THE RIGHT TO SECEDE: A COMPARATIVE ANALYSIS

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The main purpose of this Thesis is to analyze the nature of the right to secede and how it has been treated by different systems of Public Law and by the International Law. Its purpose is to answer to these questions: is the legitimization or constitutionalization of the right to secede in the Public Law of the States an advantage or a threat for democracies, and, more broadly, to the nature of the State itself? Is the creation of new States, through the right to secede, a threat to the Westphalian conception of the State or will it just create new Westphalian States? On what the modern States based? Who bears the right to self-determination recognized in International Law? How can the principle of self-determination be conciliated with the right to the Territorial Integrity of the existing States? Is the principle *uti possidetis iuris* a useful tool to handle secessions? The use of a comparative analysis between different systems of Public Law and between these systems and the International Law is essential to answer to these questions. Recent events such as the independence of Kosovo, the secession of Crimea and Donbass from Ukraine, the will of some EU member States to secede from the Union, and the attempted secession of Scotland and Catalonia have raised once more the importance of this topic for both Public and International Law. The Thesis has been structured in four chapters.

The purpose of the first one is to create a theoretical and historical framework, creating a methodology around which it will be possible to analyze the case studies of the following chapters. For this purpose, it is given an etymological analysis of both the terms secession and self-determination. On the one hand, the former derives from the Latin word *secession*, and is the action of those people who separate or withdraw from something. Originally it was mainly identified with the spiritual word of the monks who decided to withdraw into the desert. Nevertheless, it acquired a political connotation with the *secessio plebis* that took place in ancient Rome in 494 B.C. On the other hand, the latter is a product of the 19th century and was linked by the First
Communist international to the rising idea of the nation (in that case the Polish one). Self-determination has two sides, an internal one that means self-government or autonomy, and an external one linked to independence and then secession. Both concepts (secession and self-determination) are lined to the idea of freedom, and in the external side they overlap. The importance of freedom in the political theory and philosophy was deeply analyzed in the 16th-17th century. Althusius, Hobbes and Bodin have all tried to find when and how it was possible to resist to the political power, finding different answers. From the medieval Pauline conception of the political power, where no resistance was allowed, since only the citizens, and not the rules who were chosen by God, could do something wrong, to Calvin and the Monarchomachs, the idea of the political power changed into a fiduciary pact between the ruler and the people. Behind this idea there was the purpose to change the relationship between ruler and ruled into something similar to a private contract, with clauses that once broken bring to the extinction of the contract and then to secession. Johannes Althusius, considered by many the father of modern federalism, conceived a sort of social federalism, which resembles more the modern idea of subsidiarity, in which decentralization is the source of guarantees for civil and social rights from a tyrannical authority. This federalist structure is the product of a collective contract. In Althusius’s view, the right to secede from the contract that originated the social order is a right that belongs to the Ephors, those that have been delegated by the people to serve them such as controllers of the King and of public powers. The Ephors, as individuals, are authorized to protect the province against a tyrant King and, if necessary, to declare themselves independent. The Althusian theory was used to interpret the constitutional pact as a contract inside Federal States (such as the US or Switzerland). For Althusius, Calvin and the Monarchomachs, secession does not create something different form the Westphalian state. The right of secession does not pass over the Westphalian conception of the state, but it just creates new Westphalian states. In opposition to these theories, the unitary state theorized in the Leviathan became THE modern conception of the State. The Leviathan is, in continuation with the medieval Pauline doctrine, a
body from which secession is impossible without destroying the social order and
degenerate into the state of nature. Similar ideas were expressed by Jean Bodin. For
him the Monarch was the only supreme authority, in both religious and political issues.
The Monarch incarnates the State, and the State, as the bearer of sovereignty, is the
only authority able to guarantee peace. Bodin argues against democracy, that would
generate disorder, or any form of mixed government, such as the Althusian federalism,
because it would denied the true meaning of sovereignty. The dichotomy between the
Althusian and the Hobbesian/Bodinian conception of the State will be used to analyze
the different approaches taken by Public Law in relation to secession. The analysis of
International Law, which is the sum of the behavior of all states, which means that rule
the international society in a way conform to the will of all states, in relation to
secession is also essential. Three cases have been taken into consideration: the Åland
Islands Question, the UN opinions toward self-determination and colonialism, and the
secession of Quebec from Canada. The first case was handled by the Covenant of the
League of the Nations in 1919-1921 to regulate the Wilsonian principle of self-
determination established after WWI. A commission established in 1921 recognized
that the principle of territorial integrity comes after the interests of a given population.
However, a last resort right to secede exits when the internal self-determination
(through autonomy or self-government) is impossible. The second case analyzes the
UN Charter and the UN approach toward colonialism. The Charter recognizes “the
principle of equal rights and self-determination of peoples”. Anyway, self-
determination was in 1945 a right of the states to self-rule, not a right of the peoples to
independence. This status changed in 1950s with the preparatory works over the
ICCPR and the ICESCR. Through these documents the right to secede, or to
independence, was recognized to the colonial peoples, but not to the national minorities
in the motherland. Of pivotal importance is also the Uti possidetis juris principle, which
regulates secessions turning administrative boundaries into international borders. The
ratio behind this principle is that the stability of the frontiers means peace. However
this principled has proved fragile when different ethnic groups found themselves in a
single state or when a united ethnic group becomes separated by international borders. The third case is the judgment of the Supreme Court of Canada on the secession of Quebec. The most important opinion given by the Court is that regarding the existence of a right to secede in International Law. According to the Court: “A right to secession only arises under the principle of self-determination of peoples at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part” (Canadian Supreme Court Judgment 1998, par. 155). The Court also recognized that an illegal ex-ante facto secession could be legitimized ex-post facto by the international community. According to International Law then, while in the case of colonialism the states eventually accepted unanimously to consider secession legal, the same cannot be held true regarding minorities present in the homeland. Both in the Åland islands question and in the case of Quebec the right to secede remains possible only when all the other “internal remedies” are exhausted. This gives to the Right of territorial integrity and to the principle Uti possidetis juris supremacy over the right of people to self-determination. To further categorize the different secessionist cases, it has been used the classification of Margiotta according to which it is possible to distinguish between three theories of secession. The first one is the national self-determination theory of secession, for which secession is an extension of the self-determination principle on non-colonial peoples. All peoples (intend as culturally homogeneous groups) should bear the right to secede. The second one is the choice theory of secession. According to this theory, it not necessary that the group that wishes to secede is a nation. The choice of some given people (even ethnically patchy) to have their own state is enough to guarantee them the right to secede. The problem with these theories is the impossible universalization of the right to secede, giving the right to secede also to scattered minorities or groups. The third one is the just-cause theory of secession. In this case, secession is possible only when a state does not recognize the identity of a people or its internal self-determination.
Secession is then only as a “last resort” option. The problem raised by this theory is that it is not easy to define when a secession is “just”, and a given population could already be near extermination when it is legally granted to it the right to secede (as tension in given region could quickly escalate to catastrophic level, has it happened in Rwanda in 1994).

The second chapter analyzes two historical case studies, the secessionist movement in the 19th century US and Switzerland. These two countries have been chosen because they have been both characterized by a strong debate around the nature of the Constitution and of the State. In both cases, a Federal/Unitary faction was against a Confederal faction. In the US the debate around the meaning of the Constitution, and if the States created the Union or vice versa, characterized the first 70 years of live of the country. For many States and authors the Constitution of 1787 was a contract (as theorized by Althusius in the 17th century). If the Constitution was a contract between the States that had signed it, it is then possible for a state to withdraw from the contract. This was the main argument of the State Rights theorists. Opposite to this vision, the Federalists believed that the US Constitution had established the supremacy of the Federal Organs (the Congress, the President and the Supreme Court) over the States. When the Union was formed in 1787 the states that decided to do not be part of the Union, North Caroline and Rhode Island, were left to follow their own path as independent States, and joined the US by their own will two years later. The US Constitution’s preamble, with its emphasis on the people as the bearer of sovereignty, pushes toward the idea the representatives of the States, the Governors and the State legislatures are the Althusian Ephors, those who have signed the Constitutional contract and held the Right to secede from it. Historically it is possible to determine that the North American States existed as separate and well-defined entities long before 1787, and had their citizens a sense of statehood already under the British rule. Legally two important acts to take into account are the Virginia and Kentucky resolutions of 1798-1798. These two resolutions were done to nullify the effects of two acts of John Adams administration, the Alien and Sedition Acts. As these Acts violated the freedom
of expression granted by the First Amendment to the US Constitution, the States itself moved to defend their citizens against an oppressive Act, such as good Althusian Ephors, nullifying their effects. Great importance is given, in the Kentucky Resolutions, to the Tenth Amendment of the US Constitution, which states the implied power principle. The fact that the implied power are left to the States and not to the Federation is a way to say, for the State Rights theorists, that the bearer of sovereignty were the States and not the Federation, and that the possibility of a member State to secede was legally possible. Combing the Tenth Amendment with the principle *delegatus non potest delegare*, means that the powers not delegated to the Constitution belong to the States and to the People of the States. If the Constitution was a contract the States could naturally take back those powers they have delegated to it, and a form of this could be through Secession. For what concerns the US jurisprudence over the issue of the right to secede before the Secession War, an interesting case to analyze is that of Gibbons v. Ogden of 1824. In this case the US Supreme Court affirmed that the right to regulate navigation belonged to the Federation, as it was implicitly part of the commerce clause (Article 1, Section 8.3 of the US Constitution), in the same way the right to secede implicitly belonged to the State interpreting in the same way the Tenth Amendment. In the case Worcester v. Georgia of 1832 the Supreme Court defined the supremacy of the Federation over the relationship with the Indian tribes. Nevertheless, both the state of Georgia and President Andrew Jackson ignored the ruling. Then while the Supreme Court was trying to favor the Federalist view of the US Constitution, the behavior of the other political organs suggest that the State Rights theory was strongly shared in the US Constitutional framework before 1861. In 1828-1832, during the nullification crisis, the US vice-president John Caldwell Calhoun affirmed that it was possible for the States to nullify the effects of any Act of the Federal government that was unconstitutional, or tyrannical in an Althusian view. Nullification and Secession in 1832 US became synonymous, as when the former is impossible the letter is the only solution for the States to safeguard themselves and their citizens. The State Right v. Federalist debate found new fuel in 1830 with the Hayne-Webster debate on the nature
of Union. The secession crisis of 1860-1861 was unleashed by the fear the North could lead a tyranny of the majority against the South. The secessionist States reused the concept “We the People” presents in the preamble of the US Constitution to reaffirm that the People were the citizens of the States, which are represented and safeguarded by their own States. This States have signed a contract with the other States in 1787, which have formed a Union. Nevertheless, the membership to this Union could always be withdrawn. Both the US Constitution and the Constitution of the Confederate States of America never allow or deny the right to secede explicitly. Anyway, the latter has a strong emphasis over the sovereignty of the member States. The US Secession War affirmed the supremacy of the federalist view of the US Constitution and made the right to secede illegal. The fact was clearly affirmed in the case Texas v. White of 1868, in which secession was declared illegal in the US. The case of Switzerland is quite similar. The tension between the Diet (the Federal Organ) and the Cantons in the 19th century resemble the US Constitutional debate on the nature of the Union. Before the Napoleonic invasion of 1798, the Cantons did not have a formal Constitution, but were kept together by an agreement of common defense of international nature. In 1815, the Federal Treaty restored the ancient Swiss Confederacy after the Napoleonic era. The 1815 Federal Treaty was adopted without a referendum, and in it the Diet recognized the Cantons as the sovereign body that created the Confederacy. The country anyway was fractured between the conservative Catholic Cantons (in favor of a confederal structure), and the Radical Protestant Cantons (in favor of a federal structure). The first attempt of the Catholics Cantons to secede in 1833 (the league of Sarnen) was dissolved by the Diet as it was harmful to the Federal Pact itself. In 1845 the fear that the Protestant would attempt to change the Constitution in a more centralized way, brought to the creation of the Sonderbund (or separate league). In 1847 the Diet recognized the Sonderbund as illegal. Anyway, the closing of the convents in Aargau in 1841, the protestant invasion of Lucerne in 1845, the Diet legitimization of intra-Cantonal secession harmful to the Catholics Cantons, bring in the question if the league of Sarnen and the Sonderbund were just attempts of the Catholics Cantons to act as
Althusian Ephors. Anyway, the force of arm resolved the conflict, and a new Constitution was approved in 1848.

Chapter three focuses on the secessionist movements that have characterized former Yugoslavia and USSR between 1990 and 2015. It has been chosen to analyze these cases together for their common background, which lies in the Socialist Law on secession. Both the Yugoslav and the Soviet Constitution recognized the right to secede of the member states of the federal union. Anyway this right must be analyzed in the light of the Socialist Law. For Lenin what matters is the creation of a huge federation of workers. Then secession, as interpreted by a nationalist view, is antithetical to the cause of the global revolution. The nations is bourgeoisie tool, useful to achieve the final objective, a global communist state. The workers cannot revolt if they are subject to foreign domination. This is why the Communist International invented the right of self-determination of people. The right to secede, or to independence/self-determination for Lenin, is a tool for a greater cause in the Socialist law. Secession is a necessary tool to form a greater Union. The idea to introduce the right to secede in the USSR Constitution was not intended as a way to grant to the member States a right to get out from the union. The different Soviet/Yugoslav Republics had already used, once and for all, the right to secede to join the USSR/Yugoslavia. This means that the presence of an explicit right to secede in the Soviet/Yugoslav Constitution did not legitimize the secession of its member states. Regarding the case of Yugoslavia, the fact that secession was illegal in the Yugoslav law is highlighted by article 5 of the 1974 Constitution that stated: “The territory of the Socialist Federal Republic of Yugoslavia is a single unified whole and consists of the territories of the Socialist Republic”. Particular attention has been given especially to the opinions of Badinter Commission. The Commission never used the term secession, but that of dissolution referring to the secession in Yugoslavia in 1991-1995. Furthermore the date in which Slovenia and Croatia have achieved independence (8 October 1991) is antecedent to the date in which, according to the Commission, Yugoslavia has started its dissolution (29 November 1991). This means that, for Slovenia and Croatia, we are facing a case
of secession, not of dissolution. Furthermore in its second opinion the commission guarantees both the principle *Uti possidetis juris* and the right of the Serbian populations in Bosnia and Croatia to choose their nationality, which is a contradiction between the *Uti possidetis juris* principle and that of self-determination of peoples. Moreover, in its third opinion the Commission, to justify the use of the principle *Uti possidetis juris* in a non-colonial issue for the first time, uses improperly the opinion of the ICJ in the case Burkina Faso v. Mali of 1986. In the ICJ opinion there is a clear reference to decolonization and to an administering colonial power that decides to release its control. It is no clear then how this case can be used as a precedent to handle the break-up of Yugoslavia. Surely, the international recognition of the secessionist republics, and the impossibility of the Serbs who lived outside Serbia to secede, turns the conflict into one of the bloodiest of our time. It is possible to affirm that the option of being part of new state, where the Serbs were a small minority, was the main reason behind the brutal escalation of the war in Croatia and especially in Bosnia. For what concerns Kosovo, it is possible to see that the international community is split in half over the recognition of the secessionist republic. The independence of Kosovo, declared in 2008, was clearly an illegal act according to Serbian Law. The opinion of the ICJ, given in 2010, attempted to separate the issue of independence from that of self-determination and secession. This seems to clash with the common sense (an act of independence produces a secession) and with the practice of the UN in period of decolonization, where the right to self-determination was a right of independence. In addition, the ICJ does not take into consideration the General Assembly Resolution 2625 of 1970, the so-called Friendly Relations Declaration (FDR), according to which the right of self-determination shall not impair the territorial integrity of states, and the UN Security Council resolution 1244, which affirms the territorial integrity of Serbia. It is unclear why to a unitary State, such as Serbia, was not recognized the right to territorial integrity, but it was de facto privileged the principle of self-determination, or the right to secede, of the Kosovar people. It is clear that firstly, with the secessionist Yugoslav Republics, and secondly with Kosovo, it has been legitimized the right to
secede. It has been camouflaged as self-determination as in the colonial case in the former, or as a vague concept of independence in the latter, nevertheless all (in the first case) or many (in the second case) members of the international community accepted it. The dissolution of the USSR and the formation of the various independent states, today recognized by the international community, is not an interesting case in itself. The dissolution of the USSR was consensual between the Russian Federation and each secessionist republic. More interesting for this analysis are the numerous “sub-secession” that occurred within the new-independent states. Each one of them as an ethnic origin and, as there are seven of them, it is possible to speak of a proliferation of ethnic secession and fit them into the national self-determination theory of secession. The cases taken into account are: Transnistria in Moldova, Chechnya in Russia, Abkhazia and South Ossetia in Georgia, Nagorno-Karabakh in Azerbaijan and Crimea and Donbass in Ukraine. For all of them it has been analyzed the Public Law of the country on which has suffered the secession and the reaction of the international community. Particularly interesting is recognition by Russia (with three other member states of the UN) of Abkhazia and South Ossetia in 2008. This, together with the annexation of Crimea in 2014, bring in the question if Russia is trying to change the common opinion of the international community on the right to secede. Anyway this right has been already challenged with the recognition of Kosovo by more the 100 UN member States. As in the case of Yugoslavia, the fact that administrative boundaries turn into international borders, then the principle *uti possidetis juris*, was undoubtedly the main cause behind the conflicts in the former USSR. The cases of Abkhazia and South Ossetia and Kosovo have created a precedent in International Law. Many secessionist states, stressing the fact that many of them were former autonomous provinces as Kosovo, demand the international recognition of their right to self-determination. Regarding the Crimea and Donbass, the annexation of the peninsula was indeed a violation for Russia of both the Budapest Memorandums of 1994 and of the Treaty of Friendship, Cooperation and Partnership in 1997. For Ukrainian Law any normative act of the Autonomous Republic of Crimea must be in accordance with the
Ukrainian Constitution and have the consent of the Ukrainian government, something that did not happen in 2014. Anyway, Crimea inside Ukraine was an autonomous province, as Kosovo inside Serbia, with analogous legal requirements for a possible (even if remote because it requires to change the Constitution) independence. Why then many states recognized the right of Kosovo to secede from Serbia and not that of Crimea to secede from Ukraine? This cannot be justified claiming that that of Kosovo was a remedial secession, as the ICJ as clearly denied this possibility in its 2010 opinion. As in the case of Kosovo, the situation in Crimea highlights that the international community is fractured on the issue of right to secede, or more properly, on how to conciliate the issue of self-determination and the right of the states to territorial integrity. Is the association between violence and secession that has allowed Kosovo to secede in 2008 and Crimea to commit an illegal act? Then how not justify the secession of various region in the former USSR, including the recent secession of Donbass in eastern Ukraine. Using the Althusian theoretical framework, we could consider the Ephors of these regions as those who act in order to defend the local population from foreign subjection.

Chapter four deals with the democratic approaches toward the right to secede, which means the Constitutionalization of the right and its legal application. Of peculiar importance is the referendum on the independence of Scotland, one of the first process of Constitutionalization of the right to secede. The Independence referendum set out the rule on who, when and how the right to secede can be exercised by a given population that is not under colonial exploitation. The Scotland Act of 1998 is essential to determine if the Scottish Parliament had any constitutional legitimacy to exercise the right to secede. Among the reserved matters on which the Scottish parliament cannot deliberate there the Union between the Kingdom of Scotland and England. This clause can be interpreted in two ways. The first one in a Hobbesian/Bodinian sense, then interpreting this Union as indissoluble and perpetual. The second one in an Althusian sense, which means that the Union only implies that Scotland, even if independent, must remain a realm of the commonwealth such as Australia, New
Zealand or Canada. Anyway, a consensual agreement was reached between Scotland and the UK, and the referendum was possible modifying the Schedule 5 of the Scotland Act in 2013. Nonetheless, this would not have been necessary if the Scotland Act was interpreted with an Althusian meaning. This is confirmed comparing the Scotland Act to the interpretation given by the House of the Lords to the Northern Ireland Act, which, according to the House, should be interpreted in a broader and generous way. Even if the referendum did not achieve its purpose, it is interesting that once the right to secede to a given region has been granted, the local government could always hold a referendum for independence. This means that a secessionist referendum could be held continuously until the separatist movements does not reach a majority of the vote and independence is obtained. Even if it is possible to introduce a time framing for the referendum, there is the risk to fall in what some authors have called “Neverendum”. The Scottish case proves that even if the right to secede in itself seems disruptive for a unitary state it can be, nevertheless, handled inside a democratic framework. Furthermore, in the case of Scotland, the right to secede is a useful tool to push for greater autonomy, such as the full fiscal independence. The second case taken into consideration in this chapter is that of Catalonia, and the different approach of the Spanish state toward the right to secede. Catalonia is often considered a nation without a State a fact that clearly integrates this case into the National self-determination theory of secession. The Spanish Constitution of 1978 was an attempt to mediate between the unitary tendencies of the Spanish State and the desire for an independent identity by the Catalans, the Basques and Galicians. The Spanish case, however, shows very well how difficult the Bodinian/Hobbesian concept of the State and the Althusian one can coexist. Every step toward a greater autonomy must be detailed scrutinized by the central government in Spain. Taking into account the Statue of Autonomy of Catalonia is possible to see, on the one hand, a strong emphasis on the Catalan identity, on the other hand a remind to the Spanish Constitution and the unity of the nation. The Catalan idea anyway was that the Scottish referendum could become a precedent in Public Law to manage the case of self-determination outside the colonial framework. Spain has
tried to do not create this precedent denying the automatic access of an independent Scotland to the EU and do not recognizing the independence of Kosovo. Despite the opposition of the Spanish government to any legitimization of the right to secede, the Government of Catalonia decided to gather the Catalan people on a controversial referendum on the independence of Catalonia, held on 9 November 2014. The doubts on the referendum were raised by its low turnout, its mere consultative value, and the fact that minors (above the age of 16) and every people resident in Catalonia (so even immigrants that do not have Spanish citizenship) were able to vote. The jurisprudence of the Spanish Constitutional Court has expressed on the Constitutionality of the Catalan referendum on 11 June 2015. The court then reminds that Catalonia has part of the unitary state that is Spain, is competent only on the matters that the central government have delegated to it, and that no delegation of the right to secede is conceivable under the Spanish Constitutional framework. Despite the ruling, the Catalan government is trying to proceed with a new independence referendum, which will be held on 27 September 2015. To avoid any stop from the central government, the Catalan government this time will use the results of early local elections as a political symbol of the Catalan will of independence. If the pro-independence parties obtain the majority that would mean that Catalonia wants to be independent. It is very difficult that the Spanish government will ever recognize the legitimacy of the vote, as it would mine to the unity of the country, creating a powerful precedent for the different minorities in State, such as Basque, Galicians and Andalusians. Finally it must be analyzed the approach of the EU toward the right to secede. In the European Union, differently from all other international organizations, the States have ceded a portion of their sovereignty. Despite this, the Lisbon Treaty of 2009 has recognized to the member States the possibility to withdraw from the Union unilaterally through a legal procedure. The exit of a member State from the Union must be legally regulated for the deep economic and political effects that the withdrawal of a member state would cause on the entire Union. So far, the only concrete case was the secession of Greenland from the EU in 1982, which surely created a precedent for the Lisbon Treaty clause. Is
then possible to ask if the presence of the right to secede inside the EU legal framework will be a useful tool to advance the European integration (giving a chance for the Eurosceptic countries to leave), or instead it will put an end to it. The greatest test for this question lies in the referendum that the United Kingdom has planned for 2017, which proves the UK commitment to interpret the right to self-determination in a broader way. The problems related to the cession of sovereignty form the Member States to the EU are now especially acute in relation to the Eurozone. For a Member State it is legally possible to secede from the Union but not from only the Eurozone. Dammann has identified three legal ways for a secession from the Eurozone. The first option is to get out entirely from the European Union and then came back in without reenter into the Eurozone. The second option is that all the 28 Member States agree to change the European Treaty and create a clause to exit from the Eurozone. The third option is based on the option *rebus sic stantibus*, which means that the premises that brought to the creation of the Euro are no longer valid.

In conclusion, many Constitutions, the ones based on a Hobbesian/Bodinian approach, recognize in the State the only structure that can save the people from disorder and chaos. However, as Althusius has theorized, and as many cases, that has been analyzed, have proved (especially those analyzed in chapter 3), the State itself can easily turn into a tyrant. The final aim of the modern Constitutions, and then of modern democracies, is to protect their citizens, and not the State. Then it is possible to affirm that a legitimization or constitutionalization of the right to secede will improve the modern democratic system. The fear that the right to secede is impossible to universalize, as expressed by Margiotta, is an incorrect analysis. Even if it must be recognized that not all the nationalistic aspirations can be satisfied at the same time, the right to secede is nevertheless a useful tool in the hands of all groups to protect their interests. The legitimization of the right to secede, even if materially impracticable for dispersed minorities, is anyway a tool to exercise political influence. The right to secede then enters into the democratic system of check and balance, typical of the Federal States, giving to regional and local entities a power that can match with the
central one, assuring a more democratic framework for all the people within that State. The right to secede will then bring to creation of new Westphalian State, but with a stronger democratic commitment in their Constitutions, inspired by the Althusian theory on secession. For what concerns International Law, the principles of self-determination of peoples and that of territorial integrity, cannot be conciliated. The attempt of the International Community to handle the secessionist movements behind the principle of *uti possidetis iuris* has often resulted in a complete disaster. Administrative borders, generally decided arbitrarily by authoritarian States, are not a guarantee for peace. In some circumstances, the “civil” wars that have sparked from the dissolution of a unitary state have been so cruel to justify secessions according to ethnic and not administrative boundaries, then against the legal principle *uti possidetis*. Then the right to secede should be legitimized by Public Law to become an effective form of devolution, without limits by the International Law. If the right to secede is the expression of a democratic will, it cannot be limited with the principle of territorial integrity; instead, it should be encouraged by the principle of self-determination of peoples.
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