

THE DEGREE OF LAW
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Thesis Summary

Secession and Self-Determination:
A Comparison between Kurdistan and Catalonia

by

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Table of Contents

I. SUMMARY OF THE SET RESEARCH TASK	3
II. DESCRIPTION OF THE EXAMINATIONS AND ANALYSES PERFORMED AND OF PROCESSING METHODS.....	4
III. BRIEF SUMMARY	5
IV. LIST OF PUBLICATIONS.....	7

I. SUMMARY OF THE SET RESEARCH TASK

The main research task is to justify the secession in light of self-determination right by comparing Kurdistan and Catalonia. I have started with each case legal and historical background to get the necessary information about the case study. I focused on the terms of the debate of secession, the conceptual framework of secession, to know the scope of the secession. I have started by analyzing the existing theories of justifying secession that primary and remedial theories can classify to accomplish this mission. I have tried to apply these theories in the cases of Kurdish and Catalans secession. I have found a different theory for each case. In details, The Kurdish situation has two different theories to justify secession. Therefore, I showed that there is no one single comprehensive theoretical framework to justify the secession.

To cover all the dimensions of this study, I have gone through the aspects of justifying secession in constitutional and international law. Started by the International law because it is the spark of the secession life. I have commenced by understanding the concept of self-determination through knowing the “self” that stands for people and determination that stands for deciding their social and political future. In the first part, I have studied who can decide and exercise the secession, or any other determination forms. I served through the location impact and the minority rights in this endeavour. Then I have studied the international transition for the right of “self-determination”. I proved that self-determination has recently changed from being exclusive to people under colonization and the secessionists. I have ended this chapter with international recognition concerning secession.

As the second dimension of the secession and self-determination study, seclusion in constitutional law has been studied in the following chapter. The constitutional provisions relating to secession and I have classified them into three categories based on the secession’s treatment of these provisions followed by the judicial role in this part. Then I have gone back to the roots of the *basic law* and the theories of natural rights and the social theories that organize the relation between the people and the state. I have derived the related aspects of these theories from Hobbes, Locke and Rousseau’s theories. Then I have formed the concept of “internal needs of the people” to set up secession’s internal merit.

In conclusion, I have connected all parts of the study to develop the secession theoretical framework based on two aspects of secession. The international recognition and the internal needs of the people.

II. DESCRIPTION OF THE EXAMINATIONS AND ANALYSES PERFORMED AND OF PROCESSING METHODS

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

This study also determines the reasons for and the consequences of peoples' self-determination from a constitutional view. It is necessary to know the position of self-determination in the constitutional law to understand the further steps after initiation and practising the right of self-determination. The constitutional court decisions disclose this position, especially that the constitutional court decisions are connected with most secession referendums.

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

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

This ambitious research tries to join the mentioned expressions in constitutional and international perspectives. This study will use the constitutional aspect represented in the social contract in secession's justification. And show how it is connected with the international perspective of secession represented in self-determination on the other hand. In other words, one of the most modern renewable legal issues that preoccupy constitutional scholars in the world is so essential because of the growing awareness of third-generation human rights focusing on collective rights such as self-determination, which could be tested in the formation

of modern constitutions. This proposed thesis aims to inform action, prove a theory, and contribute to developing knowledge in constitutional and international studies. This dissertation will highlight the significance of people's self-determination alongside the social contract. It deals with the developed definition of self-determination as an element of the democratic transition; it is also ostensibly connected with the social contract.

III. BRIEF SUMMARY

The secession is a process of separation of a people and its territory from the state to establish an independent state or join a neighbouring state in light of these people's self-determination. This process has a constitutional and international perspective. Constitutional perspective based on the social contract theories that organize the relation between the people and the central government. The international role sees the international perspective of welcoming this process in the international club. Each perspective has its own justification concerning secession.

Starting with the constitutional perspective, the constitutional perspective defines the internal merit of secession. This merit is the failure of satisfying the internal needs of the people. The "internal needs of the people" has two dimensions: first, it unites and constructs the bonds between the secessionists, for example, but not limited to, the race drawing from the Kurdish and Catalans' example or any other ties like religion, the right of association, or any form of ties to construct the "self" or the identity of them. The second, the "internal needs of the people" show the merit of breaking the social contract with the parent state.

The international perspective of secession starts with the international right of self-determination. Only recently, this right is not exclusively that body - entrusted with advising on the legitimacy of the secessionist movement), must balance this aspect against its valuation of the current disturbance of maintaining the status quo.

The utilization of these scientific results is seen in justifying all secessionist movements worldwide; the scholar can predict where secession is moving. Therefore, there is a clear justification of a theoretical framework of secession regardless of each secession case.

The concept of self-determination is the most powerful belief. No other concept is as strong, visceral, unruly, as steep in creating aspirations and hopes as peoples' self-determination deserve to be protected in secession. Although there is no single justification for legitimate secession, I

argue that there are two aspects of secession and self-determination ruling the situation for all secession examples worldwide. The comprehensive justification regarding the legitimacy of secessionist claims, as we can see from both examples of Kurdistan and Catalonia tested along with the other examples, must result from the balancing of **the internal demands of the people** expressed in the social contract against the justifiable concerns of the international community expressed in international **recognition**. Balancing these two aspects will avoid creating special and new standards to justify secession based on each case. It will set a general immutable rule applied to all cases, current and future ones, against every group in the same way. The power of the internal needs of the people is not enough to grant secession. If “peoples” is the body, international recognition is the spirit that makes it alive. Both form the scene of secession. I claim that secession has two aspects: the “internal needs of the people” and international recognition. Each aspect has its rules to reach a sufficient level to grant a successful secession process. Each situation shall be measured whether it will cause a distribution to the international stability or reserving the Status Quo. It shall be represented in the constitution if it is a need for its people. Self-determination by the whole nation leads to good governance while an immutable minority may be led to secession. The thesis presented on the interaction constitutional and international law field starts with the comprehensive analysis and then tests it in Kurdistan and Catalonia’s practical example.

Granted for the people under the colony and is a right for people who have internal merit of secession. The members of the international community present this right by recognition. Although the recognition of any secession is affected by politics, international law tries to justify the unjustifiable politics. The international recognition of secession’s main role is based on protecting international stability and order. Thus, the international community seeks to protect the international order's stability by the approval of secession if the status quo is distributing to international stability. On the opposite, the international community will never welcome secession if it will cause a disruption of the International stability than the current disruption.

This endeavour of international stability might be undertaken after forming foretelling regarding the probable disruptive consequences of recognizing the secession, the international community (or that body - entrusted with advising on the legitimacy of the secessionist movement), must balance this aspect against its valuation of the current disturbance of maintaining the status quo.

IV. LIST OF PUBLICATIONS

Coursebook

1. Alsamhan, Eyad A. “تعيين القضاة وتدريبهم في المسائل المدنية والتجارية: دراسة مقارنة” [Appointment and Training of Judges in Civil and Commercial Matters: A comparative Study] (October 1, 2020), By Kindle Edition ASIN: B08LQLNV4V & Paperback, 191 pages ISBN: 9789957676



Professional essay published in the candidate’s mother tongue in a foreign professional journal

2. Alsamhan, Eyad A. “خصومة المستهلك في أفعال المنافسة غير المشروعة: دراسة مقارنة للتجربة الأردنية ” و”تجربة الاتحاد الأوروبي”, Journal of Scientific Development for Studies and Research (JSD), Volume 1, Issue 2, 2020, pp. 13-56.
Available on < <http://sdevelopment4.com/ar/component/sppagebuilder/187-.html> >
Accessed on Febuary 16th, 2021.



Professional essay published in the candidate’s mother tongue in a professional journal in the candidate’s home country

3. “قابلية توريث المطلقة البائن بين الفقه والقانون (Arabic) Inheritability of the divorced women in the comparison between Law and Jurisprudence” DIRASAT Journal- Volume41, Shari’a and Law Sciences, Supplement 3, 2014, 1435. SHARI’A AND LAW SCIENCES DIRASAT JOURNAL ISSN: 1026-3721 Online ISSN: 2663-6190 (Jordan)
(Characters 41574)



Professional essay in a foreign language published in a foreign professional

4. Published Article titled “Rethinking of Litigation of Consumer in Unfair Competition” at Journal of Sharia & Law; Jan2019, Issue 77, p105-136, 32p ISSN:16081013.
(71,298 characters – 32 Pages)



Professional translation from a foreign language to the candidate’s mother tongue

5. Translation of the Article titled “Rethinking of Litigation of Consumer in Unfair Competition” at Journal of Sharia & Law; Jan2019, Issue 77, p105-136, 32p ISSN:16081013.
(71,298 characters Input)

Professional essay in a foreign language published in a foreign professional journal or a peer-reviewed volume of essays

6. Published paper titled “The position of Bill of Rights in the MENA Region: comparative study” in the “WG HART WORKSHOP 2018: BUILDING A 21ST CENTURY BILL OF RIGHTS” on Monday, June 11 and Tuesday, June 12, 2018, London, by the Advanced Legal Studies, University of London. **ACADEMIC DIRECTORS:** Professor Roger Masterman, Dr Helene Tyrrell, Professor Merris Amos
(25,619 characters)

[\(http://hartworkshop2018.com/](http://hartworkshop2018.com/) (Password: wghart) - all lowercase accessed on February 13, 2020



7. published a paper titled “Modern Globalization toward regionalization; legal perspective” on ILCY MUISC 16 on April 22, 2016 (**ISBN: 978-975-6760-82-6**) EDITORS Meltem Iriparlak – Berk Tüzün (**22772 characters**)
8. published a paper titled “WTO Dispute Settlement System” on ILCY MUISC 15 on April 10, 2015 (**ISBN: 978-975-6760-72-7**) EDITOR Talha Gençal (**17239 characters**)
9. published a paper titled “Impacts of Modern Change Climate on Immigration” on ILCY MUISC 14 on April 11, 2014 (**ISBN: 978-975-6760-60-4**) EDITORS Esra Taşkın - Ezgi Çalışkan - Sena Karaduman - Nail Salkim (**7552 characters**)

Professional essay in a foreign language published in a professional journal or peer-reviewed volume of essays in the candidate’s home country

10. Presented a paper in the “**Paris Convention between national legislation and sustainable development**” conference Titled “Climate Changes in Immigration Law from a constitutional Perspective” on 2-4 May 2017, University of Jordan, Faculty of Law.
(90800 characters)



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<http://architeriorsdesign.com/eyad/Climate%20Changes%20in%20Immigration%20Law%20from%20a%20constitutional%20Perspective.pdf>> accessed on February 13,2021.

Professional articles (published in a non-legal professional journal)



11. Jordan on Renewable Energy Sources

<<http://www.ammanjo.net/print.php?id=32535>> accessed on February 16, 2021.

Professional articles (published on the candidate's website)

12. L'organisation Judiciaire en Jordanie (FRENCH language)

<<https://eyadalsamhan.wordpress.com/2017/06/10/lorganisation-judiciaire-en-jordanie/>> accessed on May 3, 2020.



13. The International Covenant on Civil and Political Rights (ICCPR) Jordanian legal case law study

<<https://eyadalsamhan.wordpress.com/2017/06/12/56/>> accessed on February 16, 2021.



14. Jordan's International Legal Obligations on Renewable Energy Sources

<<https://eyadalsamhan.wordpress.com/2017/05/26/jordan-on-renewable-energy-sources/>> accessed on February 16, 2021.



15. Statistics Study on Formal Public holidays in Jordan 1990-2013, published by Jordan Ministry of Justice report, January 13, 2014, Legal deposit number at National Library: 235/1/2014.

<<https://eyadalsamhan.wordpress.com/2017/05/26/%d8%a7%d9%84%d8%b9%d8%b7%d9%84-%d8%a7%d9%84%d8%b1%d8%b3%d9%85%d9%8a%d8%a9-%d9%81%d9%8a-%d8%a7%d9%84%d8%a3%d8%b1%d8%af%d9%86/>> accessed on February 16, 2021.

