consolidated versions of the Treaty on European Union and the Treaty establishing the European Community (Official Journal C 325 of 24.12.2002)* (Office for Official Publications of the European Communities 2003) Article 2
[393] ibid Article 10(1)
[394] ibid Article 49
[395] Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86(1) American Journal of International Law 46, 47

Erdoğan, tried to solve the "Kurdish question" which was one of the taboos of official politics. [396] The government also recognized the ethnic rights, such as legally permitting the teaching of the Kurdish language, allocating optional classes for it, and launching its own channel on state television.

However, the story did not have a happy ending. As the negotiation process continued until July 2015, the renewed fighting between the central government and the PKK and consequent preservation operations triggered thousands of displacements in the country's south-east. The negotiation process collapsed as a result of the bombings by the Islamic State of Iraq and Syria (ISIS) in the city of Suruç a small Kurdish-majority city, which targeted a gathering of Kurdish activists at Suruç on their way to Kobani fighting ISIS. The Turkish government and police were blamed as they had done nothing to curb ISIS activity against the Kurds. As a result, the PKK launched attacks in retaliation against hundreds of militants and more than 100 police officers, and soldiers have died since July in the worst violence Turkey has seen in two decades., which stopped the talks. This sparked new demands for secession. [397]

From an objective point of view, the Turkish government's initiatives under the Justice and Development Party are more open and integrated into political life. In 2018 the central government commenced building new homes in the region as part of an urban rehabilitation project and compensation for the conflict victims.. It is believed that about 25,000 homes were built in 2020, but it is unclear who will be the beneficiaries. Some accommodations were provided to the internally displaced people (IDP) for compensation, but they are far from city centers, further away from their livelihoods and social networks. Also, many people who stayed home in conflict-affected areas, such as the historic Sur district of Diyarbakir, were also forced out to make way for renovation initiatives. [398]

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[396] Emad Kaddorah, 'المقاربة الجديدة للقضية الكردية في تركيا: The New Approach to the Kurdish Issue inTurkey' [2018] سياسات عربية Siyasat Arabiya journal 22, 23

[397] ibid

[398] Internal Displacement Monitoring Centre (IDMC) (n 158) 46

However, the government has waved the ban on the Kurdish languages and allowed teaching the Kurdish language and operating an official television channel in the Kurdish language. (399)

The question now becomes what the damage to Turkey would be if it decided to grant the Kurds the desired secession. Turkey would lose about 15% of its population and the same percentage of Turkish land. However, this is not a loss that they would be sorry about. This 15% is a burden of conflict and obstacle to Turkish development. Certainly, after such a secession, a new minority problem would arise in the seceding region, but these problems could be effectively defused in advance by thorough negotiations on the modalities of secession. (400) In fact, such assuaging effects would occur. For instance, from a Turkish point of view, the Kurds of this region are a strong, menacingly, and violently combative minority. If this region became independent, the Turks remaining in this region could be expected to be a small enough minority as not to appear truly threatening to the Kurdish majority. This could transform a civil war region within Turkey into an independent Kurdish state that treats its Turkish minority in a comparatively civilized manner.

The same effect would, of course, be achieved if the secession area did not become independent but joined another state. In such a case, a new minority problem could arise in the secession area, but this would also affect a proportionately smaller and therefore better-respected minority. (401)

As seen above, the military actions and the displacement projects may not manage to end the conflict between the secessionist and the government. The main chances are to focus on the pros and cons of approving the secession even though the constitution and government do not accredit secession, and interpretations of the constitutional texts stand for the integrity of the country against any separation or secession project. Thus, there is no legal chance for secession unless there is a political will translated to a constitutional amendment. Nonetheless, this chance is not too far from seeing reality,

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399 ibid
400 Burkhard Wehner (ed), *Freedom, peace, and secession: New dimensions of democracy/ Burkhard Wehner* (SpringerBriefs in Political Science, Springer 2020) 41
401 ibid 30

especially when a Kurdish party managed to be elected into the parliament and some cities' municipal.

In this new vision, the second influence shall be a referendum for a constitutional amendment as the later referendum made in 2017. This referendum can at least grant autonomy for the Kurdish area in Turkey.

2. Testing democracy of Kurds in Iraq

The Kurdish Regional Government (KRG) never held an official referendum on independence, but a 2005 advisory referendum organized by civil society groups led to a 98% vote in favor. [(402)] The government of the KRG held an official referendum after the regional parliament approved it on September 15, 2017. This step was taken during the weakening of the central government. The independence referendum in the area of Kurdistan was criticized by the Iraqi central government in 2017 that filed a request to the Iraqi Supreme Federal Court to reject the vote and consider it unconstitutional. [(403)] Thus, federalism helps assuage the forces of political entropy and avoid secession as it appears in this Kurdish instance. A couple of days later, the Federal Supreme Court of Iraq ordered that the referendum be suspended until it could rule on complaints it had received about the plebiscite's constitutionality as the government turned to crack down on the Kurd's secessionist movements. The conflict also led to the resignation of Barzani, the leader of the KRG, in embarrassment at this failed strategy. [(404)]

Alongside these constitutional arguments is the claim that the Iraqi government's failure or unwillingness to protect the Kurdistan region adequately is grounds for independence.

The presence of a large oil field in a region within the claimed Kurdish territory Kirkuk has raised the stakes for both sides. With external involvement by Iran supporting the Kurdish side, the Iraqi government and the Kurds managed to have a Peace Agreement in 1970. The agreement recognizes that Iraq is composed of Arab and Kurdish nationalities together. Also, it provided that those regions in which the Kurds

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[402] INDYBAY, 'Percent of the People of South Kurdistan Vote for Independence,' (Febuary 9, 2005) <https://www.indybay.org/newsitems/2005/02/09/17205061.php> accessed 21 December 2020
[403] *The Iraqi Supreme Federal Court 2017* (n 34)
[404] Ginsburg and Versteeg (n 263), 977

constituted a majority were to be made self-governing within four years from the agreement's date. At the end of the four years in March of 1974, the central government unilaterally promulgated its Law for Autonomy in the Area of Kurdistan, called Iraqi Kurdistan. The area of Kurdistan, the law promised, can be considered an integral administrative unit, enjoying a juridical personality and autonomy within the framework of the Republic of Iraq's legal, political, and economic integrity.

There are several reasons that the Kurds in Iraq have achieved a successful movement but not the Kurds in Turkey or Iran. First, it is only in Iraq that the Kurds were officially and legally recognized as an ethnic minority having certain rights qua Kurds. Secondly, Iraqi Kurds have an active political leadership and form a larger minority group (proportionate to the general population) in Iraq than in Turkey or Iran. On top of that, their successful movement includes these factors: (1) the Kurds of Iraq are more geographically concentrated, mostly in mountainous areas; (2) they resent rule by the Arabs who, like themselves, were a subject people under the Turks; and (3) they fear Arab nationalism more than that of the Turks or Iranians, whom they consider ethnic brothers. [405]

The Iraqi government tried to implement the guarantees of minority rights from the League of Nations in 1925 and 1932 and later from the post-World War II renewal of international concern with subject peoples. After the overthrow of the monarchy in 1958, the new Iraqi government represented the Kurds as co-partners with the Arabs in the framework of Iraqi unity and assured their communal rights. The Kurdish tribal leader Mulla Mustafa Barzani was brought back from an eleven-year exile in the Soviet Union. Barzani stayed to become an important part of the Kurdish rebellion which flared into open fighting in 1961. [406]

[405] Bossacoma Busquets (ed) (n 12) 156–158
[406] ibid 158

D. The Right to Good Governance

As seen, secession is a means by which states can fulfill their obligations to provide self-determination to subnational groups. While most examples of secession lead to statehood, they are by no means an inevitable consequence. Indeed, not all claims for self-determination have been made public internationally. “Internal” self-determination, which takes place entirely within the constitutional order of the state, is possible and even relatively common. The right to good governance is further internal self-determination.

As also seen, the principle of self-determination has been understood in different ways as a principle against colonial rule. In particular, the principle is against the invasion and occupation of other lands by foreign powers. It includes the principle of protecting the freedom of determination for the contemporary sovereign states, which guarantees democratic forms of government. As a principle, it recognizes the freedom to define certain groups within or between sovereign states.

The right to governance is a lofty concept and a fine phrase. Good governance is a prerequisite for human civilization and society. However, it is interesting that the concept of good governance as a topic of discussion in international relations, especially in the field of public administration, did not emerge until recently. Recently, international donor organizations and agencies such as the World Bank (WB), International Monetary Fund (IMF), and many international and national institutions, governmental and non-governmental, have raised the issue of good governance in international politics. This is due to the sharp rise in communication facilities and technological innovations around the world to a global village where no one can ignore the achievements and undertakings of anyone in any part of the world. With the rise of extremism around the world, the insistence on good governance appears to have gained momentum. This principle is considered as a subsequent development of the right to democracy developed by international organizations of an economic nature such as the International Bank for Reconstruction and Development, the International Monetary Fund, and the African Development Bank. [(407)]

[407] الجندي، غسان (n 162) 218

The concept of good governance may be understood as some fundamental administrative principles aimed at gaining trust and cooperation amongst people. These principles are usually value-based and are essential for organizing institutions, organizations, and societies. Nevertheless, resistance arises when these values are narrowly defined based on securing specific interests and denying universal human dignity. The concept can be clarified by addressing some of its basic features: accountability, transparency, rule of law, and participation. Accountability: The governing institutions must be responsible for all the decisions they make and their results. The concept will be clarified by addressing some of its basic characteristics. This is necessary for harmony, socialization, and good-neighborliness in today's globalized world. Transparency: People must be able to follow and understand the decision-making process of all governments to be a local, regional, or global government. In other words, people must know who, why, and how the decision is made, and if it is being implemented. Decision-makers must also ensure that decisions are taken based on the correct information and in consultation with all stakeholders and subunits. Rule of Law: Good governance also assets that the people responsible for running the administration follow the stipulated laws abstractly. Justice and equality should be the two basic pillars of the rule of law. The law should guarantee non-discrimination based on class, color, gender, race, or religion. Participation: The decision-making process must be participatory. Decisions taken at the top level and then passed on to the lower level of implementation cannot be good for any organization. Good governance requires the participation of all stakeholders, which can be ensured through democratic means. However, good governance also requires that the democratic process be fair, transparent, and not spoiled by the rich and powerful. [408]

Later, this principle was developed due to the recommendation of the Sub-Committee of the Economic and Social Council on 26 April 2000. [409] On the other hand, this principle was included in Resolution 55/2 of 8 September 2000 adapted by the General Assembly of the United Nations about the third-millennium declaration. [410]

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[408] ʿAbdullah Aḥsan and Stephen Young, *Qur'anic guidance for good governance: A contemporary perspective/ Abdullah al-Ahsan, Stephen B. Young, editors* (Palgrave Macmillan 2017) 2–3

[409] The role of good governance in the promotion of human rights 27 April 2000, Res E/CN.4/RES/2000/64 (UN Commission on Human Rights)

[410] United Nations Millennium Declaration 8 September 2000, UNGA Res A/RES/55/2 (UNGA Res)

In a recent period, rights of the third generation came from the edges of the spotlight to its center through the World Conference on Human Rights which was held in Bangkok from 29 March to 2 April 1993, which focused on the rights of the third generation of human rights. Some jurists have also endorsed advisory opinions on the third generation rights issued by the American Court of Human Rights.

In conclusion, the right to good governance should always try to serve the needs of the entire society, including minorities and subunits. The right to good governance is not only a domestic requirement but also an international obligation. Overt balancing of competing interests can assure this right. All members should feel a sense of belonging as even the most vulnerable people have the opportunity to participate in the decision-making process. It is the ideal way to assure territorial integrity despite individual or group diversity.

CHAPTER 5: CONCLUSION

Summary, Conclusion, and Recommendations

This chapter presents the summary and conclusion derived from the study's focus on the comparison of the secession and self-determination endeavors of Kurdistan and Catalonia. It also provides recommendations that can be purposed by the scholars in constitutional and international fields.

The study was conducted in the absence of a comprehensive abstract theory applicable to all secession cases around the world. Scholars and researchers were reluctant to find or search for an extended framework theory which considers that each country has its own specific features (from a social, cultural, legal, political, and historical point of view), and therefore it is extremely difficult, almost impossible, to identify general rules that are always valid for every state. Previous studies were adapting purposive cases supporting either primary or remedial justifications for secession. This study employs a comparative and analysis methodology. Relevant aspects of the comparison were fulfilled by analyzing the theories and characteristics of some theoretical justifications and secession examples. The comparative tools used were the international and constitutional aspects of secession and self-determination.

I. Summary of Findings

The findings of the study were summarized according to the statement of the problems stated in chapter 1.

1. **How can all the self-determination seekers around the world only satisfy with secession regardless of their bonds or justifications?**

   People around the world have needs, and according to social contract theories, the governments should provide these needs. When the government fails to satisfy these needs, the people with different ties between them try to find a solution and a settlement to achieve their needs. This solution may appear in different ways for each state through constitutional or non-constitutional paths. Secession is one of these ways when there are certain ties and bonds between their members that may be based on the constitutional approach of the country.

2. **Who are the people that can decide to secede and how can they? Who are the people that can secede but how can they not? Can location play a role in secession?**

As seen, people of the state to satisfy their needs might go for secession based on the bonds and ties that identify them and connect them. These people are usually a minority in the country otherwise it would be a state revolution (insurrection). The scope of these people should be enough to establish a state or entity with a certain territory to live in. If these ties are based on a special race or nationality, the people of this nationality can decide to secede. If the ties are based on territory or geographical indications, people of these indications can decide. Thus, the people who can decide to secede are the people as a nation, a sub-community, a minority or a group of individuals practicing a collective right, or a minority with certain ties to the parent state.

As seen, location can play a role in the internal needs of the people. Location can play a positive role to strengthen the bonds between people seeking secession and present a distinctive identity for them.

On another side, there is a respected opinion that the other people, outside the scope of people with ties that can decide, have the right to decide the form or their state because they are affected by the secession. This opinion is the main reason behind the sensitivity of the secession matter and makes it controversial. In other words, self-determination can impact the rest of the parent state, but the right to self-determination is only provided to those who are directly affected by the secession. Thus, the rest of the parent state cannot decide on behalf of the secessionists. Institutional solutions therefore need to encourage secession clauses in fair constitutional terms. For instance, the subunit shall have to pay back to the center its share of national debts. Also, a specific date for the referendum needs to be set up and if the secessionists do not gain enough support, it will disappear from the option set for the future.

3. **Does only self-determination initiate secession? How is the social contract connected to secession?**

The force of self-determination lays in a basic human desire to associate with one's immediate fellows, like for example, family, clan, tribe, or village. The moral demand of the principle arises from the unjust treatment ruled by an "alien" people according to "just cause" theory or from a primary right to secede according to the opposing side. The call of self-determination will be rooted in the sense of comfort and security in self-government because the "alien" government will always be harsher and supportive of aliens. The main reason that initiates secession is not self-determination although it is a justification for people to seek secession. In addition, it is an international justification for secession. The failure to satisfy the internal needs of the people are what initiates secession and other forms of people's movements like revolutions or even immigration.

As seen, the social contract connects the people and the government of the parent state. The measurement of the distribution caused by the failure to meet the internal demands of the people must take into account the strength of the group's case for selfness within the commonly accepted dimensions of that category and the group's prospects for being a viable entity once separated from the parent governors. Therefore, the final determination of legitimacy will result from both the consequence of the disruption caused by the failure to achieve the people's internal demands and international stability.

Obviously, by suggesting this relationship, I claim the disruptive effect of the failure of achieving the internal demands of the people can be quantified in a precise manner. The utility of a comprehensive theoretical framework such as this lies in its function as a basis for argument.

4. How can the constitution play a role in secession?

Based on the understanding of the fact that internal needs of the people initiates secession, a constitution shall represent the bilateral agreements between the authority and the people. The constitution in this understanding provides the identity of the nation. Therefore, as much as the constitution provides the internal needs of the people, secession is the least demands of the people. On the other hand, when a constitution wrongfully represents the internal needs of the

people and explicitly bans secession in favor of the integrity of the state, this shall not stop secession but instead tests the strong needs of the people, and the process of secession will not commence unless the internal needs of the people reach a certain level of sacrifices. This type of constitution leads to violence more than other forms of constitutions that allow secession or remain silent to secession.

5. **How can international law play a role in secession? What is the role of the international community toward it? How is it possible to protect people's right to self-determination and how can international law be the main factor to guarantee its existence?**

   International law is playing a great role toward secession; it is like the spirit to the body. In other words, even if the internal bonds between the people has driven the people to break the social contract with the parent state, and the internal needs of the people has reached an ideal level of power to have full secession, this project will not see the light unless it has a certain international approval. This approval is controlled by a very complicated mixture of politics and international law. While politics is based on the changeable interests of states, international law is to justify unjustifiable changes in politics. The purpose of the recognition is to give the recognized person the status of an international person vis-à-vis the recognizing person. In all situations, whether recognition is directed at a country whose constitutional foundations have been integrated or even if the recognition is the result of a new de facto status of an existing international person. Then the purpose of the recognition is to pave the way for the legitimacy of the new situation on the part of the recognizing person.

   As a result, the recognition by the international community will grant the secession based on the interests of the recognizing state for political or non-political interests. This recognition is granted to get a more stable international situation in the international community. This recognition can be to preserve the status quo against the secession in the case where stability is guaranteed by preserving the status quo. Alternatively, this recognition can support secession

in the case where secession will settle and provide a better level of stability in the international community.

6. **How often does self-determination demand that this process recur. In other words, should a referendum be a "once in a generation" thing?**

   As seen, in both the Catalonian and Scotland situations, the constitution and precedent shall answer this question in each state. When the constitution has no answer or there is no precedent adapted in the state, then the general role of self-determination shall apply, the role of defining the people that has the right to secede. The same group of people can decide its contract with the central government each time that the government does not provide the internal needs of the people based on the understanding of the social contract and taking into consideration the changing ties between people. For instance, a certain generation might be born and try to practice its right of self-determination or a certain group might be in a new situation.

7. **Is there a single justification of Kurdish secession?**

   As the result shows, the same nation of the Kurdish may have different justifications for secession in different countries. This different justification for one ethnic people proves that the theory of justifying secession is not a final word in deciding secession for subunits.

   Studying the secession of the Kurdish people in Turkey and Iraqi can light the way for the secession of the other Kurdish regions like Iran, Syria, or even Azerbaijan. The success of any Kurdish secession will stimulate the neighboring Kurds to seek their secession in the same way that the Iraqi Kurdish autonomy stimulated Turkey's Kurdish movement. The other secession situation is still considered when secession of any Kurdish people leads to a new-born state of Kurdistan because this state will change the demand of the secessionist of the subunits of Kurdistan to join it rather than create its own state.

   In this matter, it should be understood that not all of these new-born states manage to be found simultaneously. It is more likely that each state will manage

to succeed in the secession and may be inspired by the earlier one which encourages secession by finding a new-born state or at least joining the earlier Kurdish new-born state.

With its own borders on the withdrawn territory, the new state can decide later to join a neighboring country, showing redemption as a way of secession. Therefore, it would be narrow-minded to define secession as separation from an existing state to become a sovereign state. There is no state called Kurdistan so far, and the Kurdish people are divided between a few countries. Therefore, the union of such parts together at the same time could be a case of secession, but if a Kurdish State managed to exist before others or one seceding parts to try to join the Kurdish state, it would be a case of irredentism secession.

8. What are the future chances for the secession of Catalonia?

After the 2017 referendum and the declaration of independence from the Government of Catalonia (Generalitat), Madrid's central government activated Article 155 of the Spanish Constitution, meaning that the central government could control it as an autonomous region which does not comply with its obligations towards the state. The central government took control of Catalonia's public institutions and arrested Catalan politicians on sedition charges, rebellion against the state. Public funds misuse prompted calls for new elections to elect a moderate government. A pro-unity party won the majority of the votes, but the Catalan pro-independent parties, as a coalition, have the majority of seats. However, they have less than the majority of the public vote, stating that most Catalans do not want Catalonia's secession from Spain.

It will take some time for the relations between Spain and its region Catalonia to stabilize and heal. Probably Catalonia will not get its independence because it is a separatist movement that does not express the view of the majority of Catalans. Many banks, like Caixa and Sabadell, and multinational corporations have fled Barcelona because, without Spain and the EU, Catalonia will not have access to the markets and financial supply from Europe.

Therefore, Catalonia's advantage of a strong economy will become a strong drawback once this region decides that it will live outside of Spain. Moreover,

the EU does not support this movement, as the nationalists thought, making them look weak to the local people and Madrid's eyes. The insecurity and uncertainty of such a scenario is the catalyst factor for the Catalans, so they want to stay with Spain. Secession has never been the main goal for society. Still, only a new discussion with the central government about Catalonia's economic model is what matters to them the most.

The pro-independence group in Catalonia is internally much more homogeneous than the anti-independence groups (those who want Catalonia to have more autonomy within Spain and those who want to either maintain the status quo or reduce the autonomy of Catalonia). This issue strengths the “internal demand of the people.” The power of the “internal demands of the people” is seen by the strength of bonds between groups that either support or oppose secession. The secessionist movements in Catalonia are internally much more alike than the opposition to the secession “integration group.” This is making a pro-secession polarization. The consequences of this polarization may occur in any similar situation of Catalonia.

As a result, Catalonia has a strong internal power to secede but this is not enough to do so without the international community recognition. This recognition will be granted either by the consent of the parent state, which Catalonia does not have, or by the ability to meet a certain level of oppression which drives the international community to recognize secession to maintain international stability. Again, this is the least to be considered based on the democratic standards that European Spain has.

9. Why are both primary and remedial theories not sufficient enough to justify secession?

As has been shown, both the doctrines of remedial and the primary approaches suffer from an essentially abstract character. In the remedial justification, it is determined by locating the condition of the secessionist group upon a norm representing the gradations of oppression capable of being inflicted by a parent state. In the primary justification, this norm represents the bonds of distinctness of the subunit; the justified secession is based on demonstrating a sufficient

scope of "selfness." Remedial theory cannot provide the secession demand made in a "self," capable of seceding from its present parent, but provide living within borders of a regime not inflicting oppression. On another hand, the primary justification must apparently accept the secession of a distinct "self" even when the secession would cause a large amount of damage or harm to the parent state or the international order, and it would not provide secession to a group possessing a weaker claim to selfhood but whose secession would sustain the societal and global stability.

Applying this idea to the two examples of Catalonian and Kurdistan secession, basically, the same nation of Kurdish in both Iraq and Turkey present different justifications for secession of the same nation.

II. Conclusion

Based on the indicated findings, the following conclusions were drawn:

1. The comprehensive theory regarding the legitimacy of a particular secessionist claim, as can be seen from both examples of Kurdistan and Catalonia along with the other examples must result from the balancing of **the internal demands of the people** expressed in the social contract against the justifiable concerns of the international community expressed in international **recognition.**

   By balancing these two aspects, it will avoid creating special and new standards to justify secession based on each case but have a general immutable rule applied to all cases, current and future ones, against each and every group in the same way.

2. Starting with **the internal demands of the people**, the constitution shall represent the needs on the people; otherwise, distribution will occur and impact on the integrity of the state. This distribution is made when the group of people, subunits, tries to break the social contract that ties the people with the regime. Using the aspects set out above, the various elements relevant to justifying secession can be reasonably accounted for by accommodating what I have called the "**the internal demands of the people**" and the items contributing to the **international community.** These

are, after all, the two main aspects in the secession and self-determination matter. Where the international stability of the world community, as expressed in the recognition, is endangered by secession, it is judicious to require exceptionally strong justification for the people's demand to secede and maintain the *status quo*. However, where the international community concerns is not seriously threatened by the secessionist movement or the international stability is not jeopardized by an unstable state based on the *status quo* of the secessionist movement, by that very act, the basis for derecognizing of the secession demand is removed, and the reasonable theory for justifying secession need not be as strict.

As has been seen, when neither the principle integrity of states nor the self-determination needs of a particular subunit are taken as opponents, the justifiable concerns of secessionist movements, unified states, and the stability of the international community may all be balanced to achieve the most rational solution.

This theatrical framework might be undertaken after forecasting the probable disruptive consequences of recognizing the secession. The international community (or that body entrusted with advising on the legitimacy of the secessionist movement) must balance this aspect against its valuation of the current disturbance of maintaining the status quo.

The result of this balancing will be considered **"even"** when neither approving secession or maintaining the status quo is likely to produce a measurable increase in disruption against secession where the future danger of recognizing the secession outweighs the risk of maintaining the status quo. It will be low when either the risk of future disruption is minimal but there is some measure of current disruption, or the risk of future disruption, although significant, is nevertheless outweighed by a serious amount of current disruption.

Evidently, the failure of achieving the internal needs of the people is working as a disruption factor, resulting from a balancing of current and future disruption. The balancing factor as understood here is a relevant

term. One might think, based on a common sense instinct, that a significant amount of future disruption plus a current situation with vastly disruptive consequences are required to produce a calculation of a “low” disruption factor. This curious result is, however, necessary to allow flexibility in accounting no possibly disruptive consequences of forcing the secessionists to remain with their parent state.

It should be apparent that the balancing required determining this factor involves more than a simple subtraction of the current from the future disruption. An assessment that utterly disastrous consequences would flow from secession cannot be ameliorated by subtracting some amount of minor current disruption, just as a judge does not sentence a capital punishment merely on the conviction of an unserious crime.

The designation of gradations less than “even” when either approving secession or maintaining the status quo is, of course, necessary to account for situations in which the quantum of future disruption, if any, is outweighed by the disruptive consequences of the status quo. The decision regarding the internal merits of the claim is graded on an increasing scale from poor to fair to excellent.

In order to determine whether a particular secession claim is in fact legitimate as a relative standard, not an absolute one; the international community must establish an abstract level which it will not consider a secession demand to be recognized if it falls below this level. This level, in effect, is the international threshold of legitimacy. The case above this level represents a case of legitimate secession and that below illegitimate one.

The theory I claim can be illustrated as follows. Where the possibility of disruption to the international community because of secession is high, the secession will have fewer chances to get international recognition. Contrary, where the possibility of disruption to the international community in maintaining the status quo is high, higher than disruption because of secession, secession will have a better chance to get international

recognition. That is, better chances even when the internal needs of the people power are not sufficient enough. In other words, when the disruption in maintaining the status quo outweighs the risks of secession, the international community can afford to be less strict in its requirements for the selfhood because the basis for its fear will be relieved by its fear for the present situation. Therefore, it may accommodate to a greater extent the self-governing wishes of a particular people who cannot offer overwhelming proof of their bonds and ties between them. Because of a weakness in the new-born state, or entity, for future ability to work successfully resulting from the secession, a bonus usually will be given to maintaining the status quo and non-recognizing secession. To a certain extent, of course, this can be offset by a particularly unavoidable failure of meeting the internal needs of the people, the other factor in the theory.

Of course, the previously mentioned bonus does not apply when the seceding subunit seeks to join an existing neighboring state. The assessment of a low future disruption implies that the secession's internal merits would also be improved because of the better chances for future viability. Therefore, secession would be located even higher on the international legitimacy threshold level, increasing its chances for international recognition.

However, I believe that the international community is willing to accept recognizing a secession of an entity requiring international aid for its survival because of the more disturbing consequences of allowing it to remain within the clutches of the present governors. An example of how this theoretical framework would operate in practice might be helpful here. Let us take the secession of Kurds in Iraq. First, the failure of providing the internal demands of the Kurds caused a disruption. The disruption is likely to result from allowing the secession is clearly significant. As seen, Kurds had been the victims of serious discrimination and the extreme brutality of the Iraqi army earlier involving massive unjustifiable loss of life and injury to human dignity. The conduct of the Iraqi forces goes far beyond even an expansive interpretation of the permissible behavior for states in subduing a

secession. In short, the amount of current disruption, measured both by the international concern with individual human dignity and by the threat to the inter-state order, was very tremendous. Even when balanced against the admittedly significant amount of future disruption, it heavily outweighed the prospective risk and thus permitted an overall calculation of a low disruption factor. Although the Iraqi government partly achieves the Kurds' internal needs by providing them autonomy in their region inside Iraq, the Iraqi Kurd's secession acquires both the inner and international factors for a successful secession. I suggest that autonomy and changing the Iraqi regime has only delayed the complete successful Iraqi-Kurdish secession. To get the full image, the recognition of the secession by the international community plays a hidden role in the success or the path of the secession process. For example, Turkey is politically stronger than Iraq, so Kurdish secession in Iraq is closer to success than Turkey as seen.

3. The testing of the Kurdish secession justification shows that it is not a clear cut theory of secessions for the same Kurdish nation. Nationalism is a close justification for the Turkish-Kurdish secession, and the remedial theory is the closest one to the Iraqi-Kurdish secession. Starting from the later example of Kurd's secession, accepting a remedial right to secede can be seen as supplementing Locke's theory of revolution and theories like it. Locke tends to focus on cases where the government perpetrates injustices against “the people,” not a particular group within the state, and seems to assume that the issue of revolution usually arises only when there has been a persistent pattern of abuses affecting large numbers of people throughout the state. It is more likely to grab the attention of the international community. This picture of legitimate revolution is conveniently simple. When the people suffer prolonged and serious injustices, the people will rise. Unlike John Locke's social contract theory, the remedial right of secession pertains to situations concerning a sub-state region rather than the nation in its entirety. Although it does not address this issue, the notion that remedial secession concerns a sub-state region raises issues about how broadly international law should define “people.” It is well-established that peoples generally have a right to self-determination under international law.

However, it is more ambiguous as to whether, for example, the Kurds in Iraq would constitute a “people” in this context. From this ending point, the social contract is broken when the state's basic law does not reflect its needs, which drives them to succeed. The scope of dissatisfied individuals could change the scenario of the dissatisfying social contract. The same goes for the Kurdish secession movement in Turkey.

4. I have concluded that nothing is left for the Catalan and Kurdish people except to breathe life into the bodies of the two movements through international recognition. In order to preserve and maintain the *status quo*, the governments of Iraq and Spain have no option but to respect the rights of Kurdish and Catalan autonomy and provide for the needs of the peoples in a sufficient way to achieve internal self-determination for these peoples. Without international recognition of the separatist movement, Kurdish and Catalan independence claims are likely to remain subject to domestic law and will hopefully be resolved through political negotiations. Both the Kurds and the Catalan regions shall rely on international community recognition to assert the right to independence from Iraq and Spain. It is presumptuous that both secessionist movements have the right to self-determination and break the social contract that ties them with the parent state. The applicable question is how these peoples ought to exercise their right to break the social contract with their parent state—accepting that the parent state did not provide the proper needs for its people in light of the right to external self-determination. Then one would conclude that Kurdistan and Catalonia have the right to succeed only when their people could not acquire their needs from the parent state. The said needs have to **construct the internal demands of the people.** These needs of the people are presented in the theories of secessions in all doctrines.

5. The international community has decided that the people subjected to oppression and an unjust situation represent a significant disruption to the stability of the world order. Nevertheless, even though global concern for their difficulty was sufficient to overcome the fundamental principle of non-interference in states' internal affairs, the international community

cannot justify a right to secessionist self-determination as a remedy simply because there was no genuine self to exercise this right. Truthfully, the international community can therefore be compelled to employ a treatment that did not require the precondition of a self in the sense of self-determination. Such a remedy might involve seeking international guarantees for human rights and minority rights, international suggestions of greater regional autonomy, economic freedom, religious liberty, and so on, as the situation required. Where the condition of a people within a state constitutes a matter of sufficient international concern to remove it from the category of a "domestic affair," but the circumstances of the people do not warrant the conclusion that they are a self and thus a candidate for the remedy of self-determination. The community must establish more minor remedies which operate within the framework of the parent state.

Even given a framework as stated above, one is left with the issue of where to establish the minimum requirements for legitimacy. The scope of this question seems to be precise; to set too strict a standard is to remand the matter back to its present unregulated, or at least obscurely regulated, condition. Neither the separatist groups nor outside states that wish to intervene on their behalf will adopt a plan that aims to balance the competing claims of unionists and separatists, but in reality forces the claimants to strive for a high level of legitimacy. On the other hand, to accord legitimacy too readily puts society in a position to assert the rights of groups with relatively weak demands or whose secession would significantly disrupt the staple status quo and the international stability. Neither independent states containing separatist movements nor their sister state supporters will recognize the force of a scheme that would flaunt their basic sense of order and self-preservation.

6. Suppose one accepts the view that the lack of providing the people's needs justify secession and that the secession shall change the regime not only secession. Honestly, that is right, but this presumption depends on the scope of people subjected to un-provided needs. If the scope of people who share the state's lack of needs expands to the whole state, it will justify changing

regime through a democratic or revolutionary mechanism. The secession result occurs only when the scope of the people who want to break the social contract with the state is relatively minority.

If one wants to stop oppression and wants to exercise external self-determination through remedial secession for the Kurdish and Catalans, one would need to examine whether Iraq and Spain meaningfully respected the Kurdish and the Catalan rights to internal self-determination, or whether these groups had been oppressed. The right of self-determination, as justifying the secession of a people from its existing parent state is a matter of last resort only, in situations where the people are oppressed or where the parent state's government does not legitimately represent the people's needs.

Away from the divorce relation between the parent state and the seceding subunit, the study shows that secession is a process like giving birth to a living creature; it needs a body and a spirit to be alive and a process to get delivered. The secession's physical body is the connected people by the aim which acts as a tie to connect the people. The ties are the needs and interests that the state does not provide for them, either a primary right like self-determination or a remedial right against oppression. Thus, after the ties between people mature enough, they can initiate the secession movement among a certain group of people. A group of people is qualified to be the secession body, meaning they are concentrated in the territory together and construct a minority of the state's people. The location impact plays an important role to get the new-born creature functionally possible, plus the small minority that cannot force the change toward the whole parent state. The process and means by which the new-born entity gets delivered can be a natural result from negotiation or referendum or in a caesarean manner by violent actions.

Still, the secession cannot be alive unless there is international recognition. Even the secessionist movement has very strong ties between the people, and it may not enter the international community without an international invitation.

7. The concept of self-determination is the most powerful belief. No other concept is as strong, visceral, unruly, and steep in creating aspirations and hopes as peoples' self-determination that deserves to be protected in secession. Although there is not a single justification for legitimate secession, I argue that there are two aspects of secession and self-determination ruling the situation for all secession examples around the world. The comprehensive justification regarding the legitimacy of secessionist claims, as seen from both examples of Kurdistan and Catalonia tested along with the other examples, must result from the balancing of the internal demands of the people expressed in the social contract against the justifiable concerns of the international community expressed in international recognition. Balancing these two aspects will avoid creating special and new standards to justify secession based on each case. It will set a general immutable rule applied to all cases, current and future ones, against every group in the same way. The power of the internal needs of the people is not enough to grant secession. If “peoples” is the body, international recognition is the spirit that makes it alive. Both form the scene of secession. I claim that secession has two aspects: the “internal needs of the people” and international recognition. Each aspect has its rules to reach a sufficient level to grant a successful secession process. Each situation shall be measured whether it will cause a distribution to the international stability or reserving the status quo. It shall be represented in the constitution if it is a need for its people. Self-determination by the whole nation leads to good governance while an immutable minority may be led to secession. The thesis presented on the interaction constitutional and international law field starts with the comprehensive analysis and then tests it in Kurdistan and Catalonia's practical example.

III. Recommendations

This study revealed the effectiveness of the social contract and the international recognition to justify and understand the secession and self-determination after a detailed analysis and comparison between the Kurdistan and Catalonia situations. Thus, the following recommendations are hereby presented:

1. Since the effectiveness of the internal demands of the people has been proven in breaking the social contract between the secessionists and the parent state, constitutions should present the internal demands of the people, both secessionists and the other members of the citizens. Institutional solutions can be thought of as a way to encourage secession clauses in fair constitutional terms. For instance, the subunit shall pay back to the center its share of national debts. Also, a specific date should be set up for the referendum. If the secessionists do not gain support, it will disappear from the option set for the future.

2. Since the effectiveness of the international community in approving secession or preserving the status quo is based on the international endeavor for stability, this endeavor of international stability might be undertaken after forecasting the probable disruptive consequences of recognizing the secession and the international community (or that body entrusted with advising on the legitimacy of the secessionist movement) must balance this aspect against its valuation of the current disturbance of maintaining the status quo.

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