



Course of

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List of Acronyms

BQ – Bloc Québécois

CLJ – Clarity Act

FLQ – Front de Libération du Québec

ICCPR -International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

NATO – North Atlantic Treaty Organization

PQ – Parti Québécois

UDHR – Universal Declaration of Human Rights

UDI – Universal Declaration of Independence

UN – United Nations

UNGA – United Nations General Assembly

UNSC – United Nations Security Council

NAVIGATING SOVEREIGNTY: THE LEGAL AND CONSTITUTIONAL DIMENSIONS OF SECESSION AND SELF-DETERMINATION

Introduction

In today's world, the concept of sovereignty, which represents a state's ultimate authority over its territory and people, is increasingly challenged by growing demands for autonomy and self-governance. Movements for independence across the globe, from Catalonia to Kurdistan, illustrate the tensions between the right to self-determination and the principles of territorial integrity and state sovereignty (Summers, 2007). While international law recognises the right to self-determination as a fundamental principle, its application in the context of secession remains highly contested, particularly when secessionist claims arise within established democratic states rather than colonial contexts. This raises a fundamental question: To what extent do international and constitutional law support secession movements in democratic states?

The right to self-determination, as recognised in the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), common Article 1(1) of the International Covenants on Human Rights (1966), and the Friendly Relations Declaration (1970), applies to all people, expanding its scope beyond decolonisation. However, defining "people" in a legal sense versus an ethnic sense introduces significant complexities. If every distinct ethnic or cultural group within a state were entitled to an unqualified right to self-determination, it could threaten the territorial integrity of existing states and lead to political instability (Tmuschat, 2006). Thus, reconciling the universal right to self-determination with the stability of the international order remains one of the most challenging dilemmas in international law.

This thesis explores the legal principles governing self-determination and secession within both international and constitutional law. To ground the theoretical analysis in a real-world context, it examines the case of Quebec's attempted secession from Canada, a unique example of a secessionist movement that pursued independence through democratic referendums and legal frameworks rather than violent conflict. This research contributes to the comparative study of constitutional and international law by analysing how legal principles are applied to secessionist claims in a democratic setting. Moreover, it enhances understanding of Quebec's historical, cultural, and legal status, offering insight into the broader challenges of managing secessionist aspirations within a constitutional framework. Finally, this thesis

integrates political, historical, and legal perspectives to provide a holistic analysis of self-determination and secession.

The case of Quebec was chosen because it exemplifies the intersection of self-determination and secession, two concepts that are often legally and politically intertwined. Self-determination refers to the right of a people to determine their own political status and pursue their economic, social and cultural development, as recognised in article 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations, 1966). Quebec's distinct cultural and linguistic identity, characterised by a predominantly French-speaking population, has driven its pursuit of greater political autonomy within Canada. This quest is underpinned by Quebec's unique legal status, which reflects its historical and constitutional distinctiveness within the Canadian federation. Unlike other Canadian provinces, Quebec operates under a civil law system, which relies on codified statutes as the primary source of law. This contrasts with the common law framework used in the rest of the country, where legal principles are largely developed through judicial precedents. The Canadian Constitution recognises this distinctiveness, particularly through the Charter of Rights and Freedoms (1982) and the Canadian Multiculturalism Act, which affirm cultural diversity and linguistic rights (Belanger, 1998). However, Quebec's ongoing push for greater autonomy often intersects with constitutional debates over federalism and the division of powers between the provincial and federal governments.

Quebec has actively sought independence through democratic means, holding two referendums on secession in 1980 and 1995. Although both referendums resulted in a decision to remain part of Canada, they were significant manifestations of Quebec's pursuit of self-determination. The narrow margin of the 1995 referendum, in which 49.42% voted in favour of secession, highlighted the deep political divisions on the issue. The referendums underscored Quebec's desire to assert its cultural and political identity while also exposing the legal uncertainties surrounding secession in democratic states (McRoberts, 1997).

Secession, as defined by Mancini (2012), is the formal withdrawal of a constituent part of a state with the aim of creating a new sovereign entity or acceding to another state. This phenomenon raises critical constitutional and legal questions, particularly concerning the conflict between a state's territorial integrity and a group's right to self-determination. In Canada, the legality of Quebec's secessionist movement was examined in the 1998 Supreme Court case, *Reference Re Secession of Quebec*. The Court ruled that Quebec does not have a unilateral right to secede under Canadian or international law. However, it stated that if a clear

majority of Quebecers voted in favour of independence in a clear referendum, the federal government would be obliged to negotiate the terms of secession in good faith, in accordance with constitutional principles such as federalism, democracy, constitutionalism, the rule of law, and the protection of minorities (Supreme Court of Canada, 1998).

In response to this ruling, the Canadian Parliament passed the Clarity Act (2000), which set conditions for the recognition of any future referendum on secession. The Act established that the federal government would only negotiate secession if the referendum question and results met a standard of clarity, ensuring that secession could not be pursued unilaterally or ambiguously. In contrast, Quebec's government enacted its own legislation asserting its right to self-determination, creating a legal and political standoff (Kohen, 2006). Since the passage of the Clarity Act, no further referendums have taken place, though the possibility of a future referendum remains a persistent subject of debate. Other regions, such as Catalonia in Spain, have cited Canada's approach as a potential model for managing secessionist movements. For example, Catalan pro-independence leaders have referenced the Canadian Clarity Act, which outlines the legal framework for secession, as a possible template for their own aspirations (Politika & Spolecnost, 2018).

The Quebec case is pivotal because it illustrates the complexities of secession in democratic states. While Quebec's referendums and ongoing political advocacy are expressions of its right to self-determination, its case also highlights the legal and constitutional barriers to secession, particularly the requirement for negotiation and constitutional amendment rather than unilateral withdrawal. The broader significance of Quebec's experience lies in its legal and political implications for other secessionist movements worldwide, raising questions about the role of constitutional law in managing territorial disputes and the limits of international legal recognition for new states.

This thesis seeks to address the legal and constitutional challenges surrounding secession and self-determination, particularly within the context of Quebec's historical and ongoing quest for independence. It explores how international and domestic legal frameworks interact and sometimes conflict in secessionist cases, evaluating the specific legal arguments and precedents relevant to Quebec. The work is divided into three main parts, each corresponding to a chapter. The first two chapters focus on theoretical and methodological foundations, analysing secession and self-determination from both legal and philosophical perspectives. The third chapter presents the case study of Quebec, using the IRAC method (Issue, Rule, Application, Conclusion), a structured legal analysis framework that

systematically evaluates Quebec's secessionist movement through legal principles, judicial rulings, and political realities.

The first chapter is dedicated to provide a comprehensive understanding of secession. It unfolds in a structured manner, beginning with an exploration of the notion of secession, followed by its classification, an analysis of its legal dimensions, and finally, its interconnection with other principles of international law.

The first section introduces the concept of secession, defining it as the process through which a group or region seeks to separate from an existing state to form a new independent state. It delves into the various theoretical justifications for secession, providing a foundational understanding of the moral and philosophical arguments that support the right to secede. The discussion includes key perspectives on self-determination, nationalism, and the conditions under which secession is considered legitimate.

Next, the chapter classifies different types of secessionist movements. It distinguishes between unilateral secession, where a region unilaterally declares independence, and negotiated secession, where the process is mutually agreed upon by the seceding entity and the parent state. This section also explores distinctions based on motivations for secession, such as ethnic, cultural, economic, and political factors. By categorising secessionist movements, the chapter provides a clearer framework for understanding the diversity and complexity of secessionist claims.

The third section analyses secession from a legal perspective, examining how international law addresses the issue. It traces the evolution of secession within international law, focusing on the principle of self-determination and its application in the context of international law, particularly the intersection between territorial integrity and self-determination. The discussion includes an overview of significant legal cases, treaties, and international norms that have shaped the legal framework surrounding secession. Additionally, it considers the role of constitutional law in accommodating or restricting the right to secede within different states.

The final section explores the interconnection between secession and other fundamental principles of international law, particularly self-determination and territorial integrity. It investigates how these principles interact and sometimes conflict in the context of secessionist movements. The section discusses the balance between respecting a group's right to self-determination and maintaining the territorial integrity of existing states. It also examines the implications of these interactions for international stability and the legal recognition of new states.

The second chapter provides an in-depth exploration of the right to self-determination, tracing its historical development and examining its legal and political dimensions. This analysis aims to offer a detailed understanding of how self-determination has evolved and its significance in shaping modern international law and geopolitical dynamics.

First, it begins by defining self-determination as the right of a people to determine their political status and pursue their economic, social, and cultural development. It explores the theoretical foundations of self-determination, examining the philosophical and moral arguments that support this principle. The discussion highlights key thinkers and theories that have shaped the concept, including its roots in nationalism and democratic theory. By clarifying the notion of self-determination, this section sets the stage for a deeper exploration of its practical implications.

Next, the chapter traces the historical evolution of the right to self-determination, focusing on its rise as a legal and political principle during the 20th century. It examines its emergence in the context of decolonisation after World War I and especially following World War II, when self-determination was enshrined in key international documents like the United Nations Charter and the International Covenant on Civil and Political Rights (ICCPR). The chapter highlights pivotal moments, such as the independence movements in Africa and Asia, the dissolution of the Soviet Union and Yugoslavia, and more recent cases like South Sudan. This section explores how self-determination has facilitated the dissolution of empires, the creation of new states, and the redrawing of international borders, while also addressing the challenges it poses in contemporary geopolitical conflicts, such as those in Catalonia and Kosovo.

The final section analyses the legal dimensions of self-determination, focusing on how international law addresses this right. It examines significant legal instruments and cases that have defined and interpreted self-determination, including treaties, conventions, and rulings by international courts. This section explores the relationship between self-determination and other principles of international law, such as territorial integrity and sovereignty. It also considers the practical challenges and controversies that arise in the legal recognition and implementation of self-determination, particularly in cases of contested or unilateral declarations of independence.

The third chapter is dedicated to an in-depth analysis of Quebec's quest for self-determination and its unique position within the Canadian Federation. It traces the historical, political, and legal dimensions of Quebec's nationalist movement, examining key events and legal decisions that have shaped its status. This section provides a historical overview of the

Canadian Federation, starting from its colonial past to its constitutional foundation. It explores the process of confederation in 1867 and the factors that led to the unification of the Canadian provinces. The discussion highlights the historical context of Quebec's entry into the Federation and the initial agreements and compromises made to accommodate its distinct identity, language, and legal system.

Next, the chapter examines Quebec's position within the Canadian legal framework. It discusses the unique status of Quebec, including its civil law tradition in a predominantly common law country and the protection of its linguistic and cultural rights. This section delves into the Canadian Reference of Canada's Supreme Court concerning Quebec's right to unilaterally secede. It analyses the Court's findings and their implications for Quebec's nationalist aspirations and the broader legal principles of self-determination and secession. This section traces the creation and rise of the *Parti Québécois*, exploring its significance in Quebec's political scene. It examines the party's appeal to Quebec voters, its performance in provincial elections, and its role in promoting the cause of Quebec sovereignty. The discussion includes an analysis of key election results, the party's strategic platforms, and its influence on Quebec's political landscape. The chapter reviews the various referendums held by Quebecers, focusing on the political and legal challenges associated with them. It examines the outcomes of the 1980 and 1995 referendums on Quebec sovereignty, the campaigns leading up to these votes, and the subsequent legal and political ramifications. This section also addresses the applicability of civil law provisions in the context of Quebec's referendums and the protection of rights under both civil and common law systems, in conjunction with relevant international legal provisions.

The final section highlights the importance of the Quebec case in the broader discourse on self-determination and secession. It outlines the solutions and insights aimed at in this chapter, proposing ways to reconcile Quebec's aspirations with the Canadian constitutional framework. This section suggests potential legal and political strategies for addressing the ongoing tensions between Quebec's desire for greater autonomy and the need for national unity.

By integrating perspectives from law, political science, and history, this thesis aims to provide a comprehensive understanding of secession and self-determination, shedding light on the legal complexities and political challenges of territorial independence movements in democratic societies. Unlike many existing studies that focus solely on legal or political aspects, this research offers a multidisciplinary approach that bridges constitutional, historical precedent, and contemporary political dynamics.

The case of Quebec is particularly significant because Canada provides one of the most well-defined legal frameworks for addressing secessionist claims, as exemplified by the Supreme Court's *Reference re Secession of Quebec* (1998) and the subsequent Clarity Act (2000). Unlike other secessionist movements, such as those in Catalonia and Scotland, Quebec's case uniquely combines constitutional legal rulings, federalist principles, and democratic negotiation processes. By examining this case, the thesis not only contributes to the academic discourse on self-determination and secession but also provides valuable insights for other democratic states facing similar challenges.

Key words: Secession, Self-Determination, Constitutional law, International Law, Quebecois Independence.

Theory and Literature Review

Scholars have developed diverse perspectives on secession and self-determination, engaging with its legal, political, and ethical dimensions. Understanding these issues requires an examination of the theoretical frameworks proposed by leading thinkers such as Allen Buchanan, Margaret Moore, Wayne Norman, Lea Brilmayer, David Raic, Christopher Wellman, Michael Hechter, and Susanna Mancini. The academic debate on secession revolves around two competing theories: Primary Right Theories, which argue for an inherent right to secession, and Remedial Right Theories, which justify secession only as a response to injustices. Beyond these moral and philosophical arguments, scholars also explore the practical challenges of self-determination, including its legal constraints, political implications, and the recognition of new states under international law.

The Primary Right Theories assert that secession is a fundamental right of certain groups, independent of injustices or external circumstances. Within this framework, two dominant perspectives emerge: nationalist theories and democratic theories. Nationalist theorists emphasise that culturally or ethnically distinct groups have an inherent right to self-determination, arguing that a shared identity, language, and history provide moral and legal grounds for secession. Nationalism, when inclusive, fosters collective identity and individual self-worth, making secession a legitimate expression of a group's aspirations (Radan, 2008). In contrast, democratic theorists, such as Christopher Wellman (2005), contend that secession should be based on the voluntary association of individuals within a territorially concentrated group, rather than on ethnic or historical claims alone. Wellman argues that if a group democratically chooses to form an independent state and is capable of fulfilling its obligations

under international law, then secession should be considered a legitimate political choice. This perspective prioritises political autonomy, self-governance, and democratic legitimacy over historical grievances or cultural identity. However, while the Primary Right Theories provide a strong moral foundation for secessionist claims, critics argue that they fail to account for the potential instability and territorial fragmentation that could result from granting every ethnic or political group an unconditional right to independence (Raz, 1990). If secession were universally recognised without legal constraints, multinational states could face continuous political fragmentation, internal conflicts, and disputed territorial claims, making governance increasingly difficult.

In contrast to these views, the Remedial Right Theories argue that secession is not an inherent right but rather a corrective measure that can only be justified in response to specific injustices. Allen Buchanan (1991) is a key advocate of this approach, emphasising that secession is morally justifiable only under circumstances where a group has suffered persistent discrimination, political marginalisation, or systematic violations of their rights. He identifies several conditions under which secession may be justified, including cases where a state has denied a minority population fair political representation, violated human rights, or historically annexed a territory without democratic consent. Margaret Moore (1998) further refines this perspective, arguing that any secessionist claim must be carefully evaluated to ensure that it does not infringe upon the rights of others within the political community. She stresses the importance of democratic processes, human rights protections, and negotiated settlements to prevent conflicts from escalating. Similarly, Lea Brilmayer (1991) contends that secession should be legally permissible when it corrects historical injustices, such as forced territorial acquisitions or annexations that violated international norms. However, she also warns of the dangers of allowing secessionist movements to be manipulated for geopolitical or economic gain, rather than genuine self-determination.

Unlike Primary Right Theories, the Remedial Right Approach has been more widely reflected in modern international law, particularly in cases such as Kosovo, where external intervention and legal justification for secession were based on humanitarian concerns and systematic repression. However, this theory faces challenges in defining what constitutes a sufficient injustice to justify secession. Governments and international bodies frequently have conflicting interpretations of oppression, discrimination, and political exclusion, leading to inconsistent legal applications in different cases (Brilmayer, 2000). The Kosovo precedent, for instance, was widely recognised in Western states, while other secessionist movements, such

as Catalonia in Spain, have faced legal opposition despite invoking similar arguments for self-determination.

Beyond the moral and philosophical justifications for secession, scholars have also examined the legal and political dimensions of self-determination, particularly in relation to state sovereignty and international law. David Raic (2002) explores how self-determination functions both as a legal right and a guiding principle in state formation, arguing that while international law recognises self-determination, it does not provide an unconditional right to secede. Instead, international legal norms prioritise territorial integrity, particularly in democratic states where internal self-determination, such as autonomy or federalism, serves as an alternative to outright secession. Wayne Norman (1998) further highlights the practical challenges of accommodating secessionist demands within multinational states. He suggests that federalism, power-sharing arrangements, and negotiated settlements can often provide more effective solutions than secession, particularly in diverse societies with ethnic or linguistic minorities.

Other scholars, such as Susanna Mancini (2012), emphasise the legal contradictions surrounding secession. She notes that while international law generally prohibits unilateral secession, successful secessionist movements often gain international recognition regardless of legal barriers. This paradox illustrates that state sovereignty remains the dominant principle in international relations, yet political realities often override legal constraints when a secessionist movement achieves *de facto* independence. Similarly, Michael Hechter (1995) explores the socioeconomic drivers of nationalist movements, demonstrating that secessionist aspirations are often fuelled by economic inequalities, political exclusion, and disparities in resource distribution. His research suggests that addressing these underlying grievances through regional autonomy or economic decentralisation can mitigate separatist tendencies without requiring full independence.

Recent scholarship increasingly frames self-determination as a legal construct within international law, focusing on the role of political legitimacy and the evolving recognition of national identity. Scholars such as Martinico, Palermo, and Delledonne (2021) analyse how nationalist rhetoric influences interstate relations and legal frameworks, arguing that self-determination is not solely about territorial claims but also about political autonomy and governance structures. These scholars emphasise that self-determination should be understood as a dynamic legal principle that evolves alongside changing political, economic, and social conditions.

The literature on secession and self-determination ultimately presents a complex debate between those who advocate for an inherent right to secede and those who argue that secession should be reserved as a remedy for extreme injustice. While Primary Right Theories emphasise the ideals of democracy, voluntary association, and national identity, Remedial Right Theories prioritise justice, human rights, and the prevention of political oppression. Legal scholars further contribute to this debate by exploring how international law balances self-determination with state sovereignty, with many concluding that a clearer legal framework is necessary to regulate secessionist claims. Political theorists, meanwhile, highlight that secession is rarely a purely legal matter; rather, it is deeply influenced by historical, economic, and geopolitical factors.

In contemporary international law, self-determination remains a contested concept, with no universally accepted criteria for recognising new states. This ongoing ambiguity underscores the need for future research to develop more consistent legal frameworks that can guide secessionist claims in democratic states, ensuring that disputes over self-determination are resolved in accordance with the principles of justice, democracy, and stability.

All the above-mentioned theories have shown their validity in investigating the complex issues of secessionism, creating a solid and rich academic discourse on the topic. However, this research employs the Remedial Right Theory as the primary theoretical landscape for evaluating the case of Quebec. While both Primary Right and Remedial Right theories provide valuable insights into the justification of secession, the Remedial Right approach offers a more legally grounded and internationally relevant background for analysing self-determination within democratic states.

Quebec's case is particularly compelling because it does not fit neatly into the Primary Right framework, which emphasises secession as an inherent right of national and cultural groups. While Quebec has a distinct linguistic and cultural identity, Canada's constitutional structure, democratic governance, and legal protections for minority rights make it difficult to argue that Quebecers face systematic oppression or political exclusion. As a result, a secessionist claim based solely on a fundamental right to independence lacks the urgency or moral weight seen in cases like Kosovo, where severe human rights violations justifies external intervention.

The Remedial Right framework, championed by scholars like Allen Buchanan and Margaret Moore, is more applicable to Quebec's situation because it focuses on whether secession is justified as a response to injustices rather than as an unconditional right. This

perspective allows for a nuanced evaluation of whether Quebec's grievances, such as concerns over linguistic protection, economic disparities, or political representation, constitute sufficient grounds for secession under international law. It also aligns with the legal reasoning of the Supreme Court of Canada's *Reference re Secession of Quebec* (1998), which rejected an absolute right to secession but acknowledged that a clear democratic mandate for independence would require negotiations within the constitutional and international perspectives.

By adopting the Remedial Right theory, this work aims to critically assess the Quebec's claims to self-determination through a legal and constitutional lens, rather solely through nationalist or democratic justifications. This approach contributes to academic discourse by demonstrating how secessionist claims in stable democracies should be evaluated through principles of justice, fairness and legal legitimacy, rather than relying on abstract moral right to independence.

Methodology

This thesis employs a comprehensive methodological approach to explore the intricate legal dimensions of secession and self-determination, using Quebec as a case study. The methodology is designed to ensure a rigorous, structured analysis of legal principles, constitutional frameworks, and international legal instruments that govern secessionist movements. To achieve this, the research incorporates qualitative legal analysis, utilising primary and secondary legal sources, alongside a case study methodology that examines the historical and legal context of Quebec's aspirations for independence.

The research design is predominantly qualitative, focusing on document analysis as the primary method for gathering data. This involves a detailed examination of legal documents, court decisions, international treaties, and scholarly works to assess how legal precedents have shaped the discourse on secession. The case study methodology is particularly well-suited for this research, as it allows for an in-depth investigation of a specific instance of secession within a structured legal framework. By closely analysing Quebec's legal status, Supreme Court rulings, and constitutional provisions, the thesis aims to provide a thorough understanding of how legal norms and political realities intersect in self-determination disputes.

A key analytical tool employed in this thesis is the IRAC method (Issue, Rule, Application, Conclusion), which is widely used in legal reasoning and case analysis. This structured approach facilitates a systematic dissection of legal questions, ensuring clarity and consistency in evaluating Quebec's secessionist movement. The IRAC method has been

recognised in legal scholarship as an effective framework for analysing complex legal issues, as demonstrated in works by William Burnham (2006) in *Legal Analysis and Writing*, G. Edward White (1985) in his historical legal studies, and Katherine A. Darmer (2008) in her discussions on legal writing pedagogy. These scholars emphasise the importance of structured legal analysis, reinforcing the validity of IRAC in examining the legal intricacies of secession and self-determination.

The first step in the IRAC method involves identifying the key legal issues surrounding Quebec's pursuit of independence. This step ensures that the analysis remains focused and relevant, particularly in assessing whether unilateral secession is legally permissible under Canadian constitutional law and international legal frameworks. Identifying these legal questions provides a foundation for evaluating how Quebec's secessionist movement interacts with broader principles of sovereignty, self-determination, and territorial integrity.

Following issue identification, the next step involves outlining the applicable legal rules governing secession. This requires a comprehensive review of Canadian constitutional provisions, Supreme Court rulings, and international legal instruments that address the legality of secession. Key documents examined include the Canadian Constitution, the 1998 Supreme Court *Reference Re Secession of Quebec*, and relevant international agreements such as the UN Charter and the ICCPR. These legal sources establish the framework for evaluating Quebec's status within Canada and its potential right to secede under international law.

The third step, application, entails analysing how these legal rules interact with the specific circumstances of Quebec's secessionist movement. This involves a critical evaluation of the Supreme Court's reasoning in *Reference Re Secession of Quebec*, the political and legal precedents set by the Clarity Act (2000), and broader international legal principles on self-determination. The application phase assesses whether Quebec meets the legal thresholds for secession, considering both the primary and remedial right theories of self-determination.

Finally, the conclusion step synthesises the findings by drawing well-supported conclusions about the legality, legitimacy, and broader implications of Quebec's independence movement. By integrating the legal principles, court rulings, and international norms examined in the previous steps, the conclusion provides a coherent assessment of whether Quebec's secession could be legally justified.

In sum, this methodological framework offers a structured, rigorous approach to analysing the legal complexities of secession and self-determination. By combining comparative legal analysis with the IRAC method, this thesis ensures a clear, logical, and comprehensive examination of Quebec's historical and ongoing quest for independence within

both Canadian and international legal frameworks. This approach not only provides an in-depth case study of Quebec but also contributes to broader legal discussions on the governance of secessionist claims in democratic states.

Summary of the Case

Chapter three provides an in-depth examination of Quebec's secessionist movement, analysing its historical, political, and constitutional significance within the broader global context of self-determination and secessionist movements. While the push for secession in Quebec has deep historical roots, this chapter focuses primarily on the contemporary political and constitutional discourse surrounding Quebec's quest for independence, particularly in light of Canada's evolving federal system and legal framework.

Quebec's secessionist aspirations stem from its historical ties to the British Crown, a relationship that many Quebecers perceive as incompatible with their distinct cultural, linguistic, and historical identity. Within Canada's constitutional monarchy, Quebec, like other provinces, operates under the Crown in Right of Quebec, a structure embedded in the broader framework of the Canadian Federation. Although the Crown's role is often viewed as ceremonial, it still holds constitutional significance, with executive authority exercised by the Queen or her representative in Quebec, the Lieutenant Governor. For many advocates of Quebec's independence, this symbolic and institutional connection to the British monarchy is seen as an obstacle to full sovereignty, reinforcing Quebec's historical subordination rather than its distinct nationhood. Consequently, it is often referred to in political discourse as the "English Crown" or the "British Monarchy", rather than as an institution with legitimate ties to Quebec's unique governance (Brouillet, 2017).

Despite its longstanding history under British rule, Quebec has maintained a distinct cultural and legal identity, recognised as such within the constitutional framework of Canada. However, its attempts to achieve independence through referenda in 1980 and 1995 ultimately failed, demonstrating that a unilateral declaration of independence was neither politically viable nor legally enforceable. Quebec's decision to refrain from declaring independence unilaterally left its aspirations for sovereignty contingent upon national and international recognition. At the same time, Quebec's legal system, which blends elements of common law and civil law, as well as its broad autonomy within Canada, complicates its justification for secession under remedial right theories of self-determination. In contrast to other secessionist movements rooted in human rights violations or systemic oppression, Quebec's situation does not meet the threshold for remedial secession, as its linguistic and cultural rights are

constitutionally protected, and there is no evidence of fundamental human rights violations by the Canadian government.

Within Canada's federalist system, Quebec enjoys significant protections for its linguistic, cultural, and religious rights, enshrined in the Canadian Constitution and reinforced through various legislative measures. Although Quebec's cultural and economic orientation is largely North American, it maintains a ceremonial connection to the Crown, which continues to symbolise its historical ties to Canada's European origins. However, Canada's federalist approach to governance has proven effective in mitigating secessionist threats, particularly through constitutional reforms and landmark Supreme Court decisions that have provided greater clarity on the legal and political parameters of secession (Radan, 1998).

Over the past few decades, Quebec's secessionist movement has declined significantly, largely due to constitutional reforms, Supreme Court rulings, and shifting public sentiment. The Supreme Court of Canada's 1998 ruling in *Reference Re Secession of Quebec* established that Quebec does not have a unilateral right to secede under Canadian or international law. However, the Court ruled that a clear referendum result in favour of independence would obligate the Canadian government to engage in constitutional negotiations. This legal framework, combined with the passage of the Clarity Act (2000), which set strict conditions for any future referendum on independence, has played a decisive role in shaping Quebec's relationship with Canada.

Younger generations of Quebecers have shown less interest in sovereignty, prioritising economic stability, social development, and political pragmatism over independence. Public opinion surveys consistently indicate that majority of Quebecers now oppose secession, favouring continued integration within Canada's federal system rather than a break from it. These shifting attitudes reflect a broader trend toward unity, suggesting that the once-strong secessionist sentiment has gradually given way to a more pragmatic engagement with federalism.

Canada's federalist model, reinforced by Supreme Court jurisprudence, has played a crucial role in preserving national unity while accommodating regional diversity. The constitutional amendments introduced in 1982, including the Patriation Act and the Canadian Charter of Rights and Freedoms, have further strengthened Canada's governance model by balancing provincial autonomy with national cohesion. Under this system, the federal government retains extensive authority in areas such as international trade, defence, and taxation, while provinces, including Quebec, exercise jurisdiction over education, immigration policies, and taxation within their own territories. This distribution of powers has not only

protected Quebec's distinct cultural and linguistic identity but also ensured that its political and economic interests remain integrated within the Canadian framework.

In conclusion, Quebec's position within Canada exemplifies the adaptability and resilience of Canada's federalist system, which has successfully balanced regional identities with national unity. While Quebec's secessionist aspirations have historically posed significant constitutional and political challenges, the Canadian legal system has demonstrated its capacity to evolve in response to regional demands, ensuring that the country remains unified despite its cultural and linguistic diversity. As constitutional reforms and judicial decisions continue to shape the legal and political landscape, Canada's federalist model remains a compelling example of how democratic governance can accommodate regional autonomy while maintaining national stability.

Chapter 1. The Concept of Secession

1.1 The Origins of the Notion of Secession

Secession, as described by Mancini (2012), is a political concept with both revolutionary and conservative implications. It simultaneously challenges state sovereignty while reinforcing the traditional notion of the nation-state. This dual nature makes secession a highly contested issue in legal and political discourse, particularly within the framework of the Westphalian model of state formation, which has shaped the modern international system. The Peace of Westphalia (1648) established the principle of state sovereignty, recognising states as independent entities with clearly defined territorial boundaries. Over time, this principle became closely linked to the idea of the nation-state, a political structure based on shared ethnic identity, language, religion, and a collective vision of prosperity.

The nation-state, while often idealised as a cohesive political entity, has historically exhibited hegemonic tendencies, particularly when governed by a dominant ethnic or political group. Despite these tendencies, sovereignty remains a defining characteristic of the state, representing its supreme authority within a specific territory (Miller, 1995). Sovereignty encompasses three dimensions: the entity that holds sovereign power, the absolute nature of that authority, and the ways in which sovereignty is exercised both internally and externally. The concept of sovereignty is closely tied to territorial integrity, a principle that has been reinforced by two major historical developments. The first was the Westphalian settlement, which formalised the recognition of states as self-governing political units free from external intervention. The second was the post-World War II era, which introduced legal frameworks

aimed at protecting human rights and promoting self-determination. These legal developments gave rise to increasing territorial claims by ethnic and cultural minorities, creating tensions between established state sovereignty and the aspirations of minority groups seeking autonomy or independence (Gellner, 1983).

Given these complexities, various theories of secession have emerged to explain when and how a group may legitimately secede from an existing state. These theories are broadly categorised into Primary Right Theories and Remedial Right Theories, each offering distinct perspectives on the legitimacy of secessionist claims.

The Primary Right Theories assert that certain groups have an inherent right to secede, regardless of whether they have suffered political injustices or repression. These theories are often divided into nationalist theories and democratic theories. The nationalist perspective holds that nations, defined by shared cultural, linguistic, or ethnic identity, have a fundamental right to self-determination and thus the right to form their own sovereign states (Wellman, 2005). Buchanan (1991) argues that if a group constitutes a distinct nation, it possesses an intrinsic moral and political right to independence. Similarly, John Stuart Mill (1991) contends that a population with strong cultural and historical ties should govern itself, as political unity is most effective when rooted in a shared national identity.

A different but related perspective is found in democratic theories of secession, which emphasise that a people or region has the right to secede if they voluntarily choose to do so through democratic processes. Christopher Wellman (2005) argues that if a territorially concentrated population votes in favour of secession, and if the new state is capable of fulfilling its political and economic obligations, then its independence should be recognised. This perspective underscores the importance of democratic legitimacy, suggesting that plebiscites and referenda are the most effective means of determining a region's right to self-determination. However, democratic theories face significant challenges, particularly when secessionist referenda fail to include other affected populations in the decision-making process. Unilateral plebiscites can create new injustices, leading to political instability and further fragmentation.

In contrast to Primary Right Theories, the Remedial Right Theories take a conditional approach to secession. According to Buchanan (1997), secession is not an inherent right but rather a remedy for severe injustices. He argues that a group may justify secession only under specific conditions, such as political oppression, systematic discrimination, or historical annexation without democratic consent. This theory aligns with the principle that self-

determination should not automatically lead to state fragmentation but should serve as a last resort when a government fails to protect the fundamental rights of a particular group.

While Remedial Right Theories provide a strong ethical foundation for secessionist claims based on injustice, they also face practical challenges. One of the primary difficulties is determining what constitutes a "sufficient injustice" to justify secession. Governments and international bodies often have conflicting interpretations of oppression and discrimination, making it difficult to establish universal legal standards. Additionally, while this theory is widely reflected in international law, it has been applied inconsistently in practice. For instance, Kosovo's unilateral declaration of independence was widely recognised in the West due to humanitarian concerns, while similar secessionist movements, such as Catalonia's independence bid from Spain, have faced legal opposition despite invoking comparable arguments of self-determination.

Given the complex implications of secession, Buchanan (1997) proposes a framework for evaluating the legitimacy of secessionist claims. This framework is based on several key criteria, including realism, legal consistency, moral justification, and political incentives. According to Buchanan (1997), any secessionist movement must demonstrate that independence would lead to a functioning, stable state, comply with international legal principles, and avoid creating new injustices or territorial disputes. Furthermore, he warns that recognising secessionist claims too readily could create perverse incentives, encouraging groups to manipulate self-determination arguments for political or economic gain.

1.2. Types and Classification of Secession

Secession is a complex process in international relations, categorised into three historical eras: before 1815, from 1810 to 1945, and post-1945. Each period is characterised by distinct patterns of secession, ranging from successful to unsuccessful attempts, influenced by political, cultural, and legal factors. Understanding secession requires examining the historical context, the concept of sovereignty, and the changing attitudes toward self-determination and territorial integrity.

Before 1815, international legitimacy was primarily grounded in the belief that states possessed inherent rights based on customary international law, often linked to hereditary monarchies (Fabry, 2010). In this period, sovereignty equated to legitimacy, and acts of secession were seen as challenges to established power. A notable example is the U.S. Declaration of Independence in 1776, which contested the legitimacy of the British monarchy.

However, after the Congress of Vienna in 1815, which aimed to restore stability in Europe following the Napoleonic Wars, there was an increase in the recognition of secessionist movements. By 1816, the international community comprised roughly 25 states, a number that grew significantly over the next century, reaching around 50 states by the 20th century (Pfirter, et al, 2006).

From 1810 to 1945, the era saw the first major wave of independence movements, particularly in Latin America. Many of these movements were not strictly secessionist but rather part of broader decolonisation efforts. For example, the independence struggles in the Spanish colonies across Latin America, such as the United Provinces of New Granada (1810), Venezuela (1811), and Mexico (1810-1821), were driven by a desire for self-determination rather than simply breaking away from an established state. The American Revolution of 1776 can similarly be viewed as an act of decolonisation, where colonies sought independence rather than seceding from the British Empire (Fabry, 2010).

These Latin American movements had mixed outcomes. While some regions succeeded in their quest for independence, like Colombia, Mexico, and Chile, others, like Venezuela, experienced setbacks as Spain briefly reasserted control. Recognition by other states played a crucial role in these independence movements. For instance, Britain was the first European power to recognise the independence of Latin American states, while Austria, Prussia, and Russia opposed this recognition, viewing it as a violation of Spain's sovereignty (Fabry, 2010). Nevertheless, the recognition of these newly independent states followed a broader pattern of acknowledging self-determination, which was reinforced in later independence movements.

The 19th century also saw new states emerge in Europe, where revolutions and uprisings led to secessions. The Belgian Revolution of 1830, for example, led to Belgium's independence from the Netherlands. Similarly, the decline of the Ottoman Empire in the Balkans resulted in secessions by Romania, Serbia, and Montenegro, often in the context of uprisings and foreign intervention (Fabry, 2010). The period also witnessed the rise of nationalism, which was closely tied to the emergence of new states seeking to assert their sovereignty and autonomy, such as the Greek War of Independence (1821-1830), where European powers intervened to support Greek secession from the Ottoman Empire (McKenna, 2010).

The interwar period, particularly during World War I, marked a significant turning point. As the war destabilised Europe, ethnic groups sought independence from the empires they were part of, leading to the emergence of new states. Poland, for example, regained its independence after being partitioned among various empires, while the Bolshevik Revolution

in Russia (1917) led to secessions by Ukraine, Finland, and several other regions. The post-World War I peace settlements, including the Paris Peace Conference of 1919, acknowledged the principle of self-determination, but this principle often collided with the territorial integrity of existing states, leading to border disputes and the creation of new states like Czechoslovakia and Yugoslavia (Raic, 2002).

The post-1945 era saw a shift in the dynamics of secession, with both successful and unsuccessful attempts across the globe. One of the most prominent examples of successful secession occurred in 1971 when East Pakistan declared independence from West Pakistan, forming Bangladesh. This secession was motivated by political, economic, and cultural discrimination, and it was supported by India, which intervened militarily to ensure East Pakistan's independence. The successful secession of Bangladesh was influenced by various factors, including the unique Bengali identity, widespread human rights abuses, and political marginalisation (Raic, 2002). However, this secession also raised legal questions about the use of force and the legitimacy of military intervention in secessionist movements.

Similarly, Kosovo's struggle for independence from Serbia in the 1990s mirrored Bangladesh's, with Kosovo's ethnic Albanian population seeking autonomy after years of political and economic marginalisation. Kosovo declared independence in 2008, despite Serbia's rejection, and received recognition from several countries, although it has not been fully recognised by the United Nations (Pazartzis & Photini, 2006). Kosovo's secession highlights the complexity of modern secession, where humanitarian concerns, ethnic tensions, and international interventions intertwine.

Other successful independence movements include East Timor's secession from Indonesia in 2002 and Eritrea's separation from Ethiopia in 1993. These cases share similarities with Kosovo and Bangladesh in that they were driven by long-standing grievances, including political oppression and ethnic conflicts, which ultimately led to international recognition. On the other hand, there have also been numerous unsuccessful secession attempts, such as Chechnya's declaration of independence from Russia in 1991, which was met with strong resistance from the Russian government, and Katanga's attempt to secede from the Congo in 1960, which was thwarted by UN intervention (Crawford, 1960).

In Africa, many secession movements have been unsuccessful due to a combination of internal and external factors. For example, Biafra's failed bid for independence from Nigeria in the 1960s and Somaliland's ongoing struggle for recognition highlight the challenges faced by secessionist movements in Africa, where borders were often drawn arbitrarily during colonialism. Similar struggles can be seen in regions like Tamil Eelam in Sri Lanka, Aceh in

Indonesia, and Mindanao in the Philippines, where local groups continue to fight for self-determination but have not achieved full independence or international recognition (Crawford, 2007).

In the modern era, the legality of secession remains a contentious issue in international law. While international law does not explicitly prohibit secession, it provides guidelines for determining whether such acts are legitimate. The key principles include the prohibition of foreign military intervention, the importance of referenda to assess local support, and the respect for territorial borders (Tancredi, 2006). Instances like Southern Rhodesia and Northern Cyprus, where secession was pursued unilaterally and without broad international support, illustrate the complexities of secession within the framework of international law.

Thus, secession movements have evolved significantly over time, shaped by historical, political, and legal contexts. While some secessions have been successful, others have been met with failure or non-recognition. The changing nature of international norms, particularly in the post-World War II era, reflects a growing recognition of self-determination as a fundamental principle, even as the challenges of territorial integrity and sovereignty persist in the global landscape. Ultimately, the success of secession is determined by a combination of legal, political, and military factors, as well as the international community's willingness to recognise new states.

1.3. Constitutional and Legal Perspectives on Secession

In legal discourse, the distinction between secession and the right to secede is key. Secession refers to the physical act of separating from an existing state to form a new independent state or join another, with the original state remaining intact, a primarily factual occurrence rather than a legal one (Watson, 2008). Since secession often involves internal conflict and challenges to state survival, it is generally seen as a factual matter, leading to the belief that international law remains neutral on domestic affairs (Tomuschat, 1993). On the other hand, the right to secede is a legal question, where international law might address the legality of such actions (Watson, 2008).

Advocates for unilateral secession argue two points: first, the absence of explicit international law prohibiting secession implies its permissibility; and second, states are obligated to recognise secession as a legitimate exercise of the right to self-determination. Critics contend that international law cannot universally forbid secession. While prohibitions

could prevent conflicts that undermine sovereignty and territorial integrity, such measures should target secessionist groups rather than host states.

Historically, the concept of secession and its link to constitutions has evolved significantly. Initially, the term "secedere," from Latin, simply meant "to separate" and was not necessarily tied to territorial boundaries. Ancient Rome, for instance, saw individual groups secede for political reasons, such as the Plebeians' secession in 494 BC. The modern political concept of secession, as an intentional act of separation from a larger political entity, was shaped significantly by Johannes Althusius (1643) in his work *Politica*, where he posited that secession was permissible even when authority had been delegated, an idea distinct from Hobbes' more centralised view.

In recent history, the American Civil War introduced a territorial element to secession, with debates over federal authority, states' rights, and sovereignty. The war's outcome still influences secession discussions today, particularly in liberal federations where incorporating a secession clause in constitutions remains controversial. Many federations avoid such clauses due to their potential strategic implications. For example, a central government may promise subunits or other states the option to secede in the future as part of an annexation deal, only to remove the option once control is consolidated, as seen with the Chinese Soviet Republic and the Soviet Union (Cassese, 1999).

Within federations, subunits might also employ the threat of secession to achieve short-term political leverage, as seen in the United States during the 1860s when some states advocated for temporary separation to secure better rights within the union (Sunstein, 2001). Although secession has rich historical and conceptual roots, its incorporation into modern constitutional frameworks remains fraught with complexity and controversy (Kymlicka, 2001).

The inclusion of a secession clause in a constitution presents both challenges and potential benefits, particularly in relation to democratic governance, national unity, and minority rights. While allowing subunits the right to secede could undermine democratic processes by incentivising non-negotiable demands, not having such provisions may give stronger subunits excessive bargaining power (Buchanan, 1991). Legal barriers to secession, if not addressed through lawful means, could also escalate tensions and lead to violence (Walter, 2006). A carefully crafted secession clause, however, could promote cooperation and compromise by establishing clear procedures for secession (Tierney, 2004). This approach would allow secessionist movements to consider the long-term implications of their decisions and encourage a more reasoned decision-making process.

However, secession clauses in constitutions also raise concerns about ethnic conflict and the potential marginalisation of minorities within newly formed states. Many secessionist movements seek to create states for subnational groups that are not ethnically homogeneous (Brilmayer, 1991). In Kosovo, for example, there are Serbian enclaves, and Quebec has significant Anglophone and indigenous populations (McRoberts, 2001). Secession in these cases could result in the marginalisation of these minorities in the newly formed state. Croatia's 1990 Constitution reflects this dilemma, acknowledging the right to self-determination for the Croatian nation while also recognising the inclusion of various nations and minorities (Caspersen, 2011).

The impact of secession and intra-state autonomy on minorities who remain "trapped" in the seceding unit must be considered carefully. While secession offers territorially concentrated groups political independence, alternative political arrangements, such as granting significant autonomy, can also address minority rights within multinational states (Kymlicka, 1998). For example, in Quebec and Flanders, linguistic territoriality has been implemented to protect cultural and linguistic rights, although this can sometimes marginalise individuals outside the dominant ethnic group (Gagnon & Tully, 2001).

In contrast, secession could provide greater visibility and recognition for trapped minorities within a sovereign state. This is particularly relevant in the European context, where states' recognition may depend on the protection of minority rights (Keating, 2001). The broader European integration framework may also counterbalance the risks of fragmentation if secession leads to the formation of mono-national states (Guibernau, 1999).

The debate surrounding secession also raises concerns about sovereignty, as embedding the right to secede in a constitution suggests that sub-state units hold some form of sovereignty, which challenges the traditional understanding of state sovereignty. Figures such as Senator John C. Calhoun in the 1860s and Lewis M. Stone argued for secession based on state sovereignty, viewing the union as a compact among states. These arguments were ultimately rejected by the U.S. Supreme Court in *Texas v. White* (1869), which affirmed the union as indivisible and perpetual, ruling that states could not unilaterally withdraw.

Contemporary scholarship on secession, such as that by Sanford Levinson (2017), further complicates the constitutional interpretation of secession. Levinson critiques the idea of an absolute constitutional framework and explores the tensions between federal and state sovereignty, suggesting that the question of secession remains a pertinent issue in American constitutional law.

In summary, the question of secession and its place in constitutional law involves a complex interplay of historical perspectives, legal precedents, and ongoing scholarly discussions. This highlights the enduring tensions between state sovereignty and the right of subnational groups to self-determination.

During the secession crisis in the former Yugoslavia, the UN Security Council treated the situation as an internal matter, due to a lack of clear international legal standards (Dahlitz, 2003). Although some states' constitutions previously allowed for secession without specific justification, many countries have since eliminated or amended provisions allowing for unqualified secession.

The morality and legality of secession have long been debated. The moral justification for secession is grounded in individual autonomy, a key principle in liberal democracies. This argument posits that respecting a group's moral right to self-determination safeguards individual autonomy, and thus, under certain conditions, a group has the moral right to secede. Critics, however, challenge this moral entitlement, arguing that secession threatens individual autonomy within dissenting factions, the sovereignty of the state, and the stability of multinational states. Advocates counter that secession should reflect majority preference, aiming to foster mutually beneficial relationships (Vaca & Artiga, 2021).

Legal objections to secession focus on regional stability. Advocates argue that recognising the right to secede could promote stability by providing marginalised groups a peaceful means of asserting their rights, while opponents fear that it could lead to fragmentation and instability. Proponents suggest that moral imperatives, similar to the process of decolonisation, justify recognising the right to secede, arguing that withholding this right perpetuates injustice.

1.4. Interconnection of Secession with the Principles of International Law

From a legal-philosophical standpoint, secession presents both conservative and revolutionary traits, which illustrate the intricate relationships between law, democracy, and territorial integrity. The revolutionary dimension of secession is apparent in the international context, where secession is generally viewed negatively. This perception arises from concerns that recognising a right to secede could undermine the territorial integrity of states, a fundamental tenet of international law. In a purely democratic context, secession can also be seen as revolutionary when it challenges established state borders and structures. On the other hand, the conservative nature of secession emerges when viewed from a state-centred perspective. From this angle, secession is more about preserving or adjusting existing state

structures rather than fundamentally reshaping them. It signifies a desire within current political frameworks to adapt boundaries or governance in response to internal pressures or grievances.

Understanding the dual nature of secession is crucial for assessing its impact on principles such as territorial integrity and the right to self-determination. To address these concerns, it is necessary to consider how secessionist movements view their right to secede and how this intersects with the concept of borders. Secession often challenges established borders, reflecting broader tensions within international legal frameworks.

As noted by Margiotta (2021), secessions reflect a crisis within the international community and its legal order. The rise of secessionist movements since the decolonisation period highlights this, as over 200 movements worldwide strive to redefine political boundaries. Yet, despite its disruptive potential, secession does not always involve redefining statehood or borders. Instead, secessionist movements typically aim to establish new states rather than challenge the broader notion of statehood itself. Consequently, while secession may seem revolutionary in terms of its impact on territorial integrity and political structures, it often operates within the established frameworks of state sovereignty and territorial boundaries. It serves as a form of internal politics rather than a full rejection of the state system, highlighting the complex and nuanced legal and philosophical challenges involved (Margiotta, 2021).

Regarding external sovereignty, which is a cornerstone of the international order, secession can be seen as deeply destabilising. It challenges the stability and preservation of the international system, which is grounded in the idea of state sovereignty. This viewpoint reflects the conservative defence of external sovereignty, which inherently denies the right to secede within the international legal framework. The fear is that recognising secession could erode external sovereignty, leading to a breakdown of state stability (Buchanan, 1997).

The global reluctance to accept secession arises from concerns that it may threaten the survival of the state system. Conversely, secession should also be analysed from an international perspective, as it both validates and challenges the existing state system. In systemic terms, secession performs a dual role: it seeks recognition from the international system while simultaneously challenging its integrity, reflecting ongoing tensions within international law.

The international community's concerns over the erosion of external sovereignty have led to a critical stance against border shifts and the creation of new states. If international law were to allow states to dissolve through recognition of the right to secede, it could transform law into a tool of revolution, undermining its traditional role of maintaining stability and order. As a result, secession is generally disapproved of in international discourse because it poses a

direct threat to the territorial integrity of states, which is fundamental to international law (Moore, 2001).

Secession challenges the principle of territorial integrity as an absolute norm in international law. By questioning the fixed nature of borders, secession brings territorial choice to the forefront, highlighting the rigidity that hinders the development of new legal frameworks capable of accommodating territorial changes. It introduces a dynamic element, suggesting that territorial unity can be modified by a distinct group through specific procedures, irrespective of the original geopolitical unity, thereby defying the principle of preserving territorial integrity.

The revolutionary aspect of secession in the international context underscores its complexity. Secession is not merely an act of separation; it operates within and against the legal and political systems. It challenges established norms, positioning itself as an uncertain and disruptive right within the international legal order. Despite its claim for recognition, secession often exists at the margins of international law, challenging the traditional concepts of state perpetuity and sovereignty.

Unlike secession, self-determination has traditionally been associated with the principle of territorial integrity. Historically, it has not involved creating new borders but has coexisted with the idea of preserving existing territorial boundaries. The right to self-determination was particularly evident during the decolonisation process, where border adjustments were carefully restrained to ensure stability and prevent state fragmentation. As a result, while self-determination is often invoked as a justification for secession, it has not been seen as inherently supporting border changes. Instead, it has been interpreted within a framework focused on maintaining territorial integrity and stability, highlighting the balance needed between respecting the aspirations of peoples and safeguarding established borders (Paust, 1980).

In essence, while self-determination has been used to legitimise secession, it has not historically endorsed the unilateral alteration of borders. Instead, it has been interpreted as empowering peoples to choose their governance without redrawing borders, aiming to prevent the fragmentation of states and ensuring stability within the existing international order (Lung-Chu, 1981).

Self-determination focuses on the substance of political action rather than its territorial boundaries. It allows for political activity within existing borders without altering them. Unlike secession, which seeks to change borders, self-determination empowers people to reject foreign rule within their pre-established geopolitical units, which were often defined during the colonial era. The "people" entitled to self-determination are thus those inhabiting borders that

were set by colonial powers, which were not always reflective of the communities living within them (Peller, 1992).

There is an inherent gap between the concepts of the state and its people. This gap is characterised by the divergence between individuals who seek freedom and nationhood and the state as a community defined by certain ascriptive features. Secession heightens this gap, challenging established legal norms. In this space between state and people, demands for separation acquire meaning, highlighting the potential of secession to question the assumption that the state and nation are inseparable entities (Peter, 2016). By attempting to disrupt this unity, secession underscores the limits of the idea that state and people are one and the same. It challenges the assumption that the alignment of nation, people, and state within a defined territory is a given, placing the question of who exercises self-determination, and how their identity is defined, at the forefront.

Chapter 2. The Right to Self-determination

2.1. Theoretical Underpinnings of Self-determination

The concept of self-determination emerged in the aftermath of World War I, following the collapse of empires such as the Austro-Hungarian and Ottoman empires, which led to the formation of new states. During this period, global leaders began advocating for the right of national people, groups united by shared ethnicity, language, culture, and religion, to independently determine their political destiny. This right enabled these groups to choose their political affiliations and status within the international community (Cassese, 1999). Initially, self-determination was not considered a tool for decolonisation, but over time, it was extended to colonised peoples. By the 1960s, it became widely accepted that oppressed, colonised groups should have the same rights to determine their political and sovereign status as other national groups. This evolution marked a significant shift in international norms and contributed to the decolonisation wave that took place across the globe during that era (Kelly, 2010). The UN General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples marked the moment when self-determination became a principle capable of creating legal rights, with its moral foundation rooted in the assertion that all people possess the inherent right to shape their own destiny (Tomuschat, 2006).

Self-determination, which originated in the decolonisation era, gradually extended beyond colonial contexts and became embedded in international law through significant instruments like the United Nations Charter and the Vienna Declaration and Programme of

Action (Sterio, 2013). Over time, its applicability broadened, applying universally to all peoples, regardless of their colonial history.

Despite its status as a fundamental right in international law, the implementation of self-determination remains contentious and complex. A key distinction must be made between internal and external self-determination. Internal self-determination pertains to mechanisms such as legislative and territorial autonomy, protection of cultural and constituent rights, and ensuring democratic participation within existing political structures. When effectively designed and implemented, these mechanisms can help manage internal conflicts within nation-states and mitigate demands for external self-determination (Summers, 2005).

Rather than conflicting with territorial integrity, self-determination offers a framework for reconciling state interests with human rights. It encompasses two central aspects: the ability to independently decide one's political status and the freedom from external control or domination. These definitions underline self-determination's dual nature as both a political and human rights principle in contemporary international discourse. The right to self-determination, enshrined in international law, profoundly influences the relationships between states and their constituent populations. Initially a principle for decolonisation, it has expanded to include a range of global political situations, underpinning claims for secession, demands for increased autonomy, and calls for greater democratic participation.

However, the practical implementation of self-determination is far from straightforward. It requires a careful balance between safeguarding human rights, preserving state interests, and upholding the global imperative of maintaining territorial integrity and sovereignty. Legal doctrines such as *uti possidetis juris*, which advocate for newly formed states to maintain inherited territorial boundaries from colonial powers to foster stability, impose constraints on the exercise of self-determination. As a result, much of the international and constitutional discourse surrounding self-determination revolves around the challenging task of reconciling state prerogatives with the rights of diverse people (Johnson, 1967).

The concept of self-determination has evolved significantly over time, particularly influenced by the identity of its claimants. Initially tied to the context of decolonisation, self-determination was framed as a right exclusive to nations, granting each nation the entitlement to form its own independent state. This 'principle of nationalities' played a critical role in the establishment of several states after World War I, including Austria, Estonia, and Yugoslavia (Summers, 2005).

The inclusion of self-determination in the United Nations Charter in 1945 marked a significant shift, broadening its scope to apply to all peoples, not just nations. This shift, from

the focus on “nations” to “people”, redefined the perception of who could benefit from international law and the right to self-determination. Further consolidation of this expanded scope occurred in 1966 with the adoption of the ICCPR and the ICESCR. These covenants affirmed the right of all peoples to self-determination, with Article 1 of both stating: "All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This solidified self-determination as a fundamental human right intrinsic to all peoples, critical for the realisation of other rights (UN Website, Treaty Collection).

However, the lack of a clear and universally accepted definition of 'people' under international law complicates the implementation of self-determination. The designation of a specific group as 'people' entitled to vote in referenda, as seen in cases such as Catalonia, Quebec, and Western Sahara, often sparks controversy. Traditionally, the exercise of self-determination has involved referendums on independence or secession, exemplified by events in Quebec (1980), Timor-Leste (1999), and Scotland (2014). According to UN General Assembly Resolution 1541 (XV) (1960), self-determination should emerge from the freely expressed will of the people of a territory through informed and democratic processes (Okoronkwo, 2002).

As the international human rights framework has evolved, the exercise of self-determination within existing nation-states has become increasingly important for minority groups. The ICCPR, for example, recognised this link, asserting that self-determination enables ethnic, religious, or linguistic minorities to protect their culture, religion, and language. Self-determination also supports fundamental democratic rights, including the right to vote, protest peacefully, associate freely, and participate politically (Cats-Baril, 2018).

2.2. Forms and Categories of Self-Determination

States have an active and affirmative responsibility to uphold the right to self-determination for peoples, as emphasised in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (UN General Assembly Resolution 2625, October 1970). This responsibility can be fulfilled through various mechanisms that support the realisation of self-determination. Self-determination can be broadly classified into two key components: internal and external self-determination.

Internal self-determination refers to the ability of peoples within an existing state to freely shape their economic, social, and cultural development without interference from

external forces. It also includes the right of citizens to engage in public affairs at various levels, ensuring their voices are heard in governance. Internal self-determination is instrumental in managing internal diversity, as it allows groups to preserve their unique cultural identities, protect their rights, and participate in decision-making processes.

Some scholars also view internal self-determination as encompassing internal secession, wherein regions or groups seek greater autonomy or territorial regrouping without fully separating from the state. This can manifest in arrangements for increased political autonomy or cultural self-governance, often within a larger framework of federalism or devolved powers.

The UN Committee on the Elimination of Racial Discrimination (CERD) has elaborated on internal self-determination in General Recommendation No. 21. According to CERD, internal self-determination involves various democratic practices that address multiculturalism, historical claims to sovereignty, self-governance, and provide conflict resolution mechanisms. Importantly, this recommendation clarifies that internal self-determination does not equate to secession. It highlights the benefits of autonomy for minorities even in cases where secession is not a legally feasible option (Cats-Baril, 2018).

Internal self-determination has proven effective in addressing regional or ethnic grievances and reducing the risk of secessionist movements. For instance, Indonesia's recognition of Aceh's right to self-determination in 2005 led to the implementation of special autonomy measures, effectively curbing separatist aspirations and promoting regional stability.

The realisation of internal self-determination is often linked to the protection of a range of fundamental rights under international law, including cultural rights, political participation, equality, and non-discrimination. This can be achieved through mechanisms such as self-government, federal systems, autonomous regions, and institutional reforms designed to represent minority concerns and foster pluralism (Orentlicher, 2003).

The UN Declaration on the Rights of Indigenous Peoples (2007) specifically formalizes a right to internal self-determination for indigenous peoples, as reflected in Article 3. This Declaration builds on protections outlined in the International Labour Organization (ILO) Convention 169, affirming indigenous peoples' rights to consultation, cultural preservation, and political participation. Implementation practices continue to evolve, covering aspects like autonomy arrangements, collective rights to language and culture, and the right to free, prior, and informed consent (Cats-Baril, 2018).

External self-determination, as defined by CERD, refers to the right of peoples to determine their political status and their position within the global community. This includes

the ability to pursue independence and establish sovereign states, particularly in contexts involving colonisation or oppression. External self-determination is grounded in the principle of equal rights and is especially associated with the liberation of peoples from colonial rule and the prohibition of subjugation, dominance, or exploitation by foreign powers (Carley, 2018).

Historically, self-determination was seen as a means of resisting colonialism and asserting the right to independence, as demonstrated by the independence movements in the Americas and Europe. The principle underpinned significant events, such as the American Revolution, the French Revolution, and the decolonisation process of the mid-20th century, where it became a central argument for the independence of colonised nations.

In the modern context, external self-determination continues to be relevant in cases of secession. While self-determination often involves peaceful independence referendums, such as those held in Canada (1995), Scotland (2014), and other regions, the international legal framework is cautious about endorsing secession as a universal right. Under international law, secession is typically not viewed as an automatic right for all peoples. However, it may be justified under certain extreme conditions, such as severe repression, genocide, or systemic human rights violations. These circumstances may provide a legal basis for secession as a recourse to protect human rights and restore political freedoms.

A key distinction must be made between the right to self-determination and the right to secession under international law. While self-determination is widely recognised as a universal right applicable to all peoples, the legal right to secession is not universally accepted. Instead, intermediate measures short of full independence may be explored, such as participation in international forums or regional organisations, which can serve to protect the interests of minority groups within the existing state structure.

The International Court of Justice's (ICJ) advisory opinion on Kosovo's declaration of independence in 2010 did not definitively establish the principle of secession through self-determination. Kosovo's pursuit of independence was not explicitly framed around self-determination grounds, and the ICJ's ruling refrained from addressing whether the declaration was an exercise of the right to self-determination (Jia, 2019).

2.3. Constitutional and Legal Frameworks for Self-determination

The concept of self-determination is a cornerstone of modern political thought, deeply intertwined with both nationalism and international law. Nationalism, with its focus on the sovereignty of nations, asserts that each distinct group, defined by shared language, culture, or history, has the inherent right to establish or maintain its own state. Yet, the irony lies in the

relationship between nationalism and the state: while nationalism advocates for the creation of states that represent specific nations, it simultaneously challenges the authority of existing states when those states do not reflect the desires of particular national groups. This paradox is compounded by the fact that international law, which governs the global order, is built upon the sovereignty of states and requires state recognition to be effective (Summers, 2005).

International law is predominantly state-centric, with its foundations grounded in state consent and practice. Treaties, conventions, and customary laws are based on the intentions and behaviours of states, and it is through states that legal norms are applied and enforced. In international forums such as the United Nations and the International Court of Justice, states are the primary actors, and the legitimacy of any treaty or agreement hinges on state approval (Dion, 2011). Thus, the framework of international law itself creates a complex interplay between states and nations, particularly when addressing the right to self-determination.

Self-determination is universally recognised as a fundamental right of people, but its application is far from straightforward. While nationalist movements seek to assert the right of nations to determine their political status independently, this right is ultimately defined and controlled by states. States, within the framework of international law, have the authority to define who qualifies as "the people" entitled to self-determination, which poses a significant challenge for nationalist movements. These movements often find themselves in a paradox: they call for autonomy or independence from existing states, yet they are reliant on the recognition of their identity and claims by those very states. This contradiction undermines the authenticity of self-determination, as it becomes tied to the recognition of states whose legitimacy may be contested by nationalists in the first place.

The tension between the nationalist desire for unfettered self-determination and the legal constraints imposed by international law underscores a central challenge: how to define "the people" who are entitled to self-determination. Scholars like Aureliu Cristescu (1981) have attempted to clarify this by suggesting that a "people" is a social entity with a distinct identity and a territorial connection, differentiating it from ethnic, religious, or linguistic minorities. However, the absence of a universally accepted definition of "people" in international law further complicates the issue. States continue to determine which groups are entitled to self-determination, leading to varied interpretations and applications of this right across different contexts (Aureliu, 1981).

The constitutional recognition of self-determination further complicates this issue, as it reflects the delicate balance states must strike between acknowledging national identity and maintaining territorial integrity. In some countries, self-determination is enshrined in their

constitutions as a core principle of governance. Bangladesh's 1972 Constitution, for instance, explicitly mentions self-determination in its preamble, asserting that the country's independence was achieved through the fulfilment of this right. Similarly, Ukraine's 1996 Constitution anchors the nation's statehood in the realisation of its self-determination. While such constitutional provisions reflect the commitment of states to self-determination, they are also indicative of the tension between state sovereignty and the aspirations of national groups.

A notable exception in the constitutional recognition of self-determination is Ethiopia, whose 1995 Constitution uniquely recognises the right to both internal and external self-determination. Article 39 grants the nations, nationalities, and peoples of Ethiopia the right to secession, making it one of the few legal frameworks to explicitly recognise the potential for secession under the principle of self-determination. While this recognition of self-determination is significant, its practical application is hindered by the highly centralised power structures within Ethiopia, which limit the autonomy of various regions despite the constitutional provisions (Dahlitz, 2003).

International law's framework for self-determination has also been shaped by geopolitical realities, such as the disintegration of the Soviet Union and Yugoslavia in the 1990s (Dahlitz, 2003). In these instances, self-determination played a pivotal role in the formation of new states, yet the process was fraught with challenges. Each case demanded tailored legal responses, often involving negotiations over the recognition of new states and the resolution of ethnic and territorial disputes. These examples underscore the challenges of applying self-determination in real-world contexts, where the principles of national identity, state sovereignty, and territorial integrity collide.

The complexity of self-determination is further illustrated by contemporary struggles, such as those in regions like Catalonia, Scotland, and Western Sahara, where nationalist aspirations for independence clash with the established legal norms of territorial integrity (Caspersen, 2012). These ongoing conflicts highlight the broader tension between nationalist movements seeking to assert their identity and the legal constraints imposed by international law, which generally favours the preservation of state borders (Buchanan, 2004).

In some cases, self-determination has served as a tool for peace-building and conflict resolution, particularly when negotiated agreements have led to the recognition of autonomy within larger state frameworks (Hannum, 1996). For example, in Bangladesh's Chittagong Hill Tracts, the signing of the CHT Peace Accord recognised the distinct identity of indigenous peoples and granted them greater autonomy, thus preventing the escalation of conflict (Chowdhury, 2018). Similar agreements in the Philippines have led to the creation of

autonomous regions, providing avenues for self-governance while preserving national unity (Bertrand, 2000).

The recognition of self-determination is also critical in the context of indigenous populations, whose rights to autonomy and cultural preservation are increasingly recognised in international legal frameworks. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 emphasised the right of indigenous peoples to self-determination, which has been implemented in various countries, such as Canada, Greenland, and Panama (United Nations, 2007). In Canada, more than 22 self-government agreements have been signed with indigenous communities, granting them varying degrees of autonomy. In Greenland, the right to self-determination has been progressively realised, as the territory gained home rule in 1979 and later full self-government in 2008, despite remaining part of the Kingdom of Denmark (Ackren, 2017).

However, self-determination does not always guarantee equitable outcomes for all members of a given group. In cases where self-determination is granted to specific ethnic or cultural communities, there is a risk that minorities within minorities, such as women or religious subgroups, may be excluded from decision-making processes (Kymlicka, 2007). This issue is exemplified in Nepal, where the Madheshi people's call for self-determination has sparked fears among some subgroups, particularly Muslim minorities, who worry about potential repression by the Madheshi majority (Gellner, 2016). Such concerns underscore the need for legal frameworks to not only recognise collective self-determination but also to ensure that individual rights are protected within these communities.

To address these challenges, liberal democratic approaches emphasise the importance of protecting both individual and collective rights. The creation of human rights commissions or similar bodies can help safeguard the rights of minorities within minority groups, ensuring that their voices are heard and their rights are protected. Furthermore, adopting a hierarchical legal approach that prioritises fundamental human rights over the right to self-governance can help balance the competing interests of national self-determination and individual freedoms (Buchanan, 2004).

The legal framework of self-determination is shaped by a complex interaction between nationalism, state sovereignty, and international law. While self-determination is a fundamental right, its application is often contingent upon state recognition and legal interpretation (Cassese, 1995). The challenge, therefore, lies in balancing the aspirations of national groups with the legal principles that govern state sovereignty and territorial integrity, while ensuring that the rights of individuals within these groups are protected. The evolving

nature of self-determination continues to test the limits of legal and political frameworks, highlighting the need for nuanced approaches that respect both collective identities and individual freedoms.

Chapter 3. The Quebec Case Study

3.1. Application of the IRAC model to the Quebec case

The case of Quebec's potential secession from Canada provides a unique and multifaceted intersection of the principles of secession and self-determination. The best way to analyse this case is by applying the IRAC method, which stands for Issue, Rule, Application, and Conclusion. This structure will allow to break down the legal, historical, and political elements of the Quebec case, creating a clear framework to explore the complexities surrounding Quebec's pursuit of independence. In this chapter, we will follow a logical progression of five key sections: an introduction to the Quebec case, identification of the primary issue, an outline of the applicable legal rules, an application of those rules to the facts of the case, and a conclusion that considers both the findings and possible future developments.

The Quebec case is embedded in the province's long and storied history of seeking autonomy, dating back to its early opposition to the Confederation of Canada in 1867 (McRoberts, 2001). Quebec's distinct French-speaking culture and political identity have historically been in tension with the predominantly English-speaking, Anglo-Canadian majority (Gagnon, 2014). The relationship between Quebec and the rest of Canada has been fraught with challenges, stemming from Quebec's desire for recognition as a distinct society within the larger Canadian federation (Rocher, 2002). Over the years, these tensions have evolved into a broader nationalist movement advocating for Quebec's independence.

Quebec's quest for self-determination can be traced back to the 1960s with the Quiet Revolution, which transformed Quebec into a modern, secular, and socially democratic province. This period marked the rise of the Parti Québécois (PQ), which advocated for Quebec's sovereignty and a political separation from Canada (Balthazar, 2013). In 1980, Quebec held its first referendum on sovereignty, which was rejected by a significant majority. However, the issue of Quebec's independence resurfaced in 1995 with a second referendum, which narrowly failed, sparking a continued legal and political debate regarding Quebec's right to secede from Canada (Dion, 1996).

Understanding the legal dimensions of this debate requires careful analysis of whether Quebec has a legal right to unilaterally secede under both Canadian constitutional law and

international law. The question of Quebec's right to self-determination, as well as its ability to pursue secession, lies at the heart of this case study. The legal complexities are intertwined with Quebec's historical identity and ongoing political struggles for autonomy, making it a critical issue in Canadian law and international jurisprudence.

Returning to the historical context, in the Constitution of 1867, the relationship between Canada and England is depicted as one that closely ties the Dominion with the Crown. This union was intended to benefit the provinces and promote the interests of the British Empire, with the new sovereign state's constitution mirroring that of the United Kingdom (Russell, 2004).

Prior to the Confederation, there was significant opposition within the Dominion, particularly in Lower Canada, now Quebec. The Quebecers opposed the creation of the Province of Canada, which merged Upper and Lower Canada into one province, thereby repealing the Act of Union. This opposition was led by the Parti rouge, a radical group of young francophones under the leadership of the Dorion Brothers. Despite their efforts, they could not prevent the Confederation Act of 1867. Ultimately, they accepted the Confederation's principles and legitimacy, with one of the Parti rouge founders, Antoine Aimé Dorion, becoming the new country's attorney general and minister of justice (Silver, 1997).

Before the foundation of the Parti rouge in 1848, the Provinces of Upper and Lower Canada experienced a series of insurgencies known as the Rebellions of the 1830s. These uprisings, rooted in the political shortcomings imposed by British rule and widespread economic distress, are still debated among historians for their long-term effects. The growing French Canadian middle class in Lower Canada, led by a new French professional elite, began to occupy key political positions, fostering a national consciousness among the francophone population (Ouellet, 1980). This led to tensions with the British minority, whose economic power was expanding through the timber trade.

The socio-economic differences between the French and British in Lower Canada, combined with political mismanagement by the British and the overreach of the Roman Catholic Church, heightened tensions. The Patriote Party, founded by Louis-Joseph Papineau, embodied the nationalist aspirations of the francophone majority (Gagnon & Bouthillier, 1983). The 1837 and 1838 uprisings, or Rebellions, were sparked by economic hardship and the influx of British and Irish immigrants, which altered the demographic balance in urban centres like Montreal and Quebec City (McNairn, 2002).

Although the Rebellions were swiftly suppressed by British troops, their impact was significant. They accelerated the enactment of the Act of Union, merging Upper and Lower

Canada into the Province of Canada. These Rebellions are seen as catalysts for the Confederation Act of 1867, which, while rooted in nationalist sentiment, did not challenge the role of the Crown (Buckner, 1985). This paved the way for a more transparent, confederated form of governance, introducing the concept of a responsible government..

The Anglophone-Francophone divide has influenced Canadian politics since its days as a British colony, evolving over time. Before and after Confederation in 1867, French-Canadian nationalism was often expressed through ultramontanism, a Catholic doctrine opposing the secular values of the French Revolution and advocating for a church-dominated society. This sectarian perspective dominated until the Quiet Revolution of the 1960s, which transformed Québec into a secular, socially democratic province and introduced a new form of nationalism focused on the territory of Quebec, shedding earlier ethnic and racist elements (Zubrzycki, 2011). The Québec sovereignties movement, which sought independence for the province, rejected previous superficial gestures of autonomy and fuelled the modern separatist movement.

In the late 1960s, the Front de Libération du Québec (FLQ), a nationalist group using terrorism, launched bombings and kidnappings that culminated in the October Crisis of 1970, ending with arrests in December. In 1968, the Parti Québécois (PQ), led by former Liberal Cabinet Minister René Lévesque, was founded, advocating for "sovereignty-association, political independence with economic ties to Canada. The PQ won the 1976 provincial election with a 41% plurality in the Québec National Assembly. In 1980, the PQ held a referendum on negotiating sovereignty-association, which 60% of Quebecers rejected (Dion, 1996).

Despite being re-elected in 1981, the PQ lost in 1985 following Lévesque's resignation, with support for independence steady at 40% (McRoberts, 2001). Polling data shows varied support for independence depending on the terminology used, indicating uncertainty among Québécois. Separatist sentiments were partly fuelled by Québec's refusal to sign the Constitution Act, 1982, which emphasized individual over collective rights. Support for separatism surged after the failure of the Meech Lake Accord in 1990 and the Charlottetown Accord's national referendum. The PQ's re-election in 1994 saw independence support return to 40% (Belanger, 1999). The Bloc Québécois, advocating for Québec sovereignty in federal elections, was formed in 1990 and won 52 seats in the 1993 federal election. Under PQ leadership, Québec renewed its secession efforts, holding a second referendum in 1995 asking if Québec should become sovereign after negotiating a new economic and political partnership with Canada. A narrow majority of 50.56% voted "no". This eventually triggered significant legal discourse (Seymour, 2004).

3.2. Key Legal and Political Issues in Quebec's Secession Debate

The central issue in the Quebec case revolves around whether Quebec has the legal right to secede from Canada, both under domestic Canadian law and under international law governing self-determination. This fundamental question also raises additional sub-issues, including whether Quebec's distinct cultural identity and political aspirations provide a legal basis for secession. The legal challenge is further complicated by the competing principles of territorial integrity, democratic governance, and the rights of minority groups within Quebec itself.

Before the 1995 referendum, the Quebec government introduced Bill 1, which would have granted the National Assembly the power to unilaterally declare independence. However, this move was met with legal challenges from within Quebec itself. Guy Bertrand, a Quebec lawyer, argued that Bill 1 was essentially a "virtual constitutional coup d'état" that threatened his Charter rights. The court allowed the referendum to proceed but acknowledged the serious constitutional questions raised by the proposed unilateral declaration of independence. After the referendum, Bertrand again sought to prevent Quebec from pursuing unilateral secession, leading to the Canadian government referring the issue to the Supreme Court.

The legal complexities surrounding Quebec's desire for secession were further examined by the Canadian Supreme Court in its 1998 advisory opinion, which provided a clear framework for understanding Quebec's position within both Canadian constitutional law and international law. The issue of whether Quebec could unilaterally declare its independence under these frameworks was addressed in detail, and the Court's ruling significantly shaped the legal discourse surrounding Quebec's potential secession.

3.3. Analysis of Legal Principles in the Context of Quebec's Secession

To assess Quebec's legal right to secede, it is essential to consider the legal principles from both international law and Canadian constitutional law. International law has long recognised the right of peoples to self-determination, which is enshrined in the UN Charter and the ICCPR. The right to self-determination, however, does not automatically equate to the right to secede from a sovereign state. According to international law, unilateral secession is generally not recognised unless certain conditions are met, such as the oppression or denial of the right to self-determination of a particular group.

In the case of Quebec, the issue of whether the province's desire for independence meets the criteria for secession under international law is complicated by the fact that Quebec,

while culturally distinct, has never been subjected to the kind of external oppression typically associated with the right to secede. As a result, Quebec's quest for independence cannot be justified purely on the grounds of international self-determination law.

From the perspective of Canadian constitutional law, the issue of secession was directly addressed by the Supreme Court in *the Reference Re Secession of Quebec* (1998). In its advisory opinion, the Court ruled that Quebec does not have an automatic right to secede unilaterally under Canadian law. While the Canadian Constitution does not explicitly address secession, the Court grounded its decision in four core constitutional principles: federalism, democracy, constitutionalism and the rule of law, and the protection of minority rights. Additionally, the Court emphasised the role of unwritten constitutional principles in shaping Canada's legal order. These elements collectively reinforce the idea that secession is not merely a political question but a legal and constitutional process that requires legitimacy, negotiation and adherence to democratic norms.

At the heart of the ruling was the principle of democracy, which the Court interpreted as more than simply majority rule, rather, it encompasses deliberation, inclusivity and respect for pluralism (Russel, 2004). While democracy allows people to express their political will through referendums, the Court ruled that a clear majority on a clear question would not grant Quebec an automatic right to unilateral secession but would instead impose a duty on the federal government and other provinces to negotiate in good faith (Supreme Court, 1998). However, democracy alone could not justify breaking up the country, it had to be balanced with other constitutional principles, particularly constitutionalism and the rule of law, which ensure that all government actions, including secession, must comply with the Constitution (Hogg, 2020). The Court emphasised that since Canada's Constitution does not explicitly grant a right to secede, any move toward independence must follow established legal procedures, including negotiations and formal constitutional amendments as required under the amending formula of the Constitution Act, 1982 (Monahan & Bryant, 2017).

Closely linked to these principles is federalism, which the Court viewed as a key structural component of Canada's constitutional order. Federalism is designed to balance provincial autonomy with national unity, ensuring that no single province can unilaterally alter the country's structure (Supreme Court of Canada, 1998). This principle has been central to Canadian governance since Confederation, providing a framework for cooperation between different levels of government while accommodating cultural and linguistic diversity (Russel, 2004). The Court ruled that because secession would fundamentally impact all provinces, it

could not be pursued unilaterally, instead, it would require a negotiated agreements that takes into account the interest of the entire federation (Monahan & Bryant, 2017).

Another critical aspect of the ruling was the protection of minorities, particularly linguistic, religious and indigenous communities. The Court explicitly stated that any process of secession must respect minority rights, raising significant legal and political challenges for Quebec's independence movement (Supreme Court of Canada, 1998). For instance, indigenous groups, such as the Cree Nation, have asserted their own right to self-determination within Canada, arguing that they should not be forced into an independent Quebec against their will (Henderson, 1994). Similarly, Quebec's Anglophone could demand constitutional protections or special political arrangements in the event of secession (Cairns, 1999). By emphasising these concerns, the Court highlighted the at Quebec's independence would not only require negotiations with Canada but could also leda to internal secessionist demands within Quebec itself (Monahan & Bryant, 2017).

Beyond these explicitly stated principles, the Court also recognised the importance of unwritten constitutional principles, which serve as interpretive guides in shaping Canada's legal framework (Supreme Court of Canada, 1998). These principles, such as democracy, federalism, constitutionalism and minority protection, reinforce the idea that the Constitution must be interpreted in a way that reflects Canada's historical and political realities rather than being limited to its textual provisions (Hogg, 2020). This approach aligns with international law, where unwritten legal norms are increasingly recognised as binding in cases of self-determination and state sovereignty (Raic, 2002).

Taken together, the Supreme Court's ruling established a clear legal framework for secession under Canadian constitutional law. First, unilateral secession is unconstitutional, meaning that Quebec cannot legally separate without negotiation (Supreme Court of Canada, 1998). Second, a referendum result favouring secession without trigger a duty to negotiate, but would not guarantee independence (Russell, 2004). Finally, any secession must follow constitutional procedures, including formal amendments and agreements with the federal government and other provinces (Hogg, 2020). By grounding its decision in both written and unwritten constitutional principles, the Court reaffirmed that secession is not merely a political act but a legal process requiring legitimacy, democratic accountability, and respect for minority rights (Monahan & Bryant, 2017).

While the Supreme Court of Canada's ruling in *Reference re Secession of Quebec* (1998) was grounded in domestic constitutional law, it also examined Quebec's secessionist claims through the lens of international law. The Court assessed whether Quebec had a right to

statehood based on three key principles: effectiveness, self-determination and territorial sovereignty (Supreme Court, 1998). These principles, derived from both formal sources (treaties and international agreements) and informal sources (customary international law), shape the legal framework governing statehood and secession. This international perspective provided a broader legal context for Quebec's claims while reinforcing the Court's conclusion that unilateral secession was not legally justified under either Canadian or international law.

International law consists of formal sources, such as treaties, binding agreements between states and informal sources, including evolving norms and customary practices that emerge over time (Raic, 2002). Canada, as a signatory to various international treaties, is obligated to comply with these formal legal instruments, but enforcement remains challenging. Informal norms, which develop from state practice and widespread acceptance, can also influence legal interpretations. Therefore, while Quebec's claims might find support in international legal principles, such claims must be balanced against Canada's constitutional obligations to negotiate (Monahan & Bryant, 2017).

One of the most important principles considered by the Court was effectiveness, which holds that international law may recognise political realities even if they lack formal legal recognition domestically. Under this principle, if a secessionist entity successfully established itself as a functioning state, the international community may accept its sovereignty as a matter of fact (Crawford, 2006). A historical example is the 1928 *Island of Palmas* arbitration, where the Netherlands' sovereignty over the island was recognised due to its effective administration, despite the United States' competing claim based on prior discovery (*United States v. Netherlands*, 1928). However, the Supreme Court firmly rejected effectiveness that while recognition of political reality may occur post facto, it doesn't not create a legal entitlement to secede (Supreme Court of Canada, 1998). In other words, a self-declared independent Quebec might gain recognition if it successfully established itself as a state, but this would not validate its unilateral departure under Canadian or International law.

The Court then turned to self-determination, a fundamental principle in international law, enshrined in the UN Charter (Article 1) and the International Covenants on Civil and Political Rights (Supreme Court of Canada, 1998). Self-determination quarantines that "peoples" have the right to determine their political status and pursue their economic, cultural and social development (Cassese, 1995). However, international law generally favours internal self-determination, meaning that groups exercise their rights within the existing state framework rather than through secession (Hannum, 2011). The Supreme Court recognised that while Quebec's people had a strong cultural and linguistic identity, they had full political

representation and autonomy within Canada, making unilateral secession unjustifiable under the self-determination principle (Supreme Court of Canada, 1998).

The Court identified three exceptional cases where external self-determination and thus secession might be justified: (1) colonial rule, (2) foreign occupation and (3) systematic oppression preventing meaningful political participation (Supreme Court of Canada, 1998). These conditions reflect international legal precedents, such as the decolonisation movements of the mid-20th century. However, the Court determined that Quebec did not meet any of these criteria, as it enjoyed full democratic right and self-governance within Canada. The rejection of unilateral secession aligns with international legal doctrine, which restricts the right to break away from an existing state except in extreme cases of subjugation to discrimination (Cassese, 1995).

Another closely related concept discussed by the Court was remedial secession, which suggests that a group suffering severe injustices, such as human right violation or political exclusion, may have a legal right to secede (Raic, 2002). This principle has been applied in cases like Kosovo, where systematic repression of the Albanian population contributed to international recognition of its independence (Crawford, 2006). However, the Supreme Court found no evidence that Quebec's people were denied fundamental rights, and therefore, the province had no legal grounds for remedial secession (Supreme Court of Canada, 1998). This reinforced the Court's conclusion that Quebec's independence could only occur through negotiation and constitutional amendment, not unilateral action.

An important legal question arising from the self-determination debate is who qualified as "a people" under international law. The UN's Declaration on Friendly Relations (1970) defines "a people" as those entitled to freely choose their political status. Scholars have debated whether this refers strictly to territorial populations (i.e., those in an independent state or federal unit) or whether it extends to ethno-national groups (Cassese, 1995). In Quebec's case, both the French-speaking majority and Indigenous groups, such as the James Bay Cree, could claim to be distinct peoples under international law (Henderson, 1994). The Supreme Court acknowledged this complexity but did not make a definitive legal determination. However, it noted that Indigenous communities within Quebec also have a right to self-determination, raising potential territorial disputed and partition claims in the event of secession (Supreme Court of Canada, 1998).

Finally, the Court addressed territorial sovereignty, a foundational principle in international law that asserts states' rights to govern and protect their territory. The principle of territorial integrity is often invoked in response to secessionist movements, as international

law generally favours preserving existing borders over allowing fragmentation (Crawford, 2006). The Supreme Court ruled that Canada, as a sovereign state, has the right to maintain its territorial integrity unless it fails to represent or protect its people (Supreme Court of Canada, 1998). This reflects international practice, where territorial integrity often outweighs secessionist claims, except in cases of severe repression or colonial rule.

The Supreme Court's engagement with international law in the *Secession Reference* reinforced the principle that unilateral secession is not legally justified under either domestic or international law. While international law recognises the right to self-determination, the Court clarified that this right is typically exercised within existing state structures, and that exceptions, such as colonial rule or extreme oppression, did not apply to Quebec. However, the ruling did not eliminate all legal and political uncertainties surrounding Quebec's potential secession. Instead, it left unresolved questions about how secession could be lawfully achieved, particularly regarding what constitutes a "clear question" and a "clear majority" in a referendum. These ambiguities prompted significant responses from both the Canadian Parliament and the Quebec National Assembly, leading to ongoing legal and political debates.

In 2000, the Canadian Parliament passed the Clarity Act, which reaffirmed the Supreme Court's ruling and provided a framework for determining whether a referendum demonstrates a clear democratic will for secession. The Act granted the federal government and Parliament the authority to assess whether a referendum question was clear and whether the result constituted a "clear majority", though it did not specify a numerical threshold (Clarity Act, S.C. 2000). The Clarity Act effectively imposed additional legal and political conditions on Quebec's potential secession, reinforcing the Supreme Court's potential secession, reinforcing the Supreme Court's conclusion that negotiations and constitutional amendments would be required for any lawful secession.

In response to the Clarity Act, the Quebec National Assembly passed Bill 99 in 2000. This legislation reaffirmed Quebec's right to self-determination and asserted that the Quebec people alone had the authority to determine referendum questions and the conditions for secession. Bill 99 explicitly defined a "clear majority" as 50%+1 of votes cast in a referendum, challenging the Clarity Act's vaguer standard (Bill 99, An act Respecting the exercise of the Fundamental Rights and Prerogatives of the Quebec People and the Quebec State, 2000). The passage of Bill 99 reflected Quebec's continued resistance to federal constraints on its sovereignty and its rejection of the Clarity Act's legal framework.

However, the constitutional validity of Bill 99 was challenged in the Courts, leading to a significant by Quebec Court of Appeal in 2007. The Court struck down key provisions of Bill

99, ruling that Quebec could not unilaterally set the terms for secession in contradiction to the Supreme Court's ruling in the Secession Reference (*Henderson v. Quebec (Attorney General)*, 2007 QCCA 1138). The Court reaffirmed that Quebec's secession could not be determined solely by provincial legislation, as it required negotiation and constitutional amendment at the federal level. This decision further entrenched the legal obstacles to Quebec's unilateral secession and reinforced the Supreme Court's emphasis on constitutional principles, particularly federalism and the rule of law.

3.4. Concluding Assessments of Quebec's Secession Attempt

The Supreme Court's ruling in the *Secession reference* underscores that the legality of secession extends beyond purely legal arguments, requiring careful political and constitutional consideration. The decision affirms that while unilateral secession is not legally justified, a province like Quebec may achieve independence through a constitutional process involving negotiations and amendments (*Reference re secession of Quebec*, 1998). This ruling established a crucial legal and political precedent, ensuring that any future attempts at secession are governed by principles of democracy, federalism, constitutionalism and respect for minority rights.

From an international law perspective, the Court's analysis offers clear guidance on when secession, outside colonial contexts, may be permissible. While international law recognises the right to self-determination, the Court clarified that this right is generally exercised within existing state structures, and external secession is only justified in exceptional circumstances, such as colonial rule or systemic oppression, neither of which applied to Quebec. This clarity provides a valuable framework for assessing future secessionist claims, reinforcing the principle that any separation must occur peacefully and through good-faith negotiations. In a global context where secession movements often lead to conflict and human rights violations, the supreme Court's ruling stands as a model for democratic and lawful secessionist processes (Crawford, 2019).

Although the Court's interpretation of the constitutional duty to negotiate and its implications for international recognition have been debated, these considerations were not central to its legal findings. Instead, they serve as contextual observations that highlight the complexity of secession while affirming the necessity of constitutional legitimacy and political consensus. As such, these aspects do not diminish the ruling's overall legal validity.

From a political perspective, the decision has been perceived as balanced by both the Canadian and Quebec governments. The ruling affirmed the illegality of unilateral secession while also recognising that a clear democratic mandate for secession would impose a duty to negotiate. This outcome was unexpected by the federal government, which had sought a more decisive rejection of secession, but aligned with Quebec's long-standing position that independence should be pursued through dialogue, not unilateral action (Russell, 2004). The Court's acknowledgment that secession is possible through negotiation may resonate with undecided voters in future referendums. However, its ruling that Quebec lacks a legal basis for unilateral secession under both domestic and international law is unlikely to diminish separatist sentiment within the province.

The passage of Clarity Act in 2000 represents a direct federal response to the Secession reference. The act translated the Court's ruling into a legislative framework, providing clear criteria for evaluating future secession referendums (Clarity Act, S.C. 2000). It grants Parliament the authority to determine whether a referendum question is clear and whether the result constitutes a "clear majority", without specifying a numerical threshold. Furthermore, it affirms that even with a clear majority vote, secession is not automatic and must be achieved through negotiations involving the federal government, other provinces, and Indigenous groups. No imposing these conditions, the Clarity Act reinforces the legal and political complexities of secession and raises the threshold for its legitimacy under Canadian law.

However, while the Clarity Act limits Quebec's ability to claim a unilateral right to secede, its role in international law remains uncertain. Even if a clear majority of Quebec voters support secession, the Act cannot prevent Quebec from seeking international recognition. Historically, international recognition of new states has been influenced by political, economic and strategic considerations, rather than purely domestic legal frameworks (Crawford, 2019). In this regard, while the Clarity Act strengthens Canada's legal position, it does not eliminate the possibility that an independent Quebec could gain international recognition through diplomatic means.

While the Clarity Act serves as a domestic legal tool to regulate the secession process, the Supreme Court's ruling in the *Secession Reference* provides a broader constitutional and international framework. The decision reinforced the principles of dialogue, mutual respect a constitutional integrity, ensuring that any future secession attempt adheres to democratic values and legal processes. Ultimately, the ruling and its legislative response illustrate that Quebec's

independence remains a possibility, but only through lawful, negotiated means, not unilateral action.

Conclusion

This thesis has explored the complex legal dimensions of secession and self-determination, using the case of Quebec as a focal point to examine the interplay between territorial integrity and the right of peoples to self-determination. These two principles, both fundamental to modern international law, frequently come into tension, as seen in secessionist movements worldwide. While the Quebec case unfolded within a democratic framework, it underscores the broader legal and political challenges associated with self-determination, particularly in states that are neither colonial nor oppressive.

The study was structured into three main characters. The first two chapters focused on the theoretical and methodological foundations of secession and self-determination. Chapter One provided a comprehensive understanding of secession, defining its key concepts, classifying different types of secessionist movements, and analysing the legal dimensions of secession within both international and constitutional law. It also examined the interplay between self-determination and territorial integrity, two principles that frequently come into tension in secessionist disputes. Chapter Two explored the right to self-determination, tracing its historical evolution and assessing its legal and political dimensions. By analysing how international law has defined self-determination, particularly in the post-colonial era, this chapter provided a framework for understanding its continued relevance in modern secessionist movements.

The third chapter served as the case study of Quebec, employing the IRAC (Issue, Rule, Application, Conclusion) method to conduct a structured legal analysis of Quebec's secessionist movement. It examined Quebec's historical, political and legal position within Canada, the role of referendums, and the Supreme Court's ruling in the 1998 Secession Reference. The chapter assessed the legal obstacles to Quebec's unilateral secession, while also highlighting the Supreme Court's recognition that a clear referendum majority in favour of independence would trigger constitutional negotiations. The passage of the Clarity Act (2000) reinforced these legal principles, establishing specific conditions for determining whether a referendum question and its results demonstrate a clear democratic mandate for secession.

The Secession Reference ruling demonstrated that Quebec does not have an unilateral rights to secede, either under Canadian constitutional law or international law. However, it

affirmed that secession is not entirely precluded, provided that it occurs through negotiation, constitutional amendments and democratic processes. This findings set an important precedent, not just for Canada, but for other democratic states grappling with secessionist claims.

Beyond Canada, the Quebec case illustrates a broader challenge in international law: the lack of a universal legal framework for secession. While the right to self-determination has been widely recognised, particularly in the context of decolonisation, modern secessionist claims, such as those in Catalonia, Scotland, and Kurdistan, continue to expose the legal uncertainty surrounding unilateral independence efforts. The UN's legal interpretation, as outlined in the 1970 Declaration on Friendly Relations and the 1993 Vienna Declaration, permits secession under four key conditions:

1. Decolonisation, where a people has been subjected to colonial or foreign rule.
2. Explicit constitutional provisions, where a state's condition provides a legal pathway to independence.
3. Unlawful annexation, where a territory has been forcibly incorporated into another state in violation of international law.
4. Systematic human rights violations, where a state fails to uphold internal self-determination, leaving secession as the only viable remedy.

Quebec's situation did not meet any of these conditions, reinforcing the Court's conclusion that its self-determination must be exercised within Canada's constitutional framework. However, the case remains significant in shaping legal debates on self-determination and secession in democratic states.

The absence of clear international legal standards has led to inconsistencies in how secessionist movements are treated, while Kosovo achieved widespread international recognition, Catalonia's unilateral independence bid was legally blocked by Spain. This legal ambiguity has contributed to political instability, demonstrating the need for a more consistent international approach to self-determination claims.

Moving forward, a universal legal framework should be established to clarify the conditions under which secession is legally recognised. This framework should provide clear definitions for key concepts such as "peoples", "self-determination", and "secession", ensuring that claims to independence are evaluated based on legal principles rather than political considerations. Furthermore, it should regulate the role of third-party states in supporting or opposing secessionist movements, preventing external interference that could destabilise international relations.

In conclusion, the Quebec case highlights the legal and constitutional complexities of secession in democratic states. While self-determination is a fundamental principle of international law, it does not automatically confer a right to secede, particularly in states that respect democratic governance, minority rights and equal representation. The balance between territorial integrity and self-determination must be carefully maintained, ensuring that secessionist claims are peaceful, democratic and legally justified. By developing a more transparent and universally accepted legal framework, the international community can better address the challenges of modern secessionist movements, fostering stability while upholding the rights of peoples to self-determination.

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