Federalism and the creation of new states: justifying internal secession

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To Arthur, Jonathan, C.L. and my big brother John

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Abstract *(English)*

This thesis addresses the creation of new states within federal arrangements – particularly federations - and their justification in liberal democratic contexts. It is presented as a set of three cumulative articles each of which makes a particular contribution to this topic. The first article argues that existing liberal approaches to justifying secession have important shortcomings if they are to provide moral guidance to when internal secession is justified. In order to address this shortfall, the second article examines the process followed in three existing cases (the creation of the Canton of Jura in Switzerland, Nunavut in Canada and Jharkhand in India) and how they were justified. Based on the process identified, the third article develops a procedural account of the grounds that may justify internal secessions. Overall the thesis argues that internal secessions should be negotiated between the secessionists, the existing unit they belong to, and the federation as a whole, delimited by the specific federal context in which they take place.

Resum *(Catalan)*

La present tesi doctoral tracta la creació de nous estats en el marc de les federacions, així com la seva justificació en contextos de democràcies liberals. Es presenta com un conjunt de tres articles cumulatius on cadascun fa una aportació al tema principal. El primer argumenta que les teories liberals sobre la secessió presenten importants mancances com a guia moral quan una secessió interna és justificable. Per abordar dites mancances, el segon article examina el procés que s'ha seguit en tres casos existents (la creació de Jura a Suissa, Nunavut al Canada i Jharkhand a l'India) i les justificacions que s'hi van donar. A partir d'aquests casos, el tercer article desenvolupa una teoria normativa procedimental que considera quins són els fonaments que justifiquen les secessions internes. En conjunt, la tesi defensa que les secessions internes s'haurien de negociar entre la part seccionista, la unitat existent a la qual pertanyen, i la federació; tenint en compte el context federal específic en el qual te lloc.

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Introduction

The general motivation for my thesis

Some of Europe's largest multinational states are facing demands for independence by stateless nations' nationalist and secessionist parties and social movements.[1] Relatively important parties such as the Scottish National Party in Scotland, *Plaid Cymru* in Wales and *Esquerra* in Catalonia air explicit demands for independence. What makes these interesting is the fact that their claims are for independence in Europe[2], or in other words, independence from the member state they are part of but not from the European Union.[3]

However the debates to date have been shaped almost exclusively in terms of the relevant domestic constitutional framework or international relations, law and jurisprudence. As such, it is considered to be an issue between the secessionist and the existing state they are part of, set within the context of international relations.[4] This assumes that the outcome of secession is the creation of an independent state in which its government holds absolute authority. But as Keating (2004) argues, "Europe challenges the doctrine of unitary and exclusive state sovereignty".[5] Indeed, this may be true not only in Europe. Elazar (1996) noted

[1] See for example K.J. Nagel (2004, 2005, 2011) or M. Keating (2001, 2004, 2012)
[2] The term *Independence in Europe* was coined as an SNP slogan in the 1980's.
[3] For a detailed account of the SNP's aim and change over time see for example E. Hepburn (2006). For a study of *Plaid Cymru* see, for example, A. Elias (2006).
[4] For an account of how secession is envisaged see D. Siroky (2011).
[5] M. Keating (2004: 368).

that "the world as a whole is in the midst of a paradigm shift from a world of states, modelled after the ideal of the nation-state developed at the beginning of the modern epoch in the seventeenth century, to a world of diminished state sovereignty and increased interstate linkages of a constitutionalized federal character".[6] Hence what is achieved with independence in Europe is not what has been traditionally associated with statehood.

In addition, discussing a potential secession within the EU as a domestic issue underestimates the implications the creation of a new state within Europe raises for the EU. It sidelines issues of how and what representation in EU institutions a new member may require and the effect this might have. The creation of a new member state may, for example, require an additional Commissioner to be added, the Council of Ministers may also be enlarged and the voting weight of member states will be affected. Similarly changes will need to be made to the judicial branch of the EU and to the distribution of seats in the EU parliament. Ultimately, in effect, independence within Europe will affect the treaties of Union. By implication, this affects not only the EU as a whole but also all the member states. The context within which independence in Europe should be discussed therefore seems to be the EU rather than international relations or as a purely domestic matter for the member state in question.

Despite this, it is unclear how such secessions should be considered. On the one hand, EU Treaties do not contemplate the possibility of either withdrawal of part of an existing member state, or internal enlargement,[7] and there is no historical precedent from which to draw.[8] In addition there is no legal precedent to examine claims for independence in Europe.

[6] D. Elazar (1996: 417).

[7] For an account see for example J. Murkens et al. (2002: 129). However, in the Lisbon Treaty withdrawal of an existing member state from the Union is considered in article 50.

[8] In terms of withdrawal from the EU there is the precedent of Greenland in 1985, but this is a different scenario. It is a case of withdrawal of part of a member state from the EU. Greenland remained part of Denmark which in turn continued to be a member state of the EU.

On the other hand, current liberal secession theorists also seem to be somewhat misplaced. This is because they have focused on providing normative guidance for justifying external secession in liberal democracies. Existing scholarly discussions on secession, including the influential works of A. Buchanan (1991, 1997), H. Beran (1984, 1998), W. Norman (2006), A. Pavkovic and P. Radan (2007), C. Wellman (1995, 2005), A. Margalit and J. Raz (1990), A. Patten (2002) and A. Cassese (1995), H. Hannum (1990) and J. Crawford (1979) have all, implicitly or explicitly, taken a view of the world as made up of separate sovereign states. As such secession is considered as the creation of a new independent state (a segregated political community) that joins this global territorial division or as the withdrawal of a territory to become part of another sovereign state. It is regarded as an issue between the seceding territory, the state and ultimately the international community.

An alternative approach to considering independence in Europe may be to frame it as internal secession or secession within federal arrangements. That is, a process similar to the creation of the Canton of Jura from the Canton of Berne within the Swiss Federation for example. If constituent units are sovereign at the self rule level while the whole federation is sovereign at the shared rule level, then secession from a self rule unit but not from the shared rule level can occur. They are "internal" because the seceding territory and population do not withdraw from the shared rule level they are part of. But when should internal secession be justified? Indeed, are the grounds that justify internal secession different to those provided by theorists to justify external secession?

To explore the morality of internal secession is no easy task. Although there are federal contexts within which secessions have occurred, there is no (or very little) literature on the creation of new constituent units within federal arrangements (other than through expansion of territory). There are few (or no) relevant existing studies to rely on. As a result, my thesis will leave the context of the EU for further studies and concentrate on the examination of the creation of new states within federations. More concretely, it focuses on analysing the grounds that have justified internal secession within federations. Doing so will provide a basis from which an alternative analysis of calls for independence within

federal arrangements can be carried out which may be more appropriate than the existing current liberal accounts on secession.

The overall research question and thesis structure

The thesis has one overall research question: *On what grounds should internal secession be justified?*

The thesis is structured and divided into three separate parts that are intended to be distinct, self contained articles. Nonetheless, each part subsequently builds on the other in a logical sequence, each providing a specific contribution towards resolving the overall research question. To this end, in the first part, I review the existing literature on secession and federalism, and consider whether they provide the grounds that justify internal secession. In the second part, I provide a comparative study of three cases of internal secession and present a model of the general process that successful secessions within liberal democratic federations have followed. The third part engages with the normative questions that the process of internal secession raises and sets out a theory on internal secession.

In order to minimise the substantial repetitions that are required when the thesis is presented as three distinct articles, I make continuous references to previous sections of the thesis without rephrasing substantial arguments that are made elsewhere. In doing so, I am fully aware that the lucidity of each part as a standalone article is somewhat compromised, but the thesis as a whole gains in fluency. In what follows I set out in more detail the aims, structure, justification and contributions towards the overall thesis that each part makes.

Part 1: ***Article 1: "A deficit of secession theories: internal secession"***[9]

In the first part of the thesis I seek to examine the question of whether new theory on internal secession is necessary. I argue that internal secession is different to external secession and that the accounts provided by existing liberal theorists are not adequate for

[9] A shorter version of the arguments exposed in part one of the thesis has been published. Please see A. Gilliland (2012).

addressing the normative questions that apply to the former. My aim is not to discredit external secession theories or to criticise the coherence of their moral and practical accounts, but to show that existing literature is inadequate for addressing the political theory questions and issues relevant to internal secession.

In order to do this, I cover four points. Firstly, I provide a distinction between external and internal secession. Secondly, I identify the liberal approaches to justifying secession that have been proposed by scholars to date and point to their deficits if they are to be used to consider how internal secession might be justified (in liberal democratic federal arrangements). Thirdly, I draw attention to the fact that the federal literature to date, particularly political theory on federalism, has itself overstepped internal secession. At most, it has focused on some issues that are arguably related, but without directly addressed it. Fourthly, by highlighting the deficits of existing liberal approaches to secession I call for the need for further research. In summary, this part of the thesis argues that internal secession is significant, different and important but has received very little scholarly consideration.

Within the overall research question of the thesis, this part therefore establishes the case that internal secession requires political theory tailored to it. I argue that this is because the existence of a federal pact modifies, or has an effect on, the interplay of the key principles that liberal theorists attach to justifying secession (such as sovereignty, majority rule or democracy, the rule of law and equality and freedom of individuals). Hence part 1 of the thesis justifies the need for part 2 where the processes of internal secession are analysed (which in turn is precursor to part 3 which explores the morality of internal secession).

Part 2: ***Article 2 "Divorce without separation: the process of internal secessions in liberal democratic federations"***

In part two of the thesis I seek to address the question of how does internal secession occur and how it has been justified in practice within liberal democratic contexts. The focus is on identifying the steps and stages in the process of internal secession, recognising the main actors involved and the arguments used to legitimise or justify it.

For this part of the thesis I restrict the definition of internal secession to cover only the creation of new constituent units from part of one or more existing ones in liberal democratic federations.[10] In this respect my study focuses on the examination of three cases. Namely, the creation of the Canton of Jura from the Canton of Berne in Switzerland, the creation of Nunavut from the Northwest Territories in Canada and the creation of Jharkhand from Bihar in India.

I focus on federations and leave out other federal arrangements. By *federal arrangement* I mean a political order which is characterised by a "genus of political organization that is marked by the combination of shared rule and self-rule".[11] And by *federation* I am referring to one type of federal arrangement that meets at least the following criteria. Firstly, it involves a territorial division of power between the constituent units and the central or shared government.[12] Secondly, the division of power is entrenched in a constitution which cannot be altered unilaterally by either a member unit or the shared government. Thirdly, citizens are members of both a constituent unit and the federation as a whole and the authority of both levels of government are directly elected.[13]

Although all federal arrangements are "political systems in which there are two or more levels of governments which combine self-rule for the governments of the constituent unit with elements of shared-rule through common institutions",[14] it is within a federation that the interaction between self-rule and shared-rule is most clearly identified. This is because unlike looser "forms of partnerships … neither the federal nor the constituent units of government are constitutionally or politically subordinate to the other, that is, each having sovereignty powers derived from the constitution rather than another level of government, each empowered to deal directly with

[10] It is important to note that for the second article what constitutes internal secession is much more restricted than the wider definition given in part one.
[11] R. Watts (1998: 120).
[12] In this thesis I exclude consideration of non-territorial federalism. For normative discussions on this please see O. Bauer (1903), K. Renner (1907), or Y. Tamir (1993).
[13] See for example R. Watts (1998: 121).
[14] R. Watts (2005: 234).

its citizens … and each elected by its citizens".[15] Studying the arrangements where federal elements are strongest will allow me to concentrate on the practical and moral issues federalism raises for internal secession.[16]

In addition, for this part of the thesis I am concerned with the creation of new constituent units from territory and population that are already part of an existing constituent unit and I do not deal with territorial exchanges between such units. I do not deny that territorial exchanges between units are important, but a distinction must be made between founding a new member and redrawing the boundaries of existing ones. It is to be expected that establishing the border position will be part of, or be a secondary debate to, the right of a group and a corresponding territory to secede. Furthermore, the creation of new constituent units that have been a result of upgrading of status will not be considered. Some federations have more than one territorial unit status (the federation is made up of states or provinces plus territorial units dependent on federal rule). Similarly, cases where a territory was removed from a constituent unit and became administered by the federal government will not be considered. In this case no self rule is established.

Finally, I only consider secession that occurred at a time of relative calm. That is, I exclude those cases that occurred as part of a wider state territorial reorganisation. As Wildhaber (1995) has pointed out, territorial changes that occur as part of a wider state reorganisation coincide with periods of relative political change and a restructuring (or indeed reestablishment) of the federal pact. When no general reorganisation occurred, greater emphasis is placed on the resolution of the conflict that leads to secession. This set of criteria establishes the three cases mentioned as the appropriate case studies.[17]

Based on the analysis of the cases mentioned, a three stage model of how internal secessions have occurred in established liberal democratic federations is devised. The model is drawn primarily

[15] R. Watts (2005: 234).

[16] In later parts of the thesis I return to consider what the implications of my findings and arguments are for other federal arrangements.

[17] In annex 1 I have included a table that summarises these criteria and the case selection.

from examining the paradigmatic case of Switzerland. I then strengthen the validity of the model by showing that the other two cases, despite their unique federal contexts, follow a similar process.

In terms of the overall thesis question, this part serves as a basis from which the normative questions that internal secession raises can be identified and ultimately, from which a normative account of when internal secession is justified can be built. Indeed, if the first part of the thesis showed that internal secession raises important political theory questions that have not been addressed by the existing liberal literature on secession; this part of the thesis, through the examination of empirical cases, discusses the normative and practical problems of internal secession and how they have been resolved in praxis.

Despite this there are two points that qualify the contribution of this article and must be noted. Firstly, the model presented is qualified by the fact that it is based on a small n study.[18] This is partly due to the relatively small number of actual cases available for study. Nonetheless, it means that the potential applicability of the findings to other federations may be restricted. Secondly, it must be noted that the study only covers successful cases of internal secession. This is not problematic for the aim of the article but caution must be expressed if it is used to decipher a set of rules that internal secession processes should adhere to.

Part 3: ***Article 3 "Justifying state creation within federations: towards a theory of internal secession"***

In part three of the thesis I aim to provide a theory of internal secession. It is framed as the concluding chapter of the thesis as a whole. Within the overall thesis research question, it provides a normative account which follows on from the more empirically based study in part 2.

This part of the thesis is divided into four sections. It begins by defining the normative questions associated with internal secession.

[18] For a discussion on case study or small n studies see for example J. Gerring (2004), Brady and Collier (2004) and R. Yin (1994).

These are derived directly from the processes identified in part 2 of the thesis. Then, returning to existing theories of secession – mainly those proposed by A. Buchanan, H. Beran and C. Wellman – it highlights that internal secessions do indeed raise normative questions that existing approaches to justifying secession do not address. This reinforces the arguments made in the first part of the thesis. In the main section of this part of the thesis my approach to internal secession is presented. Existing liberal arguments that are used in the justifications of external secession are brought together with normative federal principles and discussed in relation to the three stage process that internal secessions have followed in reality according to the study presented in part 2 of the thesis. The third section briefly reengages with the particular steps taken in the process of each of the three cases and evaluates the extent to which they were morally justified and the degree to which my procedure can be used as a standard to evaluate internal secession processes.

The approach I have taken in justifying internal secession is primarily a procedural one. This is not the approach taken by most scholars on secession.[19] They instead favour providing justifications that rely almost entirely on the outcome of secession, making reference to the need to sustain the functions of an independent state. I will argue however, that in internal secession the restrictions are less relevant and therefore a justification based chiefly on the outcome is not adequate. This is because the outcome is not the creation of a new state that joins the international community; and so the functions the new unit must sustain are less than full independent statehood. For example the competences that are held by the federal level – which generally include at least defence, foreign and economic policy – will not be assumed by the new unit (the specific power responsibilities or competences of constituent units in each federation will however be dependent on the federal pact and the role of every unit in shared rule).

In addition to this, since one of the defining features of internal secession is the fact that it occurs in a context of multiple and interrelated *demoi*, it cannot be unilateral and consequently can only be justified if negotiated. If this is so, a procedural approach is better suited to capture how or when a process will be justified.

[19] The most notable exception is D. Weinstock (2001).

Finally, a procedural approach also allows me to minimise one of the strongest criticisms that has been made of secession theories in general, that is, the lack of congruence between the moral and the practical conditions proposed. Basing my account on the study of actual cases (presented in part two of the thesis) and taking a procedural approach to considering how internal secession should be justified ensures a solid, real grounding for my proposal.[20]

Given that the foundations of my account are drawn from the conclusions of part 2, there are some limits to the application of my account. The article therefore concludes with a fourth section where I note the applicability of the model and its possible moral implications when other types of internal secession (such as those that occur in weaker federal arrangements or territorial exchanges between existing constituent units) are considered.

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Overall, the thesis thus examines the existing theory on external secession and the precedents of cases of internal secession in order to establish the grounds that justify internal secessions in liberal democratic contexts. It therefore addresses an issue which has received relatively little scholarly attention but that is of importance.

[20] I do not deny the importance of the outcome of internal secession in my account. Since importance is given to the existence of a federal pact, the provisions made in this pact must also be included in justifying internal secession or not.

Annex I: The creation of constituent units in liberal democratic federations and internal secession.

Cases of creation of new constituent units that are considered internal secessions

	Criteria		
Federal state[i]	**Creation of new constituent unit whiles a democratic federation?**	**Time of relative calm?**	**Cases of internal secession?**
Argentina	No	No	No
Australia	Yes	Yes	No[ii]
Austria	No	No	No
Belgium	No	No	No
Brazil	Yes	Yes	No[iii]
Canada	Yes	Yes	Yes. The creation of Nunavut from the Northwest Territories.[iv]
Germany	Yes	No[v]	No
India	Yes	Yes	Yes.[vi] The creation of Uttarakhand from Uttar Pradesh, Jharkhand from Bihar and Chhattisgarh from Madhya Pradesh.
Malaysia	No	No	No
Mexico	No	No	No
Micronesia	No	No	No
Nigeria	No	No	No
South Africa	No	No	No
St. Kitts and Nevis	No	No	No
Switzerland	Yes	Yes	Yes.[vii] The Creation of the Canton of Jura from the Canton of Berne
USA	Yes	Yes	No[viii]
Venezuela	No	No	No

Source: own source

Notes:

[i] This list is based on K. Adeney's (2007: 172) classification of federations according to democratic status which is composed using data from the Britannia Book of the Year (1958-1999) and the US CIA reports (2006). I include

consolidated democratic federations, federations that are currently democratic but with a turbulent democratic history which have undergone internal territorial modifications, and new federations.

[ii] Australia's only case of creation of a new state within the Commonwealth is the creation of the Northern Territory from a territory that had previously been part of the state of South Australia. But this was not a case of internal secession. The State agreed that the area should be ceded to the Commonwealth (federation) and it was only later that it gained self government. For details on the process of the creation and history of the Northern territory see A. Powell (1996).

[iii] While the number of states that make up Brazil has increased from the original 20 in 1946 to 26 today, they were all created under military rule or where the result of the upgrading of federal territories into provinces. Cases include the upgrading of the territories of Acre and Rondonia into states in 1962; the merger of Guanabara and Rio de Janeiro states in 1976; the separation of Mato Grosso do Sud from the state of Matto Grosso in 1977; the upgrading of the Territory of Rondonia to a state in 1981; and the upgrading of the territories of Ampá and Roraima into states in 1991. The only exception is the recognition of Tocantins as a state separate from the state of Gioas in 1989, however, although this occurred under democratic rule, it was envisaged by the constitution drawn up by the military government before power was transferred to civilian rule. As such it was simply enacting a change made under military rule.

[iv] The creation of new states has been mostly a result of the acquisition of land that remained under the rule of the British, the eventual incorporation of which was anticipated in the Canadian constitution. The exceptions are the formation of the separate Yukon Territory in 1898 and the creation of Nunavut in 1999. Yukon was created at a time when the government of the Territories was being reformed and was virtually entirely administered by the federal government. For an account see for example D. Elliott (1979) and S. Smyth (1991). For this reason I only consider Nunavut as a case of internal secession. Although it has a status of self governing Territory rather than a Province, I still consider it a case of internal secession. This is because it is created from a unit that was itself a self governing Territory. Unlike the case of the Northern Territory in Australia, from its birth the Northwest Territories had an established self government despite not having Province status. Furthermore, in the context of Canadian federalism, the difference in reality between the different statuses remains nominal. See for example R. Simeon and M. Papillon (2006).

[v] Germany's new Lander were created in the context of reunification which was provided for in the Basic Law. For an account of reunification see for example J. McAdams (1993) and H. A. Turner (1992)

[vi] The case of India is varied and complex. From independence until 1956 divisions were largely based on colonial administrative divisions, however after 1956, the federation was reorganised into states largely based on linguistic criteria. Since 1956 there has been a number of reorganisation of existing states that have been interpreted as attempts to redress inaccuracies and failing of the initial reorganisation. For example the Punjab Reorganization Act of 1966 divided the original 1956 state of Punjab creating a new state (Haryana), transferring the northern districts of Punjab to Himachal Pradesh, and designating Chandigarh as a Federal Territory (or Union Territory) under federal administration. I excluded the creation of units that are directly related to the

1956 reorganisation as cases of internal secession. Another path of new state creation has been through the granting of state status to former Union Territories, this is the case of Tripura and Manipur for example. Some states have also been incorporated after territories where gained from other countries, Goa, Daman and Diu are such examples. For a discussion of state creation in India see for example H. Bhattacharyya (2001) and M. Singh (2007). Only the latest creation of new states in 2000 classify as internal secession. These are: the creation of Jharkhand from the southern districts of Bihar, the creation of Chhattisgarh from eastern Madhya Pradesh and the creation of Uttarakhand from the hilly regions of Uttar Pradesh.

[vii] Switzerland's longstanding democracy and lack of territorial modifications, makes the only creation of a new canton a case to be considered as internal secession. Switzerland had previously seen the division of Cantons into two half cantons (Appenzell in 1597 and Basel in 1833). I exclude these cases on democratic grounds. In addition, they occurred before the 1848 Constitution that established Switzerland as a federation. Furthermore, the split divided the shared rule participation and there was no overall increase in participants at the shared rule level. For an account of the causes that led to these divisions see for example C. Church (1983). There are also difficulties in accessing relevant accounts and data for these cases since they occurred over 250 years ago.

[viii] The US cases are ambiguous. I am not referring to the instances where new states were created as regions ceded, were annexed or were purchased from states or foreign powers or those created as a result of internal land grants, cessions, purchases, or settlements or even the admission to the Union of previously independent states. For an account of these see for example Wildhaber (1995). There are, however cases of states created by the separation of a part of the territory of a state from an existing state within the federation. For example Tennessee was created from North Carolina in 1796. However this occurred in the context of immigration westwards form North Carolina (encouraged by the government in its drive to extend the US to the West). The process was, in a way, similar to that of the Northern Territory of Australia, that is, the land was given up to federal control before it being granted a status of its own, in the US as a separate state. In the case of the separation of Kentucky from Virginia in 1792, this was essentially a response to territorial disputes between Pennsylvania and Virginia. The creation of Maine from Massachusetts in 1820, occurred also in times of change as part of the Missouri Compromise when the pro-slavery Missouri state was created. Maine was created as a free state to maintain the balance between the north and the south states (free vs pro-slavery) in the Senate. Finally, West Virginia's creation from Virginia after the 1861 secession is marred in a process of dubious legality and legitimacy in the context of the Civil War. In this context, the debates of external secession and internal secession overlap, it occurred at a time of uncertainty if not change and instability.

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Part 1

A deficit of secession theories: internal secession[1]

Abstract

In this part of the thesis I make a distinction between internal and external secession and find that to date there is no normative account for justifying internal secession. I argue that existing liberal secession theories are external secession biased (and state centrist) and have provided limited definitions of secession, making their application context restrictive and incomplete. I examine the main moral justifications and the practical conditions set to restrict or allow secession provided by existing liberal secession theories and point towards their deficits if we are to use them to examine and review internal secessions. I then argue that the literature on federalism itself has also failed to provide discussion on internal secession. Finally I propose that to address this shortfall, we need to incorporate the moral and practical obligations arising from the existence of the federal pact into normative discussions of secession. This can then enable us to evaluate instances and future claims for internal secession.

[1] A shorter version of this chapter has been published; see A. Gilliland (2012).

I: Introduction

Secession is a concept that questions the sovereign legitimacy of the state demos, and consequently where authority lies and why a state's authority is legitimate. However, because it has generally been associated with international relations and international law, it has been assumed that, in a state, sovereignty is always undivided. Since the Westphalian division of the world all land has belonged to a state, secession has commonly been referred to a territory that was previously under the sovereignty of one state becoming (sovereign) territory of another state. In other words, it has referred to territorial modifications that amount to i) the formation of new states from one or more existing ones, or ii) territorial exchanges between states. In practice it has therefore referred to instances such as the creation of Bangladesh from Pakistan, East Timor from Indonesia, Eritrea from Ethiopia as well as the creation of Eastern European States after the fall of the USSR, to name a few examples.[2] Secession has been associated with a complete disaggregation of a territory and its population from an existing state and is often a synonym for independent statehood.[3]

In keeping with the notion that the concept of secession is necessarily related to the concepts of sovereignty, authority and power, in federations where sovereignty is not absolute but shared, where authority does not lie with only one demos, and power is divided, secession *within* the federation must also be an applicable concept. This is because if federations are defined as D. Elazar does as being "the combination of self-rule and shared rule through constitutionalised power sharing",[4] whereby constituent units are sovereign at the self rule level while the whole federation is sovereign at the shared rule level, then secession from a self rule unit but not from the shared rule level (internal secession) can occur. This is in addition to the possibility of external secession or secession from the shared rule. Internal secession therefore may apply to i) the formation of new member units from one or more existing ones, and ii) territorial exchanges between member units.

[2] For a more comprehensive list see for example A. Pavkovic and P. Radan (2007) or J. Crawford (1999).
[3] Unless otherwise stated this is the meaning I attach to the term. I am restricting myself to instances when a new state is created, leaving out territorial exchanges.
[4] D Elazar (1993: 190).

Hence it refers to demoi changes at the self rule level but not from the larger shared rule level.[5] The creation of Jura from the canton of Berne in Switzerland in 1979, Nunavut in Canada in 1999 or Chhattisgarh, Jharkhand and Uttarakhand in India in 2000, are some practical examples.

Despite this difference, we have few developed normative parameters that can provide guidance for responding to claims for internal secession. Liberal political theory has only focused on external secession. This is true for both federalism and secession literature.[6] It could be argued that literature on the nature of federalism, particularly that concerning the basis on which constituent units should be created, is relevant to internal secession. However, such literature addresses the arrangement for a federal pact rather than the question of creating new member units comprised of a population that is already part of the federation and as such its applicability is limited. If we turn to liberal theory on secession we find a lack of attention paid to internal secession, and there seems to be an inherent statist bias. Existing theories of secession including the influential works of A. Buchanan (1991, 1997), H. Beran (1984, 1998), W. Norman (2006), C. Wellman (1995, 2005), A. Margalit and J. Raz (1990) and A. Patten (2002) have all, implicitly or explicitly, regarded secession as external. No distinction has been made with regards to how sovereignty is constructed within a state and how the concept and its justification could be construed in instances where sovereignty is not absolute. While this is not a problem when discussing unitary states, where sovereignty is undivided and therefore secession can only be external, it becomes a problem when federations are discussed and internal as well as external secession become applicable concepts.

As a consequence we have no clear normative frameworks that can provide guidance for debates on internal secession in liberal democratic societies. Yet there are compelling arguments for why internal secession should be studied in political theory. Firstly, internal secessions are real occurrences and so a close analysis of

[5] This may also apply to some looser federal arrangements too and is not necessarily restricted only to federations.

[6] The only exception I am aware of is T. Nieguth (2009) who examined the claims made by Northern Ontario movements for a separate province.

these processes may be helpful to better understand them. This may be particularly relevant in India for example where the creation of new states remains a salient issue, but is relevant to virtually all federations where there are challenges to existing boundaries of constituent units.[7] Secondly, it could provide new dimensions to the debate on the relationship between federalism and conflict resolution, particularly in multinational or multiethnic contexts. With a general tendency towards the growth of local and regional identities (often linked to economic and socio-cultural globalisation), and the impossibility of the world being divided into an indefinite number of states, internal secession may become a viable cost effective solution to territorially concentrated demands for greater autonomy and self government from regions or groups.

Thirdly, with growing interdependence and in line with the concept of the post sovereign state and a paradigm shift from Statism to Federalism,[8] statehood no longer means what was traditionally thought and associated with it, at least in some regions of the world. In the context of the EU especially, it may be an important concept in considering claims for statehood of minority nations existing in some of the larger multinational Member States. The Scottish National Party in Scotland for example, proclaims a double aim of independence: independence from the UK while not from the EU.[9] Similarly, *Plaid Cymru*, the Welsh nationalist party and *Esquerra*, the pro independence Catalan nationalist party, have also adopted, at least in their discourse, similar aims.[10] As such it seems that some EU nationalist movements are abandoning traditional claims for fully sovereign statehood and are prepared to concede to shared sovereignty and authority; in effect, as M. Keating (2001) has

[7] There are internal secession demands particularly in federations such as India, Nigeria and Switzerland, R. Simeon (2009: 246).
[8] See, for example, D. Elazar (1996).
[9] See, for example, KJ. Nagel (2004).
[10] *Esquerra* sets its aim as "independència dels Països Catalans a l'Europa Unida" (independence of the Catalan countries within the United Europe)- own translation. Source: http://www.esquerra.cat/partit/projecte-politic/projecte-ppcc [accessed November 2009]. Plaid Cymru's objective is to attain "Full National Status for Wales within the European Union" see http://www.plaidcymru.org/content.php?nID=90;lID=1 [accessed November 2009]. For an account on the changing aims of SNP see for example M. Keating (2012), E. Hepburn (2006), for accounts of Plaid Cymru see for example A. Elias (2006). For general accounts see KJ. Nagel (2005), M. Keating (2004).

argued, they are adapting to the reality of the post sovereign state.[11] In such a context, internal secession may therefore be more relevant than traditional secession debates.

My aim in this part of the thesis is to point towards how existing liberal secession theory is misleading in terms of considering internal secession. To do so, I start by examining the definitions of secession that scholars have used, their moral theoretical approaches**,** and the practical conditions to restrict or allow secession that have been proposed. I argue that the moral arguments may be relevant in justifying internal secession (since they are built on important liberal democratic principles), but they should also take into account the moral implications of a federal pact if claimants wish to remain part of the federation but as a new member unit. In terms of the practical considerations, I argue that since existing theories are based on the outcome of secession being the creation of an independent, fully sovereign state, they are inadequate when the justifiability of internal secession is discussed. I then turn to briefly point towards the fact that federalism literature itself has also sidelined discussion on internal secession. In the final section I suggest that in order to address this deficit, we must first examine how cases of internal secessions have occurred and how they have been justified before a normative account of internal secession can be provided.

In doing so this part of the thesis contributes towards the overall research question by showing that existing liberal democratic political theory on secession has not focused on internal secession. It also raises, although not resolves, some of the normative issues that internal secession raises which will be explored later. This sets the background for justifying the need to, as a starting point, examine the how internal secessions in liberal democratic federations have occurred (which is the topic of article 2).

II: Existing secession theory and the deficits therein

There are three main approaches to justifying the right to secession within liberalism. Firstly there is the remedialist approach

[11] The idea of the post sovereign state is developed in M. Keating (2001) although it is also used by D. Elazar (1996).

represented by A. Birch (1984) and A. Buchanan (1991). These authors, according to P. Lehning (1998) "assert a moral presumption in favour of maintaining existing states, but also a right of secession… based on moral wrongs suffered by the separatists".[12] Secession is therefore portrayed as a remedy for state failure, that is, when a state fails to safeguard the liberal rights of a region within it. In general they are instrumental and oriented towards providing practical guidance to when and why might a claim of secession be legitimate.[13] As such they have focused more on the real rather than the ideal, which in turn means the moral justification for such a position is not developed and they have favoured the status quo.[14] Since their underlying assumption is that there is no moral right to secede from a liberal state, I have termed this approach liberal type I.[15]

Secondly, there are the primary right theories which provide accounts for a no fault right to secession. They have developed a moral theory whereby a prima facea right to secession exists based on the liberal principle of individual autonomy and the democratic principle of majority decision making. For this reason they could be termed liberal (type I) democratic.[16] The approach is best represented by H. Beran (1984). According to P. Lehning (1998), H. Beran justifies secession "based not on the wrongs suffered by separatists but on the right of free political association".[17] But while morally permissive, they provide practical conditions that restrict the applicability of the right to certain instances only.[18]

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[12] P. Lehning (1998: 2).

[13] A. Buchanan (1997) himself admits this is true, stating he was encouraged to take an instrumental position from T. Christiano's (1995) arguments that the usefulness of political theory is restricted if it is too normative and hence inapplicable to reality.

[14] This argument is also made by D. Miller (1998). It should be noted however that although theorists that have adopted this approach aim to provide a "less value laden" approach (A. Buchanan 1997), the positions proposed are not value neutral.

[15] This approach corresponds to what some literature refers to as just cause secession theory.

[16] This approach is sometimes also referred to in secession literature as primary right or choice theory.

[17] P. Lehning (1998: 3).

[18] Theorists have relied on pragmatic conditions to limit the application of their moral reasoning which seems to morally justify an infinite number of new states.

A third approach exists which has tried to develop a moral case to secession which is wider and more permissive than the remedialist one, but more restrictive than the primary rights approach. Theorists who have taken this approach build their moral justification of secession based on the liberal premise that group self determination is a key element for individual liberty. They therefore adopt a liberal type II position.[19] That is, they place importance on group rights. For this reason I refer to such an approach as liberal (type II) democratic. Authors who adopt this approach include C. Wellman (1995 and 2005), A. Patten (2002) and S. Caney (1998). In broad terms, such theorists offer a "model of political justification which explains that, while individuals and small groups may not secede, a larger group may".[20]

All three approaches are inadequate for considering when internal secession is justified. The starting definitions of secession provided are incomplete. Not only do they tend to define secession as external, but they also explicitly tend to restrict theories to cover the justification of unilateral secessions. Secondly, their moral accounts fall short of considering the moral implications that arise from the existence of a federal pact and therefore fail to take into account how the existence of multiple and overlapping demoi affect the liberal principles they invoke. In addition, the practical considerations provided to either restrict or allow secession clearly apply only to secession understood as external, occurring in the international context, rather than within a federation. I consider these three points in turn.

i) Existing theory and the definition of secession

The first deficit of current liberal theories is the restricted definition of secession that theorists have sought to address. In an attempt to provide a value-free objective definition of secession, A. Pavkovic

[19] The normative basis for the distinction between liberal type I and liberal type II corresponds to that born in response to communitarian critiques of Rawlsian liberalism in the 1980s when some scholars reshaped liberal political theory by incorporating cultural identity into liberalism. Notable scholars in this respect include C. Taylor (1982, 1993), W. Kymlicka (1989, 1995) and F. Requejo (2001).
[20] C. Wellman (1995: 142).

and P. Radan (2007) for example define secession as "the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state".[21] Similarly C. Haverland (1987) defines it as "the separation of part of the territory of a state carried out by the resident population with the aim of creating a new independent state or acceding to another existing state".[22] The assumption is that each state is fully sovereign and that any territory can only form part of one sovereign body. This assumption is clear also in the definitions provided by other liberal theorists on secession. A. Buchanan (2007) argues that secession in the classic sense occurs when "a group in a portion of the territory of a state attempt to create a new state there… leaving behind the original state in reduced form".[23] Similarly H. Beran's defines it as the "withdrawal from a state and its central government of part of its people with their territory".[24]

If one dwells into the existing political theory on secession, one is struck by the variety of ways that secession is further defined to restrict its application. A. Buchanan (1991) for example is only concerned with what he considers to be classic cases of secession excluding peaceful secessions from his considerations. Similarly, others such as J. Crawford (1979) have defined it as the "separation of part of the territory of a state which takes place in the absence of the prior consent of the previous sovereign",[25] and hence have made a distinction between secession and unilateral secession and focused only on the latter. L. Bishai (1998) also provides analysis on secession defined as the "unilateral withdrawal of territory and people from a state"[26] and goes on to argue that "undisputed divisions… are not secessions within this analysis: rather, they are commendably peaceful political agreements"[27] thereby restricting what she classifies as secession to what is really only one type of secession, namely unilateral.

[21] A. Pavkovic and P. Radan (2007: 5).
[22] C. Haverland (1987:384), see also D. Raic (2002: 308).
[23] See secession entry in the Stanford online encyclopaedia: http://plato.stanford.edu/entries/secession/ [accessed November 2009].
[24] H. Beran (1984: 21).
[25] J. Crawford (1979: 246).
[26] L. Bishai (1998: 93).
[27] See note 26.

J. R. Wood (1981) has provided a negative connotation to secession, restricting it to instances of political disintegration "whereby political actors in a sub system withdraw their loyalties, expectations, and political activity form the jurisdictional centre and focus them on a centre of their own".[28] Alternatively some authors have provided more positive connotations to what is secession. H. Beran (1984) defines it as "the *voluntary* withdrawal from a state and its central government of part of its people with their territory".[29] It is common not only to restrict secession to define it based on practical terms or the end result (assuming the context is the international community made up of independent sovereign states whose territorial integrity is of paramount importance), but also to restrict the definition to only a type of secession, ("unilateral" or "voluntary") leaving out in-depth discussion of the concept of secession.

What this illustrates however is not only that scholars have expressly denied that their definitions are limited, and consequently that their conceptual relevance is only partial, but that no one has as yet explored how the very assumptions of what secession as a concept refers to can affect set-ups where sovereignties are divided horizontally and where the State is no longer understood in the traditional sense. Indeed the very possibility of shared sovereignty is often dismissed. H. Beran (1998) for example argues that it is not practical at present for two states to share legal sovereignty over the same territory,[30] thereby denying that internal secession demands are secession claims. This raises an important limitation since all federal arrangements have some element of territorial shared rule and self rule. Even though all scholars seem to acknowledge that secession raises "deep questions about the nature and value of political community"[31] and that secession is about the legitimacy of the state one lives in, who is the sovereign or the demos,[32] little attention has been paid to what this means. Unsurprisingly, little attention has focused on exploring its wider significance within divided sovereignty arrangements (federalism).

[28] J. R. Wood (1981: 111).
[29] H. Beran (1984: 21) italics added.
[30] See H. Beran (1984: 23).
[31] B. Brian sighted in P. Lehning (1998:1).
[32] See for example A. Pavkovic (2004).

ii) Existing theory and its moral justification

The second problem with existing liberal theories is the moral justifications that have been provided to justify it. Their focus on external secession means that authors have failed to even consider how or if an existing federal pact affects the moral grounds for justifying secession. This is not to say that the liberal principles in which they are built are irrelevant to internal secession, but that the way such principles are developed is shaped by the restrictive definitions of secession authors have provided. Indeed, on some occasions internal secession has been proposed as an alternative to external secession as a means of addressing some of the grievances expressed by groups demanding external secession. However, the granting of constituent unit status to a territory and its population that was previously part of one or more existing constituent units has neither been addressed as secession nor has it been developed. Therefore my argument is that while some or all of the moral principles on which existing liberal secession theory are built may be relevant in providing the underlying justification for internal secession, the extent to which they are is unclear.

Liberal (type I) approach

The starting premise of theories in this approach is that there is no general right to secede, but secession is justified in some cases when certain conditions are met. They argue that where a liberal state exists, secession is not justified unless permitted by the constitution. So they place greater value on classic liberal civic values (and defend the status quo) over the value of self determination and democratic principles. As A. Birch (1984) writes "the justification of this view is that liberal democracy is assumed by liberals to provide a fair procedure for reaching collective decisions about government policy...having the right of voice, without fear of retaliation, they do not also need the right to (collective) exit".[33] Such views are most prominently advanced by A. Buchanan who has offered one of the most developed monographs on secession theory.[34]

[33] A. Birch (1984: 599).
[34] Other remedial rightist include A. Birch (1984), D. Orentlicher (2003) and M. Seymour (2007).

In terms of internal secession two reasons why these theories are problematic are evident. Their focus is primarily on the practical results of permitting a legal right of secession in international law and a discussion of the value laden moral justification for secession is sidestepped and underdeveloped. And unsurprisingly no effort is made to distinguish between internal and external secession. Secondly, they suggest that in liberal democratic frameworks, secession is only allowed if permitted by the constitution. In doing so, they seem to grant moral superiority to the status quo and fall into the trap of failing to grasp that constitutions are not value neutral. Furthermore they also fail to recognise that in federations more than one legitimate constitution exists. The federal nature of a constitution would undoubtedly affect any discussion on the principles that guide the justification for internal secession.[35]

If we look at the examples A. Buchanan (1997) gives this restriction is clear. He argues that it is only justified to grant a special right to secede if the existing state concedes this right (such as in the case of Sweden in 1905), if the constitution of the state allows it, or if the agreement by which the state was initially created out of previously independent political units included the implicit or explicit assumption that secession at a later point was permissible. In addition the right to secede can be accepted if the physical survival of its members is threatened by the State (for example the Kurds in Iraq), it suffers violations of other basic human rights (for example in the case of East Pakistan seceding to become Bangladesh), or a previously sovereign territory was unjustly taken by the state (which justifies the secession of the Baltic republics from the USSR).[36] Notice that all the examples used are for the creation of new independent sovereign states understood in the traditional Westphalian territorial division. The focus on international law hinders the moral discussion on the grounds for justifying secession and makes exporting the accounts offered towards an understanding of secession as internal impossible. It may be possible to draw a

[35] Indeed whether a constitution is federal or otherwise also impacts on the discussion of external secession. This can be clearly seen in the case of Canada, where secession (external) was considered possible within the constitution but the justification for it includes necessary reference to the federalist principle of the constitution. See Supreme Court of Canada (1998).

[36] See A. Buchanan (1997: 36).

theory on internal secession that is remedialist, this I do not dispute. What I argue is that the current remedial theorists on secession do not provide the arguments (or are not framed in a way) that can be useful to try and provide the moral grounds for justifying internal secession. It is unclear how A. Buchanan's arguments that make secession justified would be shaped when applies to federations.

Liberal (type I) democratic approach[37]

For H. Beran, probably the clearest example of this approach, "liberal political philosophy requires that secession be permitted if it is effectively desired by a territorially concentrated group within a state and is morally and practically possible".[38] His theory is built on the moral philosophy of liberal democratic values of sovereignty, freedom and majority rule.[39] As D. Gauthier (1994) argues, the right to secession is derived from the individual right to voluntary free association. The normative explanation for this is probably best presented by D. Philpott (1995) who sets out the right to secede as being based on the right to individual self determination which in turn derives from the liberal principle of individual autonomy.[40] This is achieved through individual democratic participation where all are free and have equal political rights to decide what community (and state) they belong to.

Two relevant important limitations to the moral account can be identified. The first has been pointed out by some scholars and is probably common to most secession theories. It refers to how the moral justifications are to be translated into practice. There seems to be a marked incongruence between the moral justifications and the practical conditions that restrict the application. Authors have tended to argue that the democratic right to secession is qualified by

[37] In terms of secession viewed as a democratic right, scholars that have defended this standpoint recently include H. Beran (1984), D. Gauthier (1994), D. Philpott (1995), D. Copp (1997).
[38] See H. Beran (1984: 23).
[39] H. Beran (1984) argues that it is always allowed, but the group must be territorially concentrated, the secession must be politically and economically viable and that secessionists allow others to secede.
[40] Similarly, H. Beran also establishes that secession is directly linked to the individual right of self determination and so any discussion of secession is necessarily a discussion of self determination.

the requirement to respect other standard liberal rights, yet they find that the application of these is restricted by conditions that seem to be pragmatic.[41] For this reason this approach does not provide a coherent moral account for restricting the possibility of just two citizens from having a right to secede.[42] Indeed critics of democratic secession have highlighted the danger these theories have in terms of their perverse consequences.[43]

Secondly, theorists such as H. Beran also set out to provide a blueprint for the creation of an international codebook on when demands for secession (understood as the creation of new states joining the International Community) or indeed declarations of Independent Statehood have to be accepted. Consequently, despite discussing consent as a basis for demos creation, they do not dwell on federal arrangements and their implication on the moral grounds they provide. For example, H. Beran's restricts the right to secession if it is detrimental or harms others (by, for example, leading to the oppression of a minority within the secessionist territory), how would this principle that secession should not 'harm' others apply in federal arrangements? Would it, for example, lead to the consideration that internal secession is not justified if it negatively affects the rights of any member of the federation, or if it is detrimental to the federal pact?

I do not dispute the argument that the principles used in the justification of secession by theorists under this approach may be relevant in justifying the moral grounds for internal secession, but it remains to be seen how or whether federalism has any effect on the moral arguments. Theorists that have taken this approach provide no guidance for discussing how the right to secession is restricted when an individual's choice of association is not between old state and new state (where loyalty and authority is completely with one

[41] See for example D. Philpott (1995), K. Nielsen (1998), D. Copp (1997) and H. Beran (1984, 1998).

[42] This concern has been raised by others including D. Miller (1998) and A. Buchanan (1991).

[43] This includes scholars such as A. Coban (1969) and A. Buchanan (1991). By perverse consequences I am referring to the argument that the existence of a democratic right to secession could have a negative effect on political bargaining and decision making if the threat of withdrawal or exit is used to avoid compromise.

or the other), but between new or old constituent unit within an existing pact. The choice has ramifications and effects for the whole pact yet how or whether they influence the moral decision of an individual is not considered.

Liberal (type II) democratic approach

This approach differs from the liberal (type I) democratic in that it is not individual self determination or autonomy alone that is important and provides the underlying moral value from which a right to secession stems, but the collective right to self determination.[44] It is modelled on the distinction made by some scholars between Liberalism type I and Liberalism type II and relies on a Hegelian rather than Kantian approach. The result is that this approach places groups' rights (and more specifically nations) as the subject of secession due to their intrinsic value for individual autonomy rather than individuals and their freedom of association.

The case for group rights in terms of self determination is explicitly made by A. Margalit and J. Raz (1990) who provide an often quoted argument that given that people's membership of an encompassing group is an important aspect of their personality; their wellbeing depends on giving it full expression. This requires expressing one's membership in political activities within one's community. Therefore self government is inherently valuable since it is required to provide a group with a political dimension. In this sense it is generally nations that are considered groups holders of a right to self determination.[45] A. Patten (2002) and C. Wellman (1995, 2005) offer an explicit account of why national self determination requires a right of secession based on the argument that recognition of national identity and self government is fundamentally good for members of that group.[46] A. Patten for example argues that a

[44] In a way, this distinction is also similar to the distinction A. Buchanan (1997) makes between ascriptive group and associative group theories. This terminology should not be confused with similar terms used in nationalism literature referring to the distinction between civic and ethnic national identities.

[45] For the arguments of the importance of nations and national self determination see M. Moore (2001), S. Caney (1998) and D. Miller (1998).

[46] This approach also includes J. Costa (2003) who argues states are not ethno-culturally neutral and proposes that secession should be considered within discussions on minority rights.

primary democratic right to secession is limited to nations and that its application is only to be triggered by a "failure of recognition" of a nation.[47]

It is evident that the importance of group identity and group self determination for individual wellbeing raise issues relating to what constitutes a group, and how, when and who identifies such groups and grants them rights or protections. Indeed, in federations, when the creation of new constituent units or modifications of boundaries are discussed, such issues may also be influential in providing moral grounds for the justification of a position. It is therefore possible, or even likely, that any theory on internal secession may be required to draw on such principles. This is particularly the case if we consider plurinational federations. However, as has been shown with the other approaches, restricting the discussion only to external secession means these theories fail to allow extrapolation for justifying a right to internal secession. Internal secession occurs within the context of a federal pact rather than the international community, therefore the principles arising from this pact will need to be considered. Federal principles need to be incorporated into the moral account of justifying internal secession.

iii) Existing theory and its practical considerations

The third problem identified is tightly linked to the shortfalls set out in the previous section. It relates to the practical considerations that have been expressed as either conditions that must be met in order for secession to be justified or a set of conditions that restrict the application of a permissive moral right to secede. I discuss each approach in turn.

Liberal (type I) approach

In this approach, if a state is liberal and thus *voice* is an option, there is no need to consider *exit*. A. Buchanan specifies that unless a constitution allows for secession, it can only be justified if certain conditions that make reference to state perpetrated injustices or the need for cultural protection from real threats to its survival are met. These conditions apply only to unilateral secessions; the

[47] See A. Patten (2002: 561).

presumption is that if the constitution allows for it, it is not unilateral. This means, as discussed above, that the definition of secession for which the theory is drawn up affects its development. It does not provide for example, an answer to when constitutions should or should not provide for secession. It may therefore be unsurprising that the conditions will not satisfactorily provide the moral grounds to justify internal secession (this is discussed below). This is also true for A. Birch's (1984) argumentation. He proposes that while negotiated secession can be justified, generally unilateral secession can only be justified in particular cases.

If we examine these conditions searching for the grounds that justify internal secession we are unable to reach any satisfactory conclusion. In this respect it is important to make three observations. The first is related to the proposition that if the constitution allows for secession to occur, it is justified. While this might also apply to internal secession, the theory proposed does not provide the principles on which a constitution is based. Even if it did however, the issues that need to be resolved are different. In internal secession two constitutions are relevant and therefore the constitutional questions raised are different from those raised by external secession. Questions on whether a constitutional clause should exist (and its particulars) need to be considered also in terms of the constituent unit itself. That is, should a constitution include the legal process to be followed or the criteria to be used to establish whether a demand can indeed be granted and under what conditions. In addition there is also the need, as with all constitutional provisions, to consider how perverse incentives can be avoided. The statement that secession is justified if the constitution provides for it relies on significant assumptions being made, and these have not been developed by theorists. Hence their application, as they stand, to internal secession is limited.

The second observation arises from considering when internal secession should be justified if it is not contemplated in the federal or constituent unit constitution. Theories within this approach focus primarily on past injustices and neglect. I find it difficult to deny that this might also apply to internal secession, if a unit government systematically neglects one of its regions, it seems reasonable to agree that this region should be able to legitimately secede. However additional issues not covered by theorists need to be

considered. In a federation and internal secession, the perpetrator of injustice would be the constituent unit the seceding seeking region is part of. What then is the role of the federation? Faced with a region within a constituent unit voting to leave the constituent unit it is part of, would the federal authorities be required to protect the existing constituent unit, or would they be compelled to support the wish of the secessionists as members of the demos of the federation? We could speculate on alternatives but the issue is that the theory basically does not contemplate it.[48] The fact that two constitutions exist and are relevant changes the context in which secession is being debated and necessarily the practical consideration will be affected and need to be redrawn bearing this in mind.

A final observation that is also worth noting is that if the possibility of internal secession was included in this approach, it may be possible to argue that to address grievances and past injustices, internal secession may be considered a more practically feasible solution to granting self government than external secession. This is because internal secession does not create a new independent state and its application therefore would not be restricted by the need to consider that the world cannot be divided into an indefinite number of sovereign states.[49]

Liberal (type I) democratic approach:

H. Beran's (1984) provides a list of six "conditions that may justify not allowing secession".[50] Briefly these conditions are based on size, viability of organising and forming a state, maintaining liberal rights of all citizens and not affecting the viability of the rump state. If we consider whether these conditions apply to justifying not allowing internal secession, we find they are clearly written for external secession and may not apply to internal secession. For

[48] It could also be the case that the perpetrator is the federal authority rather than the constituent unit. If this is the case it is difficult to argue that the existing federation is liberal and hence internal secession cannot be considered a possible solution to redress the situation. Instead the discussion should be conducted within the existing concept of external secession.

[49] Indeed internal secession would fall under what A. Buchanan (1991: 153) calls "less drastic ways" of achieving self determination.

[50] H.Beran (1984: 30).

example, in terms of size, this refers to the need for the seceding territory to be able to assume the basic responsibilities of an independent state, which is not applicable to internal secession since the territory would remain part of a larger union. Another example is the argument that the area seceding must not be culturally, economically or military essential to the existing state. In internal secession, the seceding territory would not leave the political community the parent state belongs to. Territories considered culturally essential would not leave the federation and under liberal democratic conditions access to all citizens would be maintained. Furthermore, federal economic redistribution might invalidate the economic argument. Since defence and military matters tend to be competence of the federal level, the defence capacity would probably not be affected by internal secession.

Yet, despite this clear bias, some of these conditions will, depending on the federal pact in question, also be relevant to internal secession. For example, whether the seceding territory occupies an area with a disproportionately high share of the economic resources of the existing state could potentially be grounds for limiting internal secession under certain federal pacts and fiscal arrangements. Even the issues of size and economic resources mentioned above may also be relevant. The ability of a territory and its population to sustain the required institutions may need to be considered. If the aim of internal secession is to gain self rule, the seceding region should be large enough to avoid becoming economically dependent.[51] Related to this, internal secession justifications should also address the fact that the incorporation of a new unit has an effect on the balance of power or representation of different factions, groups or even nations at the federal level (for example via the addition of new deputies in the federal chamber of territorial representation). Incentives for either federal authority to create federal constituent units incapable of sustaining themselves and incentives for powerful members of the federation dividing other federal partners ought to be avoided. When considering internal secession some practicalities that are not captured by external secession theorists will require attention.

[51] The relevance of size however may be limited if loyalty to the federation is high.

Other authors have similar shortfalls. D. Philpott (1995) for example, argues, as H. Beran does, that size is an important consideration and this has the limitations discussed above. In addition to this, D. Philpott proposes two other conditions that are worth examining. The first is the argument that restricts legitimate liberal secessions to those that would see the creation of another liberal state. Yet in a liberal democratic federation, the very idea of having an illiberal constituent unit within a liberal federation seems ludicrous if it is to continue being a liberal federation. Similarly, Philpott's argument that secession is only allowed if the degree of respect for the liberal rights of minorities in the seceding territory is at least as high as in the existing state is also a somewhat misplaced condition if we are considering internal secession. If we agree that self government is beneficial for groups, since internal secession does not remove the group from the political community of the existing state, this condition seems highly unconceivable.[52] Attention however should be paid to the fact that the creation of new units may give rise, especially in multinational contexts, to new minorities whose rights should be upheld.

D. Gauthier (1994) also provides a limitation that is by and large irrelevant (as it stands) to internal secession. In absence of injustice, he argues, a group cannot secede if it favours itself at the expense of the remaining members. It can reduce the overall wellbeing of all but it cannot mean one gains at the other's expense. Yet in a federation internal secession would have to be a pact and not unilateral, in addition natural resources and other measures that constitute wellbeing might remain in the federal state, and perhaps in the jurisdiction of the federation. If this is so this condition is misplaced if we consider secession as internal.

Theorists under this approach thus may provide useful insights and might point towards issues that need to be considered but remain inadequate. The conditions they set are written to apply in the context of full independent statehood being the result of secession. If internal secession was justified as a primary right but its application restricted by some given conditions, these would have to reflect the existence of a federal pact and the fact that the outcome

[52] Although it must be recognised that this is dependent on how powers are distributed in a federation.

is a new constituent unit with self rule, but that is also part of the shared rule. This is not to say that internal secession is necessarily more permissible than external secession, indeed while many restrictions provided by existing secession theory may not apply, the federal pact may give rise to additional ones.

Liberal (type II) democratic approach:

This approach also suffers from the problem that it is clearly associated with traditional notions of statehood. C. Wellman (2005) for example, argues that "any group can secede as long as it and the remainder state are large, wealthy, cohesive and geographically contiguous enough to form a government that effectively performs functions necessary to create a secure political environment", and indeed the remainder state must still be a viable state and be able to function. These conditions are clearly related to considering statehood in its traditional sense. In a federal arrangement many of the functions to create a secure political environment would be met at the shared rule level. Since statehood does not mean independent absolute sovereignty the meaning of a functioning state changes. The objections are similar to those raised above. For example, although it is true that in a federation a member unit does not need to fulfil all the functions of a state, it might be necessary to provide some guarantees to ensure that new constituent units are sufficiently strong (politically and economically) to be able to exercise self rule and therefore not be dependent on either the federation or its stronger members.

Similarly S. Caney (1998) argues that for a right to national self determination to translate into a right for secession three conditions apply. Firstly, the newly created nation state must be able to sustain itself since otherwise it cannot promote the people's well being. Secondly, it must treat its citizens justly (which requires for example that political and economic rights of minorities are respected). Finally, the state must honour its international commitments and treat peoples of other states justly (which requires for example that it should not jeopardise other just political arrangements).[53] All such points are directly related to, and must be understood, with reference to secession as external. The arguments

[53] See S. Caney (1998: 173).

made by A. Patten (2002) are similar. He suggests that there is no right to secede from a perfect state, and that the state must be violating conditions of minimal justice or be guilty of what he terms failure of recognition in order to restrict when secession is allowed. He proposes that the seceding group must be a group eligible for secession (ie a nation) and have a valid claim to the territory.[54] In addition the terms proposed by secessionists must be fair and the new state creation must be unlikely to generate serious violations of standard liberal rights and must not pose a threat to peace and security. Conditions that are clearly expressed, and indeed can only be understood if secession is external.

If applied to internal secession, the definition of fairness, for example, would need to be related to the existing federal pact and therefore would not be understandable without explicit reference to the federal spirit of the constitution in question.[55] In addition, while the emphasis is currently placed only on the right of secessionists, in a federal pact, one would also need to consider the right of the other constituent units that make up the federation. For example, would it be fair to member state C if by dividing member state A in two C's relative power decreased? If so, shouldn't C have a say in the process of division? Accordance to the federal spirit would require internal secession to be negotiated between the parties affected. Similarly, the concrete existing pact must be adhered to and would provide for the conditions or requirements that must be met for changes to be enacted. Finally, the condition that secession does not pose a threat to peace and security seems to be clearly valid for both internal secession and external secession. If internal secession posed a threat to peace and security (such as leading to civil war) then it should not be encouraged. However the

[54] The argument that a population must have a valid claim to the territory it inhabits is also made by D. Copp (1998: 229). He argues a population has a claim to the territory if it is "historically associated with the society, the permanent residents of which comprise the society".

[55] The concept of federal spirit has been analysed in depth by M. Burgess (2012). It essentially refers to the moral foundations on which the federation is built and which drives its evolution. It refers to the bonds that unite the different constituent units to form the political community of the whole and "serves as the ubiquitous operative principle in the overall quest for justice, equity and equality" that drives a federation, M. Burgess (2006: 113). I return to this concept later.

consideration of this condition must make reference to both peace and security within the federation as well as outside the federation.

But perhaps the greatest shortfall of this account is the strength placed on national recognition and the need for nations to be the subject of states. In this sense national identity is portrayed as either the existing state recognises the nations within it, or it doesn't and if it doesn't then a non recognised nation has a right to secede. This approach is therefore lacking discussion on a crucial element if it is to be useful in considering internal secession: the nature of the federal pact and how this might or should affect debates on granting national recognition within federations. In a federation, a demand by a nation to secede from a constituent unit it is part of but not from the federation based on the argument that the existing constituent unit fails to recognise it as a nation may be a valid claim. However it does not provide normative reasoning on why the federation as whole or indeed the federated units should accept it. Furthermore, unless the federation in question is established as multinational where the federated parts are nations, a claim for internal secession claims based on nationality may also be a call to change the federation into one where nations are constituent units. It is unclear why being a nation should trump existing federal arrangements in raising obligations on others. My point however is not necessarily that nation-based claims for internal secession cannot be morally justified (except in multinational federations) but that they must take into account that they exist with a federation and should therefore recognise that changes to the federal pact require consent of various demoi and must be by mutual consent. To date they have not done so.

In summary, since current liberal theories of secession do not address internal secession, the adequacy of using these to consider secession within federations is at best limited. Significant changes needed for providing the grounds for internal secession, mainly by considering federalism. In the table bellow I attempt to summarise my arguments on the deficits of existing secession theory.

Table to summarise existing liberal secession theories and their limits or usefulness in providing the grounds to justify internal secession

Approach	Applicability of moral arguments	Deficiency of moral arguments	Applicability of practical conditions	Deficiency of practical conditions
Liberal (type I)	Provides (indirectly) arguments for the need for constitutional rule to be respected.	Fails to recognise that the status quo is not neutral. It fails to develop a moral account to justify internal secession.	Highlights the importance of the need to ensure that liberal civic rights are maintained.	Its focus on providing a practical guidebook for an international law on secession and the need to limit the number of states in the world means it is centred fully on external secession and is blind to considering the possibility of secession being internal.
Liberal (type I) democratic	Provides moral arguments based on the liberal democratic values of individual freedom and autonomy, popular sovereignty, and the legitimacy of majority rule.	Does not include principle of federalism and the existence of more than one overlapping demos and how this will affect the argumentation of the principles identified.	Raises issues such as size, economic considerations, the need to be viable and asset and debt sharing issues that limit the applicability of a prima facea right to secede and might need to be considered in internal secession too.	It fails to consider how the moral considerations are connected or might be affected by the existence of a federal pact. Instead they are discussed only as conditions to restrict the application of a right to external secession.
Liberal (type II) democratic	Provides argumentation for defending self determination of groups. It introduces arguments of the importance of group rights and national identity recognition, hence is able to provide arguments of what groups may be holders of rights.	Does not include principle of federalism and the existence of more than one overlapping demos and how this will affect the argumentation of the principles identified.	Raises relevant issues including the size of a seceding population, the need to protect liberal rights of all citizens and the need to be a viable unit which will need to be considered in justifying the grounds for internal secession.	It fails to consider how the moral considerations are connected or might be affected by the existence of a federal pact. Instead they are discussed only as conditions to restrict the application of a right to external secession.

Source: own elaboration

III: Internal secession within literature of federalism[56]

The problem of failing to provide adequate ground for justifying internal secession is not confined to secession theories. A brief examination of federalist discussions on secession is sufficient to show that they too have ignored this possibility. Firstly, if we consider the historical case of American secessionism it is clear that secession in relation to federations was considered only to mean external secession. This is the case despite the fact that one of the first cases of internal secession, that of West Virginia from Virginia, occurred in 1861 when Virginia – along with other states - passed ordinances on secession from the Union. This led to some of Virginia's counties (which later became West Virginia) to distance themselves from the stance taken by the Virginia legislative and disassociated themselves from the secessionist call. According ot the interpretation of some historians these counties were then readmitted into the Union as a State in its own right. However, since in practice secession from the Union was never successful, and yet West Virginia did become a separate state (although in dubious circumstances), it is a case of internal secession. The rhetorical framework however was dominated by a visible, vocal and existing debate on secession from the Union. Hence perhaps it is unsurprising that an internal secession debate never surfaced. Even today recent works anchor US secessionism strictly as exit from the federation.[57]

Yet, while the framework of debate was on external secession and therefore not completely suited to providing grounds for justifying internal secession, the great debates of secessionism in 1860s America may also raise important issues that internal secession should consider. An exhaustive analysis of secession debates in the US is beyond the scope of this chapter but there are at least two important observations that must be made in this respect. The first refers to the importance of the existing federal pact. Is the allegiance of the federal authorities to its member states or to the individual citizens of the federal demos? This is evident in the

[56] It must be noted that I am restricting my concern to the political tradition of liberal democracy. In this respect readers should note that there is a rich theoretical debate on the relationship between federalism and secession within the political tradition of socialism and anarchism.

[57] See for example P. Radan (2010).

debates for example on whether states that were creations of the federation (states that had not existed as units prior to their creation by the Union) could secede from the Union which had created them and on what grounds. The existence of the federal pact was held in high importance in the debates, both by secessionists as well as defenders of the Union. Secessionists argued for the need to preserve the original pact and saw their legitimacy for seceding from the Union, not because they were against the Union as such but because the Union was acting against the very principles on which it was created.[58] Unionist such as Lincoln instead saw it legitimate that the Union be able to act if the Constitution could be interpreted to warrant such action. Historical debates point towards the importance of the original pact in secession debates. However they are not sufficiently developed to cover what its implications are for internal secession.

The restrictions of federalism and secession debates are not limited to political discussion in the US. In federalism theory more widely, with reference to the debate on self determination of groups, secession and federalism are often pitted against each other as alternatives for the accommodation of diversity.[59] Secession is clearly identified as separation to create a new independent state, while federalism is seen as a mechanism to remain united in one state. In this sense, federalism can be used to "channel ongoing tensions between unity and diversity into peaceful and democratic political compromise rather than the potentially violent conflict of secession and partition".[60] Here two main discussions can be identified. The first focuses primarily on federalism itself. It relates

[58] S. Zahlmann (2010: 297) for example argues that southern secession wanted to preserve the initial constitutional pact against excessive federal power of attempting to end slavery by federal law. It was felt that ending slavery was symptomatic of the north imposing itself on the southern states. South Carolina's 1860 *Declaration of immediate causes which induce and justify the secession of South Carolina from the federal Union* stated that "whenever any form of government becomes destructive of the end for which it was established, it is the right of the people to alter or abolish it, and to institute a new government" cited in D. Doyle (2010: 9).

[59] See for example W. Kymlicka (1998), but also W. Norman (2006). For other contributions to the wider theme of federalism and secession see D. Weinstock (2005). R. Bauböck (2000), D. Horowitz (2003).

[60] See for example G. Marchildon (2009), M. Guibernau (2006), R. Schertzer (2008) and R Simeon and D. Conway (2001).

to multinational federalism and has been predominantly based on discussions on federalism as a means of managing diverse or multinational societies.[61] The second debate focuses more directly on secession and more specifically on whether federal constitutions should include a right to secede clause, why and what should such a procedure include or reflect. Federalism is seen as a coming together of previously independent units and the debate is framed on whether a constitutional clause on withdrawal from the federation would strengthen or weaken unity in diversity.[62] In general therefore federal theorists have failed to identify that secession can also occur within a federation.[63]

Some federalism scholarship may indirectly address internal secession if it is simply understood as the creation of new constituent units. However such work is mainly descriptive and often expressed within wider works of comparative federalism.[64] For this reason it is of limited use to consider the moral grounds for internal secession. Other fields of research have focused on providing justifications for what should be the units of a federation, but they too have not considered internal secession as such. In this respect, the focus has been on federalism as a way of accommodating diversity. It has centred mainly on what basis constituent units should be created, how many should there be, how borders should be delimited or whether federalism helps or exacerbates societal division.[65] Most recently debates have turned towards multinational federalism.[66] These propose that nations

[61] See for example W. Kymlicka (1995) and D. Miller (1995).

[62] For some, such as C. Sunstein (1991) there are no valid arguments to justify a secession clause. However, D. Weinstock (2000, 2001), D. Horowitz (2003), F Requejo (2001) and W. Norman (2003, 2006) have all suggested that in the context of managing diversity in multinational states, constitutions, and in particular federal constitutions should include a secession clause in order to legalise the process and to a certain extent reduce the likelihood of secession occurring or being used for political gains.

[63] To a certain degree this may not be surprising since most authors that write on federalism and secession are Canadians that write with the demand for secession of Quebec from Canada in mind.

[64] In this respect it is worth noting the works of B. Villiers (1994) and M. Burgess (1986).

[65] See for example J. Erk and L. Anderson (2009), W. Kymlicka (1998) H. Meadwell (2002).

[66] The importance of nations as constituent units was first raised in D. MacIver (1999) and has been repeated in for example G. Smith (2000), F.Requejo (2001)

should be the units of federations given that they allow for better democracy and better guarantees of freedom.[67] Others have also extended this to discuss division of competences and asymmetric federalism in order to provide distinctions between member units.[68] The consideration of the degree to which a federation is multinational or asymmetric might also have implications on the justification of internal secession. However all the works mentioned fall short of considering internal secession directly or how and when is it justified to significantly change boundaries within a federation. Indeed in a recent survey of unresolved constitutional issues related to federalism, R. Simeon (2009) identified the drawing of boundaries as a much neglected aspect.

However, some contributions do exist which despite not developing normative discussions recognise that internal secession raises particular issues that require attention. The notable exception, which I mentioned earlier, is T. Nieguth (2009) who examined whether the philosophy behind internal secession is different to that of external secession. He concludes that we should expect it to be different since "the creation of sub state units within a federation potentially concerns a range of sovereign actors: the existing sub state unit, the federal level of government and (depending on the particularities of a country's constitutional order) the remaining sub state units".[69] In addition, W. Norman (2006) has identified some of the issues that may need to be addressed when internal secession is considered. For example, Norman points to three potential consequences that should be taken into account. Firstly, any territory will contain a minority of citizens against changing the province they belong to, hence while some citizens may gain, others will lose. Secondly, a territory could contain valuable assets (such as infrastructure, natural resources, ocean ports, military basis) that will affect the opportunities and tax base for the two provinces involved, as well as possibly, the property rights of owners. Finally if for any reason (he specifically mentions religion) either feels that their community has

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A. Gagnon and J. Tully (2001) and M. Guibernau et al (2003). It has been developed further in F. Requejo (2005), T. Fleiner (2004), M. Burgess and J. Pinter (2007) and A. Gagnon (2010).

[67] The argument is expressed as an extension of the rights of cultures proposed for example by W. Kymlicka (1995) and C. Taylor (1993).

[68] See for example S. Henders (2010) and F. Requejo and K.J. Nagel (2011).

[69] T. Nieguth (2009: 142).

been robbed of assets or sacred grounds this narrative could become a long standing source of national grievance.[70]

In summary there is not only a shortfall of current scholarly attention on internal secession, but a case to expect these to be different and a need for further study and thought. In order to address this deficit and to consider the grounds on which internal secession ought to be justified I propose the need to address two main questions. The first is to examine how cases of internal secession have occurred and how they have been justified in practice. Given the lack of scholarly attention internal secession has received it is important to establish how historical cases have occurred and what were the issues involved. In this respect a systematic study of cases of internal secession focusing on the process followed, actors involved and arguments used in debates would be required. The second question is on the moral grounds that justify internal secession.

IV. On necessary further research

In order to be able to address the shortfall of current theories an analysis of real cases of internal secession that focuses on how secession has occurred, the actors involved and their rights in liberal democratic federal contexts is required. Territorial modifications between constituent units in federations have occurred in virtually all federations. However, those that could be considered internal secession are more limited. For my purpose, I have identified three particular cases that are the most appropriate to study: the creation of the Canton of Jura in Switzerland, Nunavut in Canada and Jharkhand in India.

There are three points that are worth noting on why the study of these three particular cases is relevant. Firstly, these are the cases where a new constituent unit has been created from territory and population that was part of one existing constituent unit.[71] After

[70] See W. Norman (2006: 100-101).

[71] It therefore excludes changes brought about by reorganisation of the state due to territorial expansion or population increases. Examples of this could include for example the USA expansion to the west of the Mississippi River in 1783, or the states created after the acquisition of Louisiana Territories from France in 1803**.** Similarly Maine was created in the context of wider federal change linked

secession, both are constituted as constituent units in their own right each with self rule competences and shared rule participation. Secondly, their creation was not part of wider state territorial reorganisation.[72] This is important because as Wildhaber (1995) has pointed out, territorial changes that occur as wider state reorganisation coincide with periods of relative political change and a restructuring (or indeed reestablishment) of the federal pact.[73] This contrasts with cases when no general reorganisation occurred, and greater emphasis is placed on continuity in the resolution of the conflict that leads to secession. It is within such a context that the actors involved and the interrelation between them can be best identified. Thirdly, they occurred within established liberal democratic federations.[74]

By reviewing existing scholarly accounts of each of the three cases I have identified,[75] it seems that there are indeed normative aspects of internal secession that are distinct from those of external secession. The existence of a federal pact has an important role and cannot be ignored. In all three cases, for example, the consent of the seceding group, the constituent unit they belonged to and the federation was required in order for the new unit to come into being. Hence it seems that under liberal democratic considerations, the existence of other self rule units within a shared rule arrangement does influence the secession of a territory from a self rule unit. It shifts it from being dependent on two parts (existing

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to the Missouri Compromise. Tennessee was consciously created in 1796 from territory ceded to the federation by North Carolina after federally encouraged migration to its vast and largely empty territory.

[72] This could either apply to cases such as in Nigeria's 1998 constitutional restructuring devised by the military rulers just prior to relinquishing power to civilians – which occurred in 1999, or to young democracies setting out their territorial divisions such as India in 1956.

[73] I also exclude for this same reason cases that occurred at times of war such as example the creation of Virginia and West Virginia in the USA. The process is marred in a process of dubious legality and legitimacy in the context of the Civil War.

[74] Hence I exclude from my analysis cases that occurred in undemocratic regimes, for example territorial reorganisations in Nigeria that occurred under periods of military rule.

[75] For an account of the process that leads to the creation of Jura see P. Talbot (1991). For an account of the process that leads to the creation of Nunavut, see J. Dahl et al (2002). For an account of the process that leads to the creation of Jharkhand see for example A. Majeed (2003).

state and seceding territory) in the international community context, to three (existing constituent unit, seceding territory and population, and rest of the federal constituent units). As T. Nieguth (2009) wrote, internal secession "potentially concerns a range of sovereign actors: the existing sub state unit, the federal level of government and (depending on the particularities of a country's constitutional order) the remaining sub state units".[76]

This is perhaps not surprising. In a federation, the federal level has a commitment to uphold both the citizens and their rights and to the member states and their rights. This suggests that for internal secession to be legitimate, in addition to the consent of the existing unit from which secession is sought and the consent form the seceding group, the consent of the federal demos as a whole and the component units of the federation is also asked for. Based on the need for consent between the different actors and levels involved, it seems that mechanisms of democratic decision making for establishing the position of the different demoi will be important. External secession theory has primarily focused on providing answers for when or whether secession could be justified without consent, in internal secession it may be the case that it must always be based on consent. The exploration of the interrelation between actors and levels, their rights and obligations therefore seems appropriate if we are to unravel when internal secession may be justified in liberal democratic federations.

These initial observations are not without foundation. Internal secessions change the composition of one of the constituent units and add an additional member to the federation. Hence although the creation of a new constituent unit does not affect the federal demos as a whole unit, it does modify the federal demos as a unit composed of distinct federated parts. This is a fundamental change to the federation. On the one hand, a new unit affects the distribution of power and resources at the federal level by adding a new self rule unit that participates in the shared rule institutions. On the other hand, it also modifies the original or existing federal pact. When internal secessions occur in established and functioning federations, which is considered legitimate by all the demoi that it is composed of, it requires compromise and consensus if they are not

[76] T. Nieguth (2009: 142).

to contravene the federal spirit. That is, "the ubiquitous operative principle in the overall quest for justice, equity and equality" that forms the moral foundations of each federation and drives its evolution.[77]

In the study of the three case studies, which will be the focus of part 2 of the thesis, I will consider in depth the process followed in the cases of internal secession. This will assist in analysing how the obligations of the federation towards both the constituent unit and the citizens of the federation are balanced in these processes. How and when the federation intervenes in demands for internal secession and whether the rights or obligations of one level "trump" those of others.

V. Conclusions

This part of the thesis has developed the idea that internal and external secession are two different phenomena. There is no normative account of the grounds that justify internal secession within liberal theory. I have argued that the deficiencies in addressing internal secession of existing theory are clear insofar as the definitions of secession they consider are state-centrist and tend towards discussing only unilateral secession. Perhaps linked to this, it is then not surprising that their moral justifications and the practical conditions they propose to limit or allow secession are also found to be deficient. The moral accounts, while they point to liberal principles that may be relevant to justifying the moral grounds of internal secession, fail to incorporate federalism in their discussions. In their practical considerations on what allows or restricts a moral right to secede, theorists have also failed to consider the fact that the outcome of internal secession is not a state that joins the international community but a new constituent unit within a federation. I have argued also that the literature on federalism itself has also failed to provide discussion on internal secession and the moral grounds for creating new constituent units within a federation. From the perspective of federalism theory, the closest debates that could be invoked deal with what the constituent

[77] M. Burgess (2007: 113). It refers to "faith, mutual trust, partnership, dignity, friendship, loyalty, consent, consultation, compromise, reciprocity, tolerance and respect".

units of a federation should be (nations, territories, etc.). This addresses the boundary or territorial arrangement but not the redrawing of boundaries within a federation.

The very nature of internal secession requires that the context within which a demand for internal secession is discussed be federalism and the federation in question and not the international community and international law. From a moral and a practical perspective internal secession is a fundamental issue for the federal pact since it is related to the number of constituent units and hence the composition of shared rule level institutions. For this reason, any account on its justification should incorporate, in the normative discussions, consideration for the respect and mutual loyalty between a federation and federated units arising from it. This will shape arguments for when consent by the federation and the federated units should be given to internal secession demands. Unless we do so, existing secession discussion will remain useful only for external secession.

This deficit I argue is important for both theoretical and practical reasons. Theoretically, there is an important gap in the literature that has not received scholarly attention. This is how the principle of federalism affects discussions on group rights to self determination and ultimately secession in a context where sovereignty is shared and divided, where the demand is not for complete dissociation. In practical terms, internal secession has occurred in federations such as Switzerland, Canada and India. And calls for internal secession exist in many constituent units of some of today's largest liberal federations. Yet no scholarly work has attempted to even consider whether and how these might be morally justified. In addition, with growing interdependence statehood, at least in some regions of the world, it no longer means what was traditionally thought and associated with it. In the context of the EU especially, it may be an important concept in considering claims for statehood of minority nations existing in some of the larger multinational Member States.

I propose that in order to address these shortcomings two questions be addressed. The first is how internal secessions occur. It is important to establish the process followed and the issues involved in practical cases of internal secession in liberal democratic federations. To date internal secession has received a considerable

lack of scholarly attention. It would also help to anchor normative discussion on reality. This can then lead to a second more normative question related to who should deal with internal secession disputes, what actors or institutions may veto and what is the role of the federation and the member states in the process of internal secession. This can then be extended to examine whether teh empirical cases studied should have taken place or more widely: what are the moral grounds to justify internal secession? Combined, these questions will shed light on the constraints that the existence of a federal pact raises in justifying a right to secession when the demand is for internal secession - which is different from external secession – within liberal democratic federations.

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Part 2

Divorce without separation: The process of internal secessions in liberal democratic federations

Abstract

This part of the thesis seeks to contribute to the study on internal secession by presenting a three stage model of how internal secessions happen within liberal democratic federations. My starting point is the examination of the Swiss case from which I identify my three stage process. I then confirm this model by showing that it was also followed in the creation of Nunavut in Canada and Jharkhand in India. The process starts where there is a sustained demand for internal secession based on the distinctiveness of an area from the existing constituent unit. Secondly, there is a response stage, where the constituent unit authorities act to address this demand. Although shaped by the existing constituent unit, the process is carried out under federal authority guidance (representing the existing federal demos) and involves the consent of the population of the territory that includes the potential new unit. Finally, secession does not occur until and unless it is formally enacted and ratified by the federation. I argue that this procedure – which places specific constraints on the actors involved - legitimises the process of internal secession and may be used as a protocol to follow.

I. Introduction[1]

This part of the thesis seeks to make an initial contribution to the study of internal secession by addressing *how does internal secession occur and how it has been justified in practice* in liberal democratic federations.

My findings are presented as a three stage model based on the study of three cases: the creation of Jura in Switzerland, Nunavut in Canada and Jharkhand in India.[2] Firstly I examine the case of Switzerland and the creation of Jura. I focus primarily on this case since Switzerland is often considered as paradigmatic[3] and federalism is considered to be part of its essence. Indeed, as Gonzague de Reynold emphatically defended in 1938: "the principle of Switzerland, its roots its reason for existence, its value, its originality, is federalism. Switzerland will be federalist, or it will not be".[4] Additionally, the creation of the Canton of Jura is the first case of internal secession at a time of relative calm, relatively recently and the literature and sources are relatively accessible.[5]

[1] This introduction has been adapted in order to minimise repetitions in the thesis when it is read as a whole. For publication as a separate article, a more extensive introduction has been prepared which justified the need for the study presented and examines the case selection further.

[2] The case selection is discussed in the overall introduction to the thesis, see page 6, and in page 47.

[3] Scholars that argue that Swiss federalism is paradigmatic include for example K. Deutsch (1976), A. Lijphart (1984), W. Kymlicka (1995), D. Butler and A. Ranney (1994).

[4] Gonzague de Reynold (1938) cited in Erk (2008: 85-86). The original is: "*le principe de la Suisse, sa racine, sa raison d'être, sa valeur, son originalité, c'est le fédéralisme. La Suisse sera fédéraliste ou elle ne sera pas*".

[5] It is true that Switzerland had previously seen the division of Cantons into half cantons (Appenzell in 1597 and Basel in 1833). I exclude these cases since they occurred before the 1848 Constitution that established Switzerland as a federation. Furthermore, in these cases the existing shared rule participation was divided rather than expanded to give equal representation to a newly created constituent unit. Hence there was no overall increase in participants at the shared rule level. The causes for division were different too, Appenzell's division was religion based, Basel's division was due to disputes between urban and rural areas. There are difficulties in accessing relevant accounts and data for these cases since they occurred over 250 years ago.

The model derived from the Swiss is then confirmed by examining the other two cases. Nunavut, is a self governing Territory rather than a Province, nevertheless it is generally accepted that the status of Territories in Canada "have been moving closer to provincial status".[6] In India, there have been other cases of internal secession,[7] but as A. Majeed (2003) rightly points out, in 2000 the states that came into being were for the first time not created under the auspices of the initial 1956 State Reorganisation Act.[8] The State of Jharkhand was created at the same time as two other states, Chhattisgarh from eastern Madhya Pradesh and Uttarakhand from Uttar Pradesh.[9] However, since all three states were created at the same time and followed a similar process, I focus primarily on only one: Jharkhand.[10]

These three cases, apart from constituting arguably the three most relevant cases of successful internal secessions, also represent different types of federalism, and differing constitutional provisions on internal secession. Switzerland is often considered as exemplary classic consociational federalism. According to a prominent Swiss scholar, Herbert Luthy, "the essential content of [Swiss] federalism is not a division of competences between the federal level and the cantons, but the realization of democracy at all levels of society".[11] It is a federation with a strong tradition of consensual decision making in institutions and wide use of direct democracy via referendums. In terms of internal secession, the constitution neither prohibited nor provided for internal secession.[12] Yet Switzerland

[6] See R. Simeon and M. Papillon (2006: 96).

[7] The practise of state reorganisation is not uncommon, indeed since independence there has been around twenty reorganisation Acts, for details see H. Bhattacharyya (2001).

[8] For an analysis of state creation in India in general see M. Singh (2007).

[9] For more details on Uttaranchal (also known as Uttarakhand), see M. Aryal (1994), D. Dhoundiyal *et al* (1993), K. Valdiya (1996), G. Mehta (1996), E Mawdsley (1997), P. Kumar (2000) and J. Robinson (2001). For an account of Chhattisgarh's regional movement see H. Shukla (1999).

[10] This was the most debated and contentious of the three. For some accounts of the Jharkhand case see S. Corbridge (1987, 1988, and 1991, 2002, 2004), Prakash (2001), Chadda (2002) and R. Munda (1990).

[11] Cited in J. Erk (2008: 85).

[12] The new Swiss constitution (1999) includes a clause modelled on the Jura experience to set how territorial changes in the federation should take place.

internal territorial integrity has been remarkably stable since federation.

Canada is a parliamentary federation where all provinces are defined by territory and are deemed to have equal powers. However there are some legal provisions that allow for a degree of *de iure* asymmetry (such as in the composition of the Senate, and the competences that constituent units can adopt). In practise, de facto asymmetries exist between Quebec, which is a province defined by its cultural difference rather than only territory, and the other provinces. The existence of francophone Quebec and the largely English rest of Canada have lead to ongoing tensions and struggles that have included calls for external secession.[13] Indeed, much of the literature on external secession and federalism is born from Canada's perennial existential debate.[14] Like Switzerland, its federal constitution did not have a specific clause that guided the creation of Nunavut.

The Indian Union is also a unique federation. Strikingly, it is a highly centralised one.[15] Indeed, some scholars hesitate to define India as a federation at all since the States powers are set by the central constitution and States do not have constitutions of their own. In terms of internal secession, the constitution has a clause which grants the Union parliament near exclusive monopoly on the issue.

Despite the considerable differences between the three federations, their political cultures and history, the overall pattern of internal secession followed is common to all three (albeit the details of the process and the weight of arguments employed differ).

In the next section I outline the process leading to the creation of Jura focusing on the key points, the actors involved and the justifications provided by those who advocated the positions ultimately adopted. I then establish the three stages that the creation of Jura followed. In the next section I turn to the creation of

[13] See for example K. McRoberts (2001: 701).
[14] The literature on federalism and secession is discussed in part 1 of the thesis.
[15] For an account of India's federalism and political culture see, for example A. Kohli (2001).

Nunavut and Jharkhand and show how each step found in the case of Jura can also be identified. Finally I conclude by proposing the overall model.

In terms of the overall thesis question, this article serves as a basis from which the normative questions that internal secession raised and were resolved in praxis be identified, and ultimately, from which a normative account of how it should take place can be built.

II. Switzerland: the creation of the Republic and Canton of Jura

On the 1st of January 1979, the territory and population of three districts (covering an area of 828 square kilometres and a population of just under 65 thousand) that had previously been part of the Canton of Berne were admitted to the Swiss federation as a constituent unit with the corresponding self rule and participation in shared rule. At the federal level, the size of the territorial representation chamber (*conseil d'etats*) was increased by two seats for representatives of the Jura Canton. In the population based representative chamber (*conseil national)* the number of seats elected by Berne was reduced by 2 which were allocated to the newly created Jura constituency. By virtue of being a canton, it also participated as a unit in federal referendums, and had its corresponding weight when double majorities are required (such as for passing federal referendums). The Canton of Berne modified its parliament too. The canton became socially more German dominated and protestant. Jura became a predominantly French-speaking and catholic canton, reorganised its territory into districts, and set up an assembly of 60 deputies.

Early demand for recognition, attempt at appeasement and continued demand

The beginning of the process culminating in secession can be established as the mid 1940's when for the first time a comprehensive set of grievances and demands of the Jura region was presented to the Canton of Berne Authorities.[16] Triggered by

[16] At this stage, Jura is loosely defined as covering the seven districts of Berne that correspond to the territory annexed in 1815, the *Ancien Jura*.

the so called *affaire Moeckli*[17] the *Comité d'action pour la défense des droits du Jura* (also known as the *Comité de Moutier*) was organised and popular indignation was expressed at the way the Canton of Berne was dominated by a German majority and was insensitive to the existence of the distinct francophone Jura region.[18] This amounted to a call for political recognition and a degree of self rule for Jura based on the region's cultural, linguistic, religious and historical distinctiveness[19] and inherent neglect by the canton of Berne dominated by the German speaking protestant majority.

This led to the introduction of some limited changes to the constitution of the Canton of Berne in 1950 which officially recognised the *jurassiens* as an ethnic group within Berne and accepted some of their symbols such as the Jura flag.[20] However they fell short of granting the demand to modify the electoral districts to allow special electoral significance to the districts of Jura thereby not addressing their permanent minority status within Berne. It was argued that granting special electoral significance to the Jura districts would in effect divide the sovereignty of the canton into two peoples and violate the Cantonal Constitution principle of "*egalite de droit public entre les citoyens*" (equality of rights between citizens).[21]

The concessions made were limited, and while some *jurassien* were satisfied, others organised into a movement calling for Jura to separate from Berne. The reforms therefore appeased some but exacerbated the demands of others.[22] In the early 1950's two social movements were established, the secessionist *Rassemblement*

[17] Georges Moeckli, the *jurassien* member of the executive council of Berne was in line to become director of public works and railways but was rejected by the Berne legislature on the grounds of his supposed "defective knowledge of German" (A. Volmert 2008). For a more detailed account see P. Talbot (1991).
[18] For a detailed account of this committee see M. Hauser (1979).
[19] For an official statistical account of the distinctiveness of Jura see Conseil Fédéral (1977b). For an academic account of how Jura is geographically distinct see Jenkins (1986), for its religious and linguistic difference see A. Volmert (2008) and B. Voutat (1992).
[20] The changes introduced by these reforms are described extensively in P. Talbot (1991).
[21] This in turn basically meant that more self rule for Jura could not take place within Berne, see P.Schultz (1979: 319).
[22] See, for example, A. Volmert (2008:396)

Jurassienne (RJ) and the anti-secessionist *Union des Patriotes Jurassiens.*[23] The former was a movement that called for the seven districts that made up the *Ancien Jura* to become a canton in its own right whereby the people of Jura, united and legally recognised as such would be part of the Swiss confederation.[24] The latter aimed to defend the interests of Jura within and as an integral part of the canton of Berne.[25] Both became increasingly radicalised and polarised Jura's population, clashing on several occasions.[26]

Indeed the RJ, attempting to force Berne authorities to act and to draw political attention to its cause, collected over 24 thousand signatures (over half the electorate at the time of *Ancien Jura*) calling for a referendum on separation. When presented to the cantonal administration of Berne as a public petition, they were legally bound to call the referendum (albeit across the whole of Berne). Separation was overwhelmingly defeated, but had strong support among the Catholic-French population, largely concentrated in the northern districts of Jura.[27] This rather than settle the issue ignited further tensions within *Ancien Jura* in the 1960s. The secessionist movement radicalised[28] and the *problème jurassien*, initially a Berne cantonal problem, had the potential of becoming a Swiss federal problem.

Deciding if separation is legally possible

Within a context of social unrest, the Berne authorities attempted to push through an autonomy plan for Jura with little or no consultation, however the federal government by criticising the

[23] There was a third (autonomist) position taken by the *Deputation Jurassienne.* They sought to reinforce Jura's position within the existing 1950 constitutional amendment and cultural plan of Berne, but they had little popular support within Jura itself.
[24] The position of the RJ is clearly set out in Rassemblement Jurassien (1953).
[25] See Rassemblement Jurassien (1953).
[26] In this respect the RJ organised annual events and numerous demonstrations often attended by thousands. For accounts see, for example, C. Hauser (2004) and A. Pichard (2004).
[27] For account of the referendums and the uneven support see, for example, F.L. Reymond (1965), P. Stauffer (1974) or K. Mayer (1968)
[28] For example, the G*roupe Belier*, the youth and violent arm of the RJ carried out a series of direct action stunts and between March 1963 and March 1964 the FLJ (*Front de Liberation Jurassien*) carried out a series of low key terrorist acts.

proposal and making its own proposal effectively required the Berne government to abandon this plan and acknowledge the need to negotiate a solution with their *jurassien* opposition. The federal government was responding to appeals from the RJ to the federal chambers to hear their case for self determination; and to pressures by anti-secessionist representatives who argued that the federal authorities, as guardians of peace, order and security, had a duty to squash the separatist unrest that was creating disturbances of the peace.[29] As a result the Berne Government appealed to the federal government to set up a joint *Commission Confédérée des Bonnes Offices* which was set up in 1968 to report on the situation and possible solutions, including separation.[30] The commission served as the forum to set out recommendations for a possible future secession. The federal government had established that the *problème jurassien* was a Canton of Berne internal issue, but if separation was to be considered as a possible solution, it would ultimately require Federal constitutional amendment and so the solution necessarily had to be negotiated.[31] A *Commission Confédérée des Bonnes Offices* was also seen as an adequate framework within the Swiss federal system for negotiations on solutions to the *question jurassien* to be reached. This is important since in the eyes of the federation, the recommendations made by the commission were both legitimate and trustworthy despite the fact that RJ representatives did not take part and that such a framework allowed the Berne government to gain the upper hand in establishing the process that could lead to secession.[32]

[29] For a general account see P. Schultz (1979: 318). Calls for the federal government to clarify its position and to get involved in the "problème jurassien" were reflected in questions posed to the federal government, see for example Conseil National (1969).

[30] The committee was presided over by Petitpierre (federal councillor) and composed of Walhen (also a federal councillor), Broger and Graber (both national councillors).

[31] The Swiss constitution names the Cantons and number of seats in the territorial chamber. The creation of a new constituent unit therefore requires constitutional change. Additionally, any cantonal constitutional change also requires federal legislative approval (although not federal constitutional change as such). The federation as a whole therefore would need to agree with the outcome of any solution for it to be accepted and hence enacted.

[32] Indeed the recommendations drawn were similar to those that the Berne Government had established as its position on separation in 1967. See P. Talbot (1991: 40-45). The lack of alternative solutions being discussed is also partly

Indeed the recommendations of this commission formed the basis for the *additif constitutionel* that reformed the Berne cantonal constitution and established into law "*les règles à appliquer aux différents stades de la procédure, jusqu'à une éventuelle division de l'actuel canton de Berne et à la formation d'un nouveau canton*".[33] That is, the procedural process by which Jura and Berne could propose division to the Federation. It established a series of plebiscites whereby the seven districts that formed the *Ancien Jura* would first decide whether a new Canton was to be created. Then subsequent referendums would take place to delimit the territory that would form this new Canton allowing the people themselves to set via democratic means "*si la partie jurassienne du canton dans son ensemble ou certains de ses régions entendent constituer un nouveau canton*".[34] It also regulated the election of a constituent assembly, the process of negotiation, and how the canton of Berne should proceed once it had accepted a constitution for Jura. Finally, it recognised that separation could only go ahead if it was ultimately accepted by the federation via a federal constitutional amendment following the existing procedures.

The process was justified following legal argumentation anchored on Swiss federal principles. Firstly, the advocates of these reforms sought to establish whether it was possible for a separation to occur. Having found that neither federal nor cantonal constitution provide any indication that it could not occur, it was considered possible if a process that was in line with existing legal jurisprudence and principles was found.[35] In this sense federalism, as well as democracy and the need to protect minorities, were cited as essential principles that guided the process envisaged. Indeed:

> "Selon la doctrine dominante, il serait nécessaire d'avoir, avant de réviser la constitution fédérale, une décision affirmative de la population touchée. Cette opinion est motivée par les principes démocratiques et fédéralistes qui régissent notre Etat et qui font apparaitre comme exclue la division, contre sa volonté, d'un canton par une révision de la constitution fédérale. Comme, en

explained by the inherent dominant position of the government of Berne in the Committee. I return to this point later.

[33] Conseil Fédéral (1970: 562).

[34] Conseil Fédéral (1970: 557).

[35] See, for example, J. Aubert (1967).

> l'espèce, ce n'est pas seulement la population de l'ensemble du canton de Berne qui est en cause, mais surtout celle du Jura et de ses différentes parties, une votation cantonale sur l'alternative: séparation au maintien du statu quo, apporterait une solution admissible au point de vue du droit formel, mais qui ne serait pas satisfaisante pour assurer la sauvegarde de l'autonomie de toutes les régions du Jura. La protection des minorités réclame que la procédure de consultation populaire soit complétée et élargie sur le plan du droit cantonal".[36]

The federation therefore could not take the initiative on a process that would see the territorial integrity of a canton under threat (since the constitution guarantees and protects cantonal territorial integrity). However, the canton could not itself split without the federation's approval and consent.[37] In addition, since the residual powers in the federal constitution lie with the cantons, and Berne's constitution considers the people of the canton as its sole sovereign, Berne (in detriment of Jura) was identified as the legal body with the power to propose a process (albeit restricted by the federation since it would ultimately require its acceptance).[38]

With regards to deciding the process for separation itself, two main questions were discussed, who could separate and who should decide if separation was to take place. With regards to who could separate, the seven districts that composed the *Ancien Jura* of Berne were identified as candidates to potential secession. This was based on a legal precedent, as it corresponded to the territory recognised to comprise the people of Jura in Berne's 1950 cantonal constitutional change and in the 1815 Treaty of Vienna through which Jura became part of Berne.[39] At the same time, the diversity within Jura had itself to be recognised. In this sense the seven districts for historically, geographic, economic, linguistic and religious reasons were identified as comprising three distinct parts:

[36] Conseil Fédéral (1970:562).

[37] Since the federal constitution enumerates the cantons hence implying that any change must be approved by the federation. For an academic position at the time that the federation should intervene, see J F Aubert (1967). For arguments that the competence lied entirely with Berne see JB Asdevant (1966).

[38] That is the cantonal constitutional amendment (in the form of an *additif constitutionel*) required acceptance by the Berne electorate via a canton wide referendum, and later federal guarantee (acceptance by both federal chambers). See P. Schultz (1979).

[39] See for example P. Schultz (1979).

South Jura (French speaking and Catholic), North Jura (French speaking and Protestant) and the district of Lauffon (German speaking). In order to reflect this, a cascade of plebiscites whereby districts and communes could decide what canton they wished to belong to was established.[40] It allowed this recognition of distinctiveness to be put into practice in democratic decision making.

The *additif constitutionel* was enacted with very little opposition. In a popular referendum across Berne it was accepted by about 90.000 votes to 14.000.[41] The RJ, although sidelined in setting the process, did not campaign against it. Presented with a proposal that explicitly acknowledged a right to self determination for Jura, the RJ leadership and intellectual father Ronald Béguelin endorsed the constitutional addendum in the referendum.[42] That is not to say that the RJ were in favour of the process envisaged *per se*, indeed the leadership was later accused by a section of RJ for having committed an error of judgement in supporting a process that would see *Ancien Jura* split. Despite this, the fact that the process proposed was firmly entrenched in legal and constitutional principles of the Swiss federation and the ongoing context of unrest in Jura, opposing would be at grave risk of being labelled anti democratic, anti Swiss, wanting disorder and violence and being irresponsible.[43]

Although the process envisaged in the *additif* was indeed based on Swiss constitutional principles, it was not the only possible alternative. Indeed as Talbot describes:

> "Dès 1965, le professeur Lüthy a proposé une formule de résolution de la question jurassienne qu'il estimait a la fois plus

[40] For an account of the process of referenda in cascade see J. Laponce (2004: 177), K. McRae (1983), A. Sanguin (1983), J. Laponce (1984), B. Jenkins (1987), M. Anderson (1996).

[41] Across the seven districts of Jura it was accepted by 20464 to 2216 votes. See P. Talbot (1991: 47)

[42] It was the first time that Berne acknowledged the right to self determination of the people of Jura, and the RJ leadership supported it.

[43] The courts had recently prosecuted arrested members of the FLJ and the political calls for federal military intervention to keep peace in the Jura region were still ongoing. In order not to alienate support, the RJ arguably could not be seen to be against the Swiss constitution.

> conforme aux données de l'historie helvétique et mieux adaptée aux réalités locales, formule que le RJ finira par accueillir favorablement en 1974. Il s'agissait de l'établissement de deux demi-cantons pouvant envisager plus tard leur unification. Il convient de noter qu'en Suisse, les demi-cantons ont une existence indépendante et ne se distinguent des cantons unifies que par le fait qu'un seul représentant leur est affecté au Conseil des Etats et qu'ils ne possèdent qu'une demi-voix cantonale lors des votations constitutionnelles fédérales"[44]

If Berne was split into two semi–cantons, this would have meant that both Jura and Berne would gain the self rule competences of a canton, but the overall Canton of Berne representation and vote in shared rule institutions would be split between the two new half cantons. Nevertheless given that the *additif*, and indeed the process, was basically based on the expression of Berne's government preference (albeit articulated within a federally negotiated framework), it is not unreasonable to argue that for the Berne authorities the half canton alternative was not realistically an option. Berne had already in 1950 refused to recognise *Ancien Jura* as a territorial unit that had any legitimate grounds to claim self determination. As Talbot (1991) shows, the RJ did briefly endorse the creation of two half cantons, but this was done in 1974 as part of its (belated) opposition to the *additif* that arose once it was clear that the process (previously agreed) was going to divide the *Ancient Jura* territory in two. By that time the process for separation had already been set in the legal rather than political sphere.[45]

Deciding if internal secession goes ahead, establishing the seceding territory and negotiating the arrangements for separation

Although by 1970 a legal procedure to secession was in place, the *question jurassien* had not been resolved. It remained a politically salient issue and calls for federal intervention to resolve the situation continued.[46] In an attempt to resolve the issue rather than

[44] P. Talbot (1991: 38).
[45] Once the process had been set into legal terms, RJ opposition was portrayed by opponents as opportunistic and arising only because the results of the referendums were not the results they wanted.
[46] For a motion by a secessionist sympathiser see for example Conseil National (1973a). For a notion calling on federal intervention to squash secessionism see for example Conseil National (1973b).

allow further political wrangling to reach an autonomy plan for Jura within Berne that had no real support, the government of Berne (the *conseil exécutif*) unilaterally announced it was activating the process envisaged in the *additif.* It argued that since representatives of the North and South districts could not live harmoniously together (evident by the continued unrest), the people should decide whether to separate and what territory was to separate.[47] This came despite the fact that the commission that suggested the constitutional addendum recommended also that it should be used only as a last resort, once alternatives to secession had failed. This was based on the understanding that secession was not a popular solution. After all, the 1950 referendum across the whole Canton of Berne had not given a uniform result in favour of separatists or the status quo. Yet by the 1970s the positions had radicalised.

As foreseen, the decision to create a new canton was made in a first referendum across the seven districts of Jura. Since a slim majority in favour of creating a new canton was announced subsequent referendums were called for the southern districts which had voted against division to delimit the territory of the new canton.[48] The Berne government then convened a constituent assembly for Jura as per the *additif.* The assembly, directly elected by the electorate of the delimited territory to become the new canton, were tasked with drafting a constitutional text for the proposed new Canton. The Jura constituent assembly subsequently drew up the draft constitution with the involvement of Berne authorities and federal government advisors. The draft was voted for in a referendum in the delimited Jura before being approved by the Berne chambers (as the legally recognised entity with the power to petition the federal level) and sent to the federal chambers for its formal acceptance and enactment.

Ratification and final approval of the creation of the new Canton

The Swiss Constitution enumerates the constituent units that make up the federation and therefore the creation of a new canton

[47] It invoked the powers to activate the process established in Article 2 of the *additive*. This set that the process could be activated "*a) a la demande de 5000 citoyens ayant droit de vote dans la partie jurassienne du canton, ou b) sur décision du Conseil-exécutif*" Conseil Fédéral (1970: 558).

[48] For an account of referendums see P. Talbot (1991) and J.A. Laponce (2004).

required federal constitutional amendment. In addition to that, changes to cantonal constitutions also require consent (by means of a federal guarantee) from the federation. As such, separation could only be enacted if the federation issued the due guarantees for the proposed Jura constitution, the changes arising for the Canton of Berne constitution and ultimately the acceptance of a Swiss federal constitutional amendment by means of the existing established procedures.

Hence as mentioned, the process required Berne, as the existing entity (given that Jura was not as yet a sovereign entity), to petition the federation to accept the division in the terms agreed. The Cantonal Constitution of Jura was considered by federal parliament and was found to provide a solution to the problem fully legal and justified within the existing constitutional principles with only minor changes to ensure it was interpreted within the constitutional spirit of the Swiss constitution.[49] Subsequently, the changes to the constitution of the canton of Berne were approved. Finally the federal constitution amendments to enact the changes were introduced.[50] Such amendment required acceptance from the federal chambers and by referendum of the people and the Cantons of Switzerland. This is granted when it is accepted in a referendum by the majority of Swiss citizens (who have voted), and the majority of Cantons (this latter being determined by the result of the popular vote in a each Canton). But this was largely procedural and raised little debate.[51] Indeed the government presented them as the final stage of a process that had already been debated extensively in commissions, in the media and parliament. It was presented as the

[49] See Conseil Fédéral (1977c). The federal guarantee for the constitution was given to all the proposed constitution barring article 128. This article was deemed to violate article 6 of the federal constitution which established federal protection to the territory of the cantons since it stated that "*la république et canton du Jura peut accueillir toute partie du territoire jurassien directement concerné par le scrutin de 23 juin 1974 si cette partie est régulièrement séparée au regard du droit fédéral et du droit du canton intéressé*".

[50] It required amendment of article 1 which enumerates the cantons and article 8 which established the representation in the territorial federal chamber

[51] The federal referendum was held on the 25th September 1978 and 82.3% of the votes voted in favour and a majority of citizens who voted in each Canton accepted the changes, hence all cantons were deemed to have accepted it.

solution to a long running problem that had been negotiated and devised according to existing law.[52]

III. The Jura as a model

The Jura case, as my analysis shows, followed three main stages: an initial demand stage, a second response stage and a final enactment stage. At the initial stage a demand for internal secession is formulated. This includes both the early demand for recognition and the later demand for separation from the constituent unit but not from the federation. The demand is based on grievances primarily related to the failure of the constituent unit to recognise its distinctiveness and is to a certain degree construed as a *Jurassien* nationalist demand.[53]

At the second stage, the response, the focus is shifted from the local demand movement to the existing constituent unit albeit with federal involvement. After the federation is called upon to intervene it engages with Berne authorities by setting up a *Commission Confédérée des Bonnes Offices* to study the possibility of providing a legal process for separation but refuses to become actively engaged since it considered this to be outside its remit. The commission, composed of representatives of the Federal and Berne governments, makes recommendations and a constitutional addendum is passed for the Canton of Berne setting the process to be followed for Jura to secede. This process is approved by the federation and consequently has the endorsement of the majority of

[52] The Federal Government's position is set out in Conseil Fédéral (1977a) and Conseil Fédéral (1977b). It was presented as ratification by the federal council in the debates in both the *Conseil National* and the *Conseil d'Etats*. See Conseil des Etats (1977a) and Conseil National (1978).

[53] The argument of distinctiveness can be largely defined along two main arguments: Jura's different historical experience, its French language and culture and its predominate catholic population. According to Béguelin (RJ leader and intellectual), the *jurassienne* form a minority within Berne that is permanently oppressed by the "bernois" majority in the canton. This has particular force in raising support (despite the fact that the Federal Constitution and to an extent the Berne constitution itself after the 1950 amendments ensure minorities are protected). Evidence that the demand is nationalistic could also be said to be reflected in the fact that support for separation is highest among the Catholic-French population (largely concentrated in the northern districts of Jura), for an account of this argument see K. Mayer (1968).

other Swiss cantons.[54] In deciding if secession goes ahead, at this stage the issue is almost exclusively within the constituent unit. Firstly, it is the Berne Government who activates the process envisaged in the *constitutional additif*. The decision to secede or not is then taken by the residents of the seven districts identified as Jura and set in the constitutional addendum that was approved by the member state and the federation. Once an affirmative decision to create a new territory has been taken, the boundary of the contiguous territory to become Jura is delimited by means of referendums at district and sub district level (the possibility of creating enclaves was excluded in the process). After that a constituent assembly is elected from the population of the delimited territory and a constitutional draft for the Canton is drawn up under the supervision of the Berne authorities, who must approve it before presenting it to the federal institutions for approval as a Canton of Berne request. As argued, the focus is on the existing constituent unit, but it is pressured by the secessionist demand and restrained by the need for the federation to ultimately agree the changes.

In the third stage the federation becomes the main actor for ratification and final approval to enact the creation of the new Canton. The federation, recognised both as a unit in itself (the Swiss people) and as a collection of federated units (the Cantons) is required to accept the changes to the old existing constituent unit, accept the constitution of the new unit and make the federal changes required to incorporate the new unit into the shared rule level governance. Hence all the member states in the federation are included in the process. This is as set by the Swiss constitution, whereby the cantonal constitutional changes require federal guarantee and federal constitution amendments require parliamentary approval and endorsement via referendum.[55]

[54] This is evident since the constitutional addendum to the Canton of Berne requires the Federal institutions to issue a guarantee before it is enacted. Such a guarantee includes its acceptance by the federal territorial chamber. This can be obtained via simple majorities in each chamber. For amendments to the Swiss constitution on the other hand, ratification by referendum is also required. In order to succeed, a double majority is needed – a majority of Swiss citizens and a majority of cantons.

[55] Had the constitutional change not been accepted, Berne would continue to exist and the process would be called off. This position was set as hypothetical but set out in Conseil Fédéral answer to a question posed by a deputy. See Conseil des Etats (1977b).

The three stages, the steps taken, and the method followed in the Swiss process are summarised in the table presented on the next page.

Table 1. The process of creating the Canton of Jura in Switzerland

Stage	Steps	Method
DEMAND	Initial demand for recognition	Ancien Jura *Comite de Moutier* calling on Berne Canton to recognise Jura as distinct and make provisions to address its neglect.
	Attempts to satisfy demands	Limited Berne Canton Constitutional amendment to recognise the people of Jura as an ethnic group and recognition of official symbols for Jura.
	Continued demand	Establishment of a Social movement (RJ) across Jura with strong support in the three northern districts of Jura calling for secession.
RESPONSE	Deciding if it can legally occur and how	The federation is called upon to intervene by both secessionists and anti-secessionists within Jura. The federation refuses to become actively engaged since it was outside its jurisdiction. At the same time, it engages with Berne authorities by setting up a *Commission Confédérée des Bonnes Offices* to study the possibility of providing a legal process for separation. The commission makes recommendations and a constitutional addendum is passed for the Canton of Berne which sets the process to be followed for Jura to decide if it wishes to secede, how the territory should be delimited and what steps should be followed to complete secession., including the negotiations.
	Deciding if secession goes ahead	Berne Government chose to activate the process envisaged in the *additif constitutionnel* after it considers that Jura's demands cannot be plausibly met within the Canton of Berne. The first referendum across the 7 districts of the Ancien Jura is set to decide if secession actually is to occur.
	Establishing the seceding territory (boundaries)	Since the first referendum establishes a majority to secede, subsequent referendums are called to delimit the territory of the new canton following the process set in the constitutional addendum.
	Negotiation of arrangements for separation	Jura elects a constituent assembly to draw up constitution for Jura with the involvement of Berne authorities (as the existing sovereign unit of which Jura was part of at the time) and federal government advisors as arbiters.
ENACTMENT	Ratification of proposed constitution for Jura	The proposed Cantonal constitution for Jura is submitted to a Jura wide referendum; the Berne authorities accept the constitution and submit it to the federation for constitutional guarantee.
	Ratification of whole process by federation	Before the separation comes into effect, the Swiss constitution is amended to include Jura as a member unit of the federation.

Source: own elaboration

Finally, in terms of justifying the process the very strong emphasis on constitutionalism as well as federalism and democracy in legitimatising the process is highly noticeable. This is especially true in the way the constitutional addendum to the Berne cantonal constitution was presented as deeply ingrained in Swiss jurisprudence and tradition. Opponents were dismissed for adopting an anti-Swiss and anti-democratic stance. Following the disturbances and clashes between secessionists and anti-secessionist in the late 1960s, they were also portrayed as promoting violence and unrest. Politically, opposition to the solution derived was difficult. At the same time, the process also stands out for providing a solution to a nationalist self rule demand, not in terms of ethno-national principles but established constitutional, federal and democratic principles.

IV. The creation of Nunavut in Canada and Jharkhand in India

W. Riker (1964) explicitly argued each case of federalism is unique and has special features and elements that are particular to it. For this reason we cannot expect the steps identified in the case of Jura to be followed exactly in cases of internal secession that have occurred in other federations. Nevertheless, at least in the case of Nunavut in Canada and Jharkhand in India, this three stage process (demand, response and enactment) involving the federation, the constituent unit as a whole and the secessionist groups, is discernible. Indeed, this is significant since both of these federations are unique in their own way.

In Canada, Nunavut, an area covering over 770 thousand square miles and a population of over 22 thousand, was created from the eastern part of the Northwest Territory (NWT) in 1999. It gained self rule institutions consisting of its own Commissioner (largely equivalent to Province Lieutenant-Governor), executive council and a directly elected legislative assembly which by virtue of demographics became in effect controlled by the Inuit (who account for around 80% of the population).[56] NWT's rump territory reduced

[56] Constitutionally, Nunavut is a federal government dependent Territory like NWT but it is generally accepted that the administrations in the Territories "are now responsible to locally elected leaders, and they are today full partners in the

its legislative assembly and executive and its population became less heterogeneous. At the federal level, an additional seat was added to the Senate for Nunavut. There was essentially no change in the House of Commons because the size of the population concerned did not warrant additional constituencies.[57]

In India, Jharkhand, a state comprised of 18 southern districts of Bihar, covering an area of 79714 square kilometres with a population of almost 27 million people, was established in November 2000.[58] It gained its own executive and legislative with the same self rule as other Indian constituent units. Rump Bihar's legislative assembly was reduced as the constituencies covering the area of Jharkhand were removed. At the federal level the lower chamber in parliament (the House of the People or *Lok Sabha*) remained unchanged in size but some constituency boundaries were redrawn where necessary to ensure no constituency encompassed districts in Jharkhand and Bihar.[59] The upper house (the Council of States or *Rajya Sabha*) was subsequently increased to include representatives of Jharkhand as a state.[60] The process was particularly unique in the sense that the federal constitution sets the process for the creation of new states. Article 3 of the constitution grants the Union Parliament exclusive powers to enact such changes, limited by the requirement to be initiated by the President, and the need for the affected constituent units to be consulted.[61] This seems rather centralist, especially since the role of the 'affected states' is only advisory, however it is not surprising if we bear in mind that India's constitution "reflecting concerns about centrifugal forces that might fragment India, establishes a rather

machinery of Canadian intergovernmental relations" R. Simeon and M. Papillon (2005: 94).

[57] The Western Arctic constituency was redrawn along the Territorial boundary and the Nunatsiaq constituency was renamed and redrawn to become Nunavut.

[58] Data available from the 2001 Indian Census, http://www.jharkhand.gov.in/AboutState_fr.html [accessed December 2011].

[59] Of Bihar's original 54 constituencies in the Union Parliament lower chamber, the 14 that covered the territory of Jharkhand became Jharkhand constituencies while the rest remained constituencies of Bihar.

[60] The change at federal level was part of a wider reorganisation since Jharkhand was created at the same time as two other states.

[61] For studies on Indian Union ability to create news states see U. Phadnis (1989), R. Kapur (1986), M. Chadda (1997) M. Chadda (2002), P. Brass (1991) and B. Puri (1981).

centralised polity in which the Union government is vested with sufficient powers to ensure not only its dominance, but also its ability to rule in a unitary fashion if necessary and politically feasible… only a strong centre, thought many of the founders, could effectively drive economic development and ensure equity across territorial jurisdictions, religions, languages, classes and castes".[62] Despite this, as I will show the process followed in these two cases relates to the three stage process identified in Switzerland, albeit each has its own particularities.

Stage 1: Demand

In the case of Canada, an initial demand for autonomy and greater recognition of the Inuit was made in 1976. The Ottawa based Inuit organisation, Inuit Tapirisat of Canada (ITC), sought an autonomous arrangement for the Inuit as part of their negotiations with the federal government that had been set up in the framework of federal policy on native Comprehensive Land Claims.[63] The Inuit's "basic idea is to create a territory, the vast majority of people within which will be Inuit. As such, this territory and its institutions will better reflect Inuit values and perspectives than with the present Northwest Territories".[64] However this demand was not seriously considered by the federation. The federal government was already engaged in a process of constitutional development with the Northwest Territories (which included the Inuit's proposed land) as a response to its ongoing demands for gaining province-hood (led by the majority white population, who controlled most of the administration). It had recently moved NWT administration from Ottawa to Yellowstone and in 1979 it split the NWT federal parliamentary constituency into two constituencies. Furthermore it considered its relations with the Inuit to be governed by the Indian Act 1973, an act which explicitly distinguished between native Land Claim negotiations and wider constitutional development. The refusal to consider the Inuit calls for an own territory led these to redirect their claim within the NWT political arena and the existing debates on NWT's constitutional development within Canada.

[62] A. Majeed (2005: 1)
[63] For an analysis of federal policy of Comprehensive Land Claims policy see S. Weaver, (1981).
[64] Inuit Tapirisat of Canada (1976: 15).

The Inuit's proposal was hence articulated as a proposal to split the NWT on the basis that the Eastern Arctic was culturally, socially and economically different from the West. It was predominantly populated by the Inuit whose culture, traditions and language were unique. Therefore there was a need for the local population to take part in decisions on development of arctic resources, protection of the environment, education system and the protection of the Inuit language.[65] They criticised the size of the NWT and the subsequent remote, faceless Yellowknife government and its insensitiveness to the problems and particularities of the eastern communities and argued for the need for the local communities to have political control and institutions for self government to ensure policies respond to their needs. These arguments formed the basis of the Inuit's demand for Nunavut that was persistent and continued until the process was completed. Indeed it was widely acknowledged by the government of Canada as well as in the media, that had it not been for the persistence of the pressure and work of the Inuit organisations - the ITC and its later offshoot the Tunngavik Federation of Nunavut (TFN) - Nunavut may not have occurred.[66] This is an important aspect of this case in particular given the specific federation in question. In Canada, Quebec secession, and more widely, the multinational character of Canada is a prominent political discussion. However while Quebec has largely been attempting to increase the asymmetries between the Province of Quebec and other constituent units, the Inuit, emphasised their attachment to the essence of Canada and sought symmetric treatment (becoming one territory among other Canadian Territories). By portraying their aim as an approximation to Canada the Inuit were successful in gaining support of the other constituent units in their quest for self determination.

In the Indian case, the idea of a state of Jharkhand was in existence since 1956, the time of the State Reorganisation Act. However it was not until 1987 that a unified local political party including most of the different politically active tribal groups calling for a Jharkhand state, the Jharkhand Mukti Morcha (JMM), was created.

[65] For the Inuit position see Inuit Tapirisat of Canada (1979).

[66] For an account of what the Inuit claims and how they changed and developed see G. Weller (1988).

This party was born out of tribal movements (the *adivasi*)[67] that argued they should be able to control their own land, which was to be achieved through controlling the government of a state of their own within India. This movement and its demand could therefore be said to amount to a sub-nationalist demand based on the tribal distinctiveness of Jharkhand hill people.[68] Despite this however, the JMM and its particular demand for a separate state was not a key factor in the process that ultimately occurred. But it did provide the basis for other parties (which became key in the creation of the state) to adopt the call for a Jharkhand state as their own. It made state creation a politically salient issue among political parties vying for power at Bihar and Union level.

This is important because the process that led to the final creation of Jharkhand is explained by partisan politics and a complex interrelation between Bihar state politics and Union level power struggles between India's two main political parties - the Indian National Congress (INC) and the Bharatiya Janata Party (BJP). In this sense the process and the creation of Jharkhand are related to the fortunes and strategy of the BJP as opposition party at both Bihar state level (initially governed by the INC alone and later in coalition with a Bihar regional party, the Rashtriya Janata Dal - RJD) and at federal level (governed by an INC coalition led government). From the late 1980's the BJP became the crucial driving actor for the creation of the new state as it attempted to wrestle power from the INC at both Bihar state level and Union level.[69] The BJP's call for a new state, while acknowledged to

[67] For more details on India social and cultural composition and its development during democracy please see S. Corbridge et al (2012). The adivasi is an umbrella term that refers to aboriginal peoples of India and are recognised as Scheduled Tribes in the Constitution of India article 342.

[68] S. Corbridge (2002) makes the case that the claim was based on nationalist demands. For the case of Jharkhand distinctiveness see for example A. Tirkey (2002), U.S. Rekhi (1988) and S. Lourdusamy (1997). Jharkhand occupies a hill region rich in natural resources and has a relatively large proportion of Scheduled Tribes and an economy largely fuelled by industry. This contrasts with the rest of Bihar that is geographically flat and contains large areas of arable land, its economy is largely driven by agriculture and it is demographically dominated by what are termed Other Backward Casts (and particularly three casts). For more details on the social make up of Bihar and Jharkhand see S. Kumar (2004).

[69] For accounts of party changes and struggles see for example M. Singh and D. Verney (2003), A. Wyatt (1999) and E. Mawdsley (2002).

originate in tribal demands, was based on arguments about the perceived economic neglect of the Jharkhand districts of Bihar by the State of Bihar in terms of investment and development. Ultimately as S. Corbridge (2002) has argued, the state was "formed with little regard for the adivasi communities so long in the vanguard of the Jharkhand movement".[70] Indeed, as M. Chadda (2002) has argued, despite there being a local demand, "the timing of the new state had however depended on the configuration of politics in New Delhi and Patna [Jharkhand capital]".[71]

Although the creation itself is tied to the fortunes of the BJP, like in the case of Jura, there was an attempt to address the demand some years before the creation of the new state. In 1994 a process to create the Jharkhand Area Autonomous Council (JAAC) encompassing the 18 southern districts of Bihar that would later become the new state was initiated by the INC and RJD Bihar State government. However, rather than an attempt at granting some degree of autonomy or recognition to the Hill Tribes, this was politically motivated and responded to direct partisan struggles. At Bihar State level the INC was being challenged in the constituencies of Jharkhand by the BJP and the JMM which were calling for a separate state of Jharkhand. The impact on the INC was exacerbated by the fact that it had lost its dominance of the rest of Bihar to the regionalist party RJD that generally opposed the principle of creating a new state. This had the potential of destabilising the INC's dominance at Union level. Hence it attempted to respond to the regional demand for more autonomy without offering a new state, which was unpopular in the rest of Bihar.[72]

Despite such attempts neither the BJP nor the JMM gave up on the demand for the new state, and its creation continued to be a politically salient issue. The BJP promised they would propose legislation in the Indian Parliament for the creation of the new State within six months if the JMM, led by Shibu Soren supported them

[70] S. Corbridge (2002: 56).
[71] M. Chadda (2002: 54).
[72] Indeed earlier, in August 1989, when the INC still had considerable control of politics, the INC Union Home Ministry had sought to mitigate a potential loss of support arising from this issue by proposing the creation of a Union Territory or a Jharkhand General Council as alternatives to the formation of a Jharkhand state, but this never materialised as INCs support rapidly declined.

in Bihar to wrest power from the Rashtriya Janata Dal.[73] By this time, the INC, having already lost many Bihar constituencies to the RJD and fearing further loss of support in its Jharkhand constituencies to the BJP, became supportive of the idea of creating a new state. At the same time the RJD, fighting for its overall control of Bihar State government, secured the continued support of the INC in exchange for backing the demand for division of Bihar. At this stage therefore, although there was no developed, coherent discourse or justification that can be clearly identified by any party supporting or not the creation of the new state, the division of Bihar was in principle supported by all the significant political parties within Bihar and the two main parties at Union level.

While it seems therefore that the demand in the Jharkhand case is largely related to political struggles, in both cases, Nunavut and Jharkhand, a demand stage similar to the one in Jura can be identified. In both cases the process was initiated by the existence of a popular movement demanding some degree of recognition and autonomy. Some attempts were then made by the authorities holding office at constituent level but the demand continued. I summarise this stage in the table below.

Table 2. DEMAND in the creation Nunavut and Jharkhand

CASE	STEPS	METHOD
Nunavut	Initial demand	Led by Inuit political elders, the political elites, through Inuit representation bodies ITC and TFN.
	Attempt at appeasement	White majority led NWT assembly commissions a report on division but it recommends against division. Federal authorities have recently created a new constituency for the Eastern Arctic and the demand for division is not seriously considered.
	Continued demand for constituent unit status	ITC formulates a clear and well defined proposal within the constitutional limits of Canada and the framework of governance of the North.
Jharkhand	Initial demand	Led by a small local movement, the JMM although later adopted by the BJP elites.
	Attempt at appeasement	Attempts at institutionalising the JAAC.
	Continued demand for constituent unit status	Most vocally led by BJP and the JMM political elite. The issue becomes politically salient and all parties at Bihar level endorse division.

Source: own elaboration

[73] For more details on BJP coalition strategies see E. Sridharan (2003, 2005).

Stage 2 The response

Faced with the demand for internal secession, the second stage is a response by the constituent unit authorities. This involved firstly deciding whether secession could go ahead, secondly the boundaries for separation, and finally the terms of secession and the institutions for the new unit. Both cases are parliamentary federations and, as I mentioned, in both cases sovereignty over the issue constitutionally lies with the federal parliament. For this reason it is unclear the extent to which the final Parliamentary Acts that enacted the new constituent units actually required either agreement or consent of the existing constituent unit affected or indeed the initial demand movements. Indeed in the case of Bihar, the state has no constitution of its own and so its powers and existence emanate directly from the Union Parliament. Nevertheless such agreement did take place. Indeed the federal government, in proposing the relevant legislation, and the federal parliament in accepting it, were responding to proposals that were acknowledged to have been made elsewhere. This is specially the case in Canada. But even in the case of India, although constitutionally the Union government has exclusive powers on the matter, and the federation played a much more active role, the Bihar State government and legislature did debate the issues and had adopted a favourable position to the split before the Union government introduced federal legislation to create the state.[74] Consequently, as I will attempt to show in more detail below, stage 2 of the process is also evident in both these cases.

Deciding if secession is to go ahead and the boundaries of the new unit

In the Nunavut case, it was the NWT legislative assembly that decided. At first, when the Inuit presented their proposal for division as their contribution to the debates on the future constitutional development of the NWT, it was coldly received by the white majority which controlled the NWT assembly.[75] They

[74] The legislative assembles of the States in question had been debating territorial changes for a considerable period before reaching agreement. See for example H. Bhattacharyya (2001) and M. Chadda (2002).

[75] According to A Légaré (1998).in the NWT assembly, of its 24 members only 8 were Inuit and only 15% of its public sector employees were Inuit.

were unsympathetic to the division of the NWT since they saw division as hampering their ambition of gaining province-hood status. However this changed in 1979 when, for the first time in its history, a Native majority, sympathetic to division, was elected to the legislative assembly. Yet despite favouring division, the legislative assembly was not all in favour of Nunavut itself (which had been the initial Inuit proposal). For this reason the assembly called a referendum on the principle of division across the whole NWT in line with the powers and decision making procedures the public administration of NWT had.[76]

The referendum on secession was duly held and division approved by a slim margin.[77] It was only advisory and not legally binding. But in November 1982 the federal minister for Northern affairs and development, John Munro, declared that Ottawa would recognise the decision taken by the NWT people to split since it was a clear reflection of the population's wish with respect to the constitutional future of NWT. This is of particular importance since it illustrates the active role of the federation in the process at this stage. Indeed Munro's statement of the federal government's willingness to accept the verdict of the referendum was qualified. He set three conditions. Firstly, any proposal had to allow for the settlement of the land claims with the Inuit, secondly the boundary had to be agreed and settled between the different actors that disputed territorial ownership in order to ensure a stable outcome, and finally it had to settle the structural arrangements for the future of territorial government. Hence it was not to become the start of a process but the culmination of one.[78] This set the framework for subsequent discussions within NWT and competing actors, namely the Inuit, the Dene Nation and the white population which all had different visions on NWT's future constitutional development. The

[76] The NWT legislative assembly was responding to a proposal by the Inuit for division. The chamber could not reach a consensus position and set up the Special committee on Unity to look for possible solutions. The commission recommended that since no consensus was reached it was to be decided by residents of all NWT. For more details see A. Légaré (1998: 274) and F. Abele and M. Dickerson (1985).

[77] For the arguments made opposing division see G. Dacks (1986), for arguments in favour see F. Abele and M. Dickerson (1985) and R. Salisbury (1986). For a report on how society was divided see Northwest Territories Office of the Chief Plebiscite Officer (1982).

[78] See A. Légardé (1998: 275).

decision on whether secession went ahead was therefore taken by the existing constituent unit but under federal influence.

Political leaders from each of the competing groupings across the arctic created within the next two years quasi-governmental groups to develop proposals for division and were brought together under the NWT Legislative Assembly's Constitutional Alliance.[79] There was considerable dispute among the Inuit, the Dene, Metis, and the Mackenzie Delta Inuit mainly in terms of ancestral hunting grounds, and by implication on the boundary delimitation for division. There were also disputes between native and non-native NWT residents. Nevertheless, after a period of intense negotiations between the different actors and near complete breakdowns "full of drama, reversals, upheavals and determined progress"[80] agreement was reached to submit a boundary proposal brokered by the NWT commissioner John Parker to a NWT wide referendum.[81] The process was legitimised as being negotiated between the different political elites of the NWT while the ultimate decision was made by the demos of the Territory via referendum. Democracy was the legitimising principle for setting the "unified NWT position" which the Federal government had asked for before it would act on the future of the North. The creation of Nunavut was however not the only proposal for dividing up the NWT. The Dene Nation had advocated the creation of Denendeh,[82] while the white community

[79] This was an umbrella convention created by the NWT Assembly as a forum for different NWT actors to debate their separate proposals for NWT constitutional reform. For an account of all the constitutional forums and discussions see P. Jull (2000).

[80] P. Jull (1998:12).

[81] For an account of boundary disputes see W. Wonder (1990). For an account of the arguments against division see G Dacks (1986).

[82] Under the proposals presented, Denendeh would be a territory comprising of the Western part of the NWT and would have institutions to safeguard Dene Nation and other First Nation cultures. For example, the Dene Nation called for a Senate for aboriginal peoples with veto powers over issues concerning aboriginals, and 30% of the seats in the legislative assembly reserved for native Indians. They also called for stringent 10 year residency requirements for voting in legislative elections, further breaking away from Canadian democratic principles and entrenching the debate in Aboriginal collective self determination arguments. Because such a territory would depend very much on whether the boundaries meant there was a Native Indian majority or not, they argued a vote to take place once a possible concrete boundary was proposed by an independent

was simply against any division.[83] Indeed, the referendum was held in May 1992 and the boundary was accepted but only by a small margin.[84]

Politically, to a certain extent the proposal on the boundary division was only set to referendum because the political elites could not reach a consensual position. It was in line with NWT's precedent of submitting to referendum decisions that could not be agreed unanimously by the Legislative Assembly (exemplified by the referendum on the principle of division). Nonetheless the process followed demonstrates that the steps taken at the response stage are in line with the model suggested by the Jura case albeit closely linked to its particular context.

In the case of India the process of deciding if seceding was to go ahead and its boundaries was also negotiated although, as set out above, ultimately taken by the Union government as established by the constitution. The strongly centralised process therefore means that the issues were not constitutionally resolved at existing constituent unit level as these do not have constitutions of their own. Nevertheless, Bihar had debated proposals for division before. Finally, the 2000 bill at the Union Parliament ultimately saw the creation of Jharkhand. The territorial delimitation set out for example coincided with what had already been established as comprising Jharkhand. It is true that the JMM's demand for Jharkhand state initially encompassed land belonging to four

federally mandated commission which would then be put to a vote of the population.

[83] This group concentrated primarily in the west and in the cities, particularly Yellowknife, and was the only group to clearly reject the principle of splitting up the Territory. They built their position arguing that division would create an ethnic state which would go against Canada's constitution principles of majority rule and democracy. In addition they argued the conflicting goals of the Dene Nation, the Delta Inuit in Western Arctic and the Eastern Arctic Inuit made a referendum on the issue premature. Whites also considered the cost of division to be excessive and raised fears of job decline due to the elimination of government jobs in Yellowknife if division went ahead. In addition, some feared that division would weaken NWT's long term aim of becoming a province. For an account of the arguments against division see G Dacks (1986).

[84] The result of the referendum was split along regional lines. The east voted overwhelmingly in favour by almost 9 out of 10 voters. In the west voters were against on a margin of 3 to 1. Nevertheless overall 54% of voters were in favour.

existing states (Greater Jharkhand), but as Chadda (2002) rightly argues, as early as 1994, Jharkhand had been limited to 18 districts of Bihar. This occurred when the JAAC had been discussed and the legislative assembles of the "affected states – Bengal, Madhya Pradesh and Orissa – rejected the formation of Jharkhand from part of their territories".[85] Hence only the state of Bihar had agreed in principle to creating Jharkhand. Indeed, in the debates on the Bihar Reorganisation Bill in the Indian Parliament, the government responded to questions on why the "historically Jharkhand" districts in Orissa had not been included in the new state by referring to the fact that the state of Orissa had never accepted such changes. The Union, it was argued, could therefore not impose changes that the states affected had not agreed to. In addition to this, the creation of a state comprising 18 districts of Bihar also reflected the 1998 proposal for a new state that had been tabled (as a political stunt) at the Bihar Assembly by the BJP and JMM. This initiative was easily and quickly blocked by the RJD and the INC, nevertheless, it is worth noting since it illustrates that the area to become the new state was not unfamiliar at Bihar level. Overall therefore there is clear evidence that suggests that the constituent unit in question had devised the division that ultimately became federal law.

But perhaps the clearest evidence that the constituent unit agreed to the plans before they were enacted is the fact that the Union government only advised the President to initiate the process of such a bill after the BJP gained an electorate mandate to do so in the 1999 Union elections. Its manifesto had carried the proposal and it won 23 of the 54 Lok Sabha constituencies in Bihar (of the Jharkhand area, it won 11 of the 14 constituencies). Furthermore, when the President sent the proposed bill that was finally enacted to the Bihar authorities for consultation, the Bihar legislative chambers and government voted largely in favour for it.[86] The decision

[85] M. Chadda (2002: 54).

[86] The RJD raised concerns that there was no economic package to guarantee the financial future of rump Bihar. They argued that Jharkhand although less densely populated was the main source of income via taxes for Bihar and hence without the area, Bihar would lose its economic assets. In addition, they expressed a principled opposition to the bill arguing that while states have no actual say in the creation of new states under the constitution, they should do, and since not all the state parties agreed to the split proposed by the BJP, the Union should not go ahead. Nevertheless they voted for the bill (it could be argued that they did so out

whether separation could go ahead and the new boundaries was therefore made by the Union, but based on debates forged at Bihar level. Indeed the fact that the Union Parliament actively seeks agreement in the affected state before proceeding on state creation has recently been shown by the recent thwarted attempt at creating Telengana. The Union government withdrew its planned legislation to create the new state citing the lack of agreement in the legislative of the state affected, Andhra Pradesh, on the issue.[87]

Deciding the terms of secession and the institutions for the new unit.

The final step in considering the response to the demand for the creation of a new constituent unit, deciding the terms of secession and the institutions for the new unit can be identified in the Canadian case but it is not as clear in the case of India. It is true that in both these cases, like in Switzerland, the negotiations of the specifics of secession occurred between federal, existing constituent unit and would be unit representatives. However in the case of Jharkhand, most of these negotiations were carried out after the Bihar reorganisation Bill became an Act. Nevertheless, as I will argue below, there is a politically motivated explanation for this, and so I argue my general model still holds.

In the case of Nunavut the three level negotiations before the bill was enacted can be clearly distinguished. Throughout the process the Inuit and other NWT actors had agreed before the federal government acted. In setting the terms of division as such, the federal government, the NWT government at Yellowknife and Inuit representatives were all involved in the negotiations. Indeed to a certain extent it was the federal government's reiterated stance that it would not initiate any change in NWT (thereby maintaining the status quo) unless it was a united NWT proposal, which was the driving force for reaching agreement - a stance adopted as a

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of fear of losing INC support – whose votes they needed to govern – in Bihar). Only the communist party (the CPM) and a few Independent members voted against.

[87] The Indian government announced at the end of 2009 that it would present legislation to see the creation of Telengana, see for example: http://news.bbc.co.uk/1/hi/world/south_asia/8405146.stm [accessed October 2012]. This was thwarted after violent protests occurred. The debate on Telengana however continues.

response to appeals by the different actors in the NWT for various reforms in the political development of the North.

In the case of Jharkhand the provisions of the Act were very much dominated by the federal government. To an extent this is not surprising since the constitution sets the Union as having competence over this. However the specifics of the bill are explained by party political dynamics. The bill to create Jharkhand was presented by the BJP led government as being based on long fought demands from the Jharkhand population, a response to its chronic neglect by part of the Bihar government which was stifling the potential for economic development of Jharkhand. However, the exact division of assets, capital tranfers or the details of institutions needed was not included in the act. This can be explained by the fact that at Union level the BJP coalition had a simple majority in the Indian Parliament and parliamentary time available was tight. A bill with no financial implications (referred to as a Money bill in the Indian Constitution), required simple majorities of members present and voting in both houses of parliament. However, a bill with financial weight, although it did not require the vote in favour of the Upper chamber, entailed additional scrutiny and potential delay.[88] This would have threatened the bill's passage and by implication, forced the BJP to fail to accomplish an electoral promise. The bill to create a new state was carefully drafted to include a call for the need to provide an economic package to accompany the creation of the new state without actually including such measures in the specific act that created the new state.

Indeed one of the main contentious issues when the bill was debated was the fact that the bill as such did not contain any economic package either for Jharkhand (to ensure it could create the required state institutions and indeed later sustain them) or for compensating Bihar for the loss incurred (given that it was to lose the economically richest part of its territory). In its response, the BJP led government took the position that this would be dealt with as a separate issue once the new state was created.[89] Despite this, it was

[88] The process and requirements for passing Money Acts as opposed to other acts is set out in the Constitution of India, chapter 2.
[89] See the Home Office Minister's response in the Lok Sabha debates, Parliament of India (2000: 564-565).

never denied that the negotiations envisaged would require the participation of Jharkhand, Bihar and Union representatives, and indeed they did.[90]

I summarise the steps in stage 2 for each of the two cases in the following table.

Table 3. RESPONSE in the creation Nunavut and Jharkhand

CASE	STEPS	METHOD
Nunavut	Deciding if a split is required	The NWT legislative assembly called a NWT wide referendum on the principle of a split
	Deciding the boundary	NWT actors (under pressure from the federal authorities to reach agreement) create a Constitutional Convention to reach common position. After various collapses in talks they agree to hold a referendum on the federal proposal for dividing line. The boundary was ratified by a NWT wide referendum
	Deciding the institutions for new unit	Negotiations between Inuit representatives and federal government under the latters' command. The constituent unit is indirectly pressured by secessionists and the federation to find a solution.
Jharkhand	Decision for seceding to go ahead and boundaries	As set by constitution, President initiates legislation under the instruction of the Union government. The boundary is politically motivated as constitution does not set the criteria for new state creation.
	Deciding the terms of secession	The Union government proposes bill, sends it to the Bihar Government for consultation who in turn seeks opinion from Bihar Legislative chambers before issuing its position to the government (this position is legally non binding)

Source: own elaboration

Stage 3 Enactment of laws to create new states

In this final stage there is significant difference with the Swiss case. This is primarily due to the fact that India and Canada are parliamentary federal states. In the case of Canada, it is also true that Nunavut is a self governing territory rather than a province, and in the case of India it must be remembered that the constitution sets

[90] Once the legislation was passed the Bharatiya Janata Party set up two separate State party committees (one for Bihar and one for Jharkhand) to work out the transition. Despite their political differences, MPs from Bihar (from different political parties) cooperated to plan for the development and economic uplift of rump Bihar after the Jharkhand area was carved out as a new State.

a process for internal secession to occur. The creation of Jura required express consent by the Federal Chambers of the new constitution for Jura as well as Federal constitutional amendment by the people and the cantons of Switzerland. In addition the federal chambers' role in providing federal guarantee to cantonal constitutions is restricted to making sure the proposals do not contravene the federal constitution. For this reason the ratification aspect of the process seems to be clear. Although, of course, the Swiss federal constitutional change required to finally approving the creation of the new canton is legitimised by democratic means via referendum rather than reference to judicial arguments. In India and Canada's parliamentary democracy on the other hand, the federal Parliament is empowered to enact changes. An Act of Parliament passed with a simple majority in both chambers was enough. Yet despite this, the relevant bills were presented in parliament as a culmination of a process. The passage of the bills through parliament was portrayed as the last seal of approval needed. Despite the formal differences, it is still coherent to argue that a third stage, enactment, is present in these two cases.

In the case of Nunavut it required amendment to existing Canadian Legislation on the governance of the NWT and other related Acts. It was proposed by the federal government and presented as the culmination of negotiations which not only reflected the agreement reached between NWT actors for political reform of the North, but as part of a Land Claims Settlement with the Inuit which reflected the righting of a historical debt. The debates in Parliament are a testament to the fact that its passage was treated as the final approval, and so ratification, of the process.[91] Emphasis was placed on it being the result of compromise and agreement, its adherence to Canadian constitutional principles and the fact that it would benefit the whole of Canada. After a largely ceremonial debate of self congratulations, the bill was passed with little opposition.

In the case of India, it was also introduced as the solution to a longstanding demand and the culmination of a long fought struggle for a state. Introducing the bill, the Union Home Minister Thomas Hansda, argued the bill aimed to give effect to a "long pending

[91] This is clear in the presentation of the Bill, see Canada House of Commons (1993: 20392-4).

demand" and argued it was not an animus separation but the achievement of a dream, a division of south and north Bihar that recognised their marked geographic, economic and cultural difference. Indeed, he urged "honourable members not to raise any controversy" so the state could be finally created.[92] As already mentioned, the bill responded to electoral and partisan aims, and hence it is not surprising that there were vociferous accusations against the BJP led government. However they were directed at the politically driven proposal of the BJP and not against the creation of Jharkhand as such or the legitimacy of the process followed.[93] And despite the uproar, the bill was passed with very little opposition.[94]

Table 4. ENACTMENT in the creation Nunavut and Jharkhand

CASE	STEPS	METHOD
Nunavut	Ratification of creation of new unit and amendment to Canadian Legislation	Via federal parliament Acts. They were passed with support from all main parties. They were proposed by the federal government and presented as settling a historical debt with the Inuit but in accordance to Canadian principles.
Jharkhand	Enactment of laws to create new states and ratification of changes through constitutional amendment	Parliamentary Acts to create new state as required by the constitution. It is proposed by government and defended as responding to Jharkhand demand, with consent of Bihar.

Source: own elaboration

V. Conclusion

In this part of the thesis I have argued, with reference to real cases, that internal secession follows a three stage process. First a demand

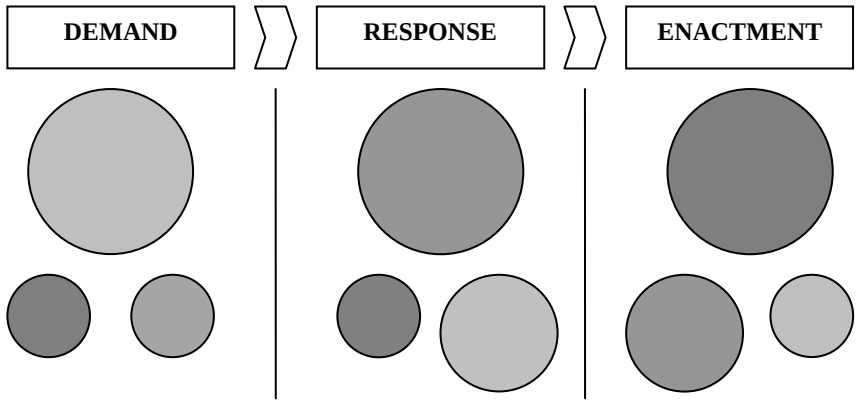
[92] See Parliament of India (2000: 427).

[93] Indeed the thrust of the discussion in both chambers of the Indian Parliament was the members' concern for viability of the rest of Bihar and the need for a financial package. However rather than oppose the bill, they called for it to be sent to parliamentary commission to receive more scrutiny.

[94] Secession itself was only opposed in principle by the communist party CPI(Marxist) although the bill itself was also opposed by two junior partners of the ruling NDA alliance - the Janata Dal(U) and the Samata Party. These opposed the bill as a protest towards the BJP for having proposed the bill without their consultation. Other parties, including the INC criticised the bill (and the government) for attempting to rush through parliament the legislation and not being prepared to afford it greater parliamentary scrutiny, but did not oppose it in principle. Indeed the INC voted in favour. However support for the bill may be explained by political motivations. The party feared losing constituencies in Jharkhand.

exists which seeks to gain autonomy and self rule within the framework of the federation that develops into a demand for statehood. The demand is articulated within existing constitutional principles recognised in the federation in question. There is then a response at the existing constituent unit level to find a solution which is then proposed to the federation for ratification and formal enactment. This model has two aspects to it. The first refers to the process itself and the second to how the process was justified. This latter serves as an explanation for the first and as such we should treat the two aspects as being interlinked. In the diagram below, I illustrate my model of how internal secessions have occurred. The diagram itself is simplistic; for this reason I then explain each stage drawing on its main features as well as on some of the most important aspects that justified the development of each process.

The three stage model of how do internal secessions occur



Key: Scales of grey: dark (federal level), medium (constituent unit), and light (secessionist movement). The different size is to illustrate the importance and is not to scale. *Source: own elaboration*

In the first stage, the demand stage, a call for separation or some form of recognition of distinctiveness by an area and its population within a constituent unit is made. Some reforms and concessions in the form of greater autonomy within the existing constitutional arrangement are then either introduced or discussed. Thus, the demands are seemingly addressed by the constituent unit. Despite this, however the demand continues and the issue of separation becomes politically salient. This demand is driven by a secessionist movement and is based on the distinctiveness of the population

seeking to secede with a marked cultural or national character, the failure of the existing unit to provide for sufficient collective self rule and the neglect suffered as a result. It is clearly a demand against the constituent unit but not against the federation. In this sense, it is not a demand for special status, special rights or protections for a given group or identity but a demand for a constituent unit articulated with reference to liberal, democratic and federal principles. This can be illustrated if for example we contrast the successful Inuit demands for Nunavut in the NWT to the failed Dene Nation demand for Denendeh detailed above. In the case of Nunavut, the Inuit expressed their demand in terms of self rule and the need to protect the distinct Inuit culture within the Canadian federation with a public Canadian government that would be closer to the people and therefore in a better position to respond to local social problems. The Dene Nation instead, articulated their demand as the creation of an ethnic state with special rights and privileges on its institutions and illiberal methods of decision making concentrating public power in native group elders. Such demands went beyond the meaning of minority rights in Canadian liberal constitutionalism.[95]

In the second stage, the response, the demand for internal secession is seriously considered by the constituent unit authorities but with some form of federal oversight. The onus of the response is on the existing constituent unit as a whole. It therefore includes the secessionists but is not exclusively reserved to these or the territory they demand to be made a constituent unit in its own right. This is justified by the fact that the constituent unit is an existing legitimate and recognised member of the federation (and consequently one of the sovereign demos of the federation) while the secessionist territory is only a potential demos to be. Nevertheless this does not mean that the constituent unit responds alone. It must take into account the federation's position on creating an additional member unit. It is therefore important to consider what the federal constitution and the original pact is based on, what is the basis for

[95] An asymmetric federal solution could have been justified. Canada could have allowed, for instance, an aboriginal senate of elders to work as a consultative chamber.

membership to the federation.[96] This is important because it may shape the discourse that secessionists and indeed anti-secessionists. Indeed it also forms the backbone of the federation's position itself. Nevertheless it is those most immediately affected by a possible internal secession (the constituent unit as a whole including the proponents of secession) that are the main actors in this stage. Jura in this respect is perhaps the clearest example but it is evident in the case of Nunavut too and indirectly in the case of Jharkhand.

In Jura as the social tensions rose, the federation set up a *Commission Confédérée des Bonnes Offices* for the Berne authorities to look at possible solutions with the federation's oversight to ensure that any proposals were fully constitutional and in line with the spirit and letter of the Swiss federal constitution. In the Northwest Territories the Federal government refused to be drawn into the debate on separation but did not rule it out if the NWT government was able to present a proposal with widespread support. This basically forced the NWT authorities to seek compromise first on accepting division and later on the boundary. In the Indian case, the Union parliament has exclusive constitutional control over territorial modifications including state creation (albeit it is the President alone who can initiate such legislation), however in practice the demand of the JMM and the tribal people of Jharkhand did elicit responses from main parties in Bihar before these were raised at union level. As I argued above, the issue had been largely resolved at Bihar level before the Union Parliament passed the Act to create Jharkhand.

It is at this stage, when the focus is primarily on the existing constituent unit, that the bulk of the negotiations and decisions on secession and boundaries are made. In this respect two main decisions are particularly important. The first is whether secession can occur and how it must be established. The second refers more directly at establishing the seceding territory itself and drawing up a self rule constitution for the new proposed unit. It is in this stage that greater details of how internal secession is justified can be

[96] At this stage it is important to bear in mind that I am assuming the federation is a legitimate liberal democratic one. I am therefore not able to consider in this par t of the thesis the moral implications of a federal pact is illiberal, established before it became a liberal one or a pact that has no regard for group rights.

discerned. Firstly, an emphasis on seeking a process that is legally accepted within the existing constitutional framework can be identified. The second is the importance of democratic decision making and the equal rights of individuals that justify the specific steps taken in each case. These, together with the more pragmatic fact that the existing constituent unit authorities had the upper hand in the negotiations, in my view form the backbone of the process and justified why a specific position was adopted in each case and each situation. The details and intricacies of each case, are however unique to the federation in question and to the historical context of each case.

Returning to the process, in the final stage, the ratification, two things are required. Firstly the ratification of the agreements reached and secondly the passing of relevant legislation to enact the secession at federal level. In all three cases, ultimately, if the secession was not accepted by the federation it could not occur. At this stage the federation is therefore the most important level. All actors are aware of this, hence they adapt accordingly in earlier stages of the process. The federation is to be understood as a whole demos, as well as a collection of federated parts or *demoi*. The consent of these is to be reached in accordance to the conventional method of decision making in line with the constitution and precedence. In the case of Jura for example, it required constitutional amendment and therefore required assent from both chambers of the federal legislature (including the territorial chamber) as well as approval by referendum of a majority of people and cantons in Switzerland. In the other two cases the legal requirements were much simpler. In Canada and India, it required a simple Act of Parliament - a majority in both legislative chambers - before it could be put into practice.

I have used the term ratification freely since although in the cases of Canada and India, it is the parliament which has exclusive authority to enact such changes, the legislation that was proposed was presented as a culmination of negotiations and extensive debates carried out elsewhere by those directly involved. Indeed, given that at the response stage, the federal government itself had been influential, this is not surprising. Furthermore, in both cases the support for the creation exceeded the minimum required majorities and was near unanimous.

If any internal secession follows this three stage process, then it is in line with internal secessions that have occurred and have been justified in liberal democratic federations. This chapter has also drawn on the gap in the literature on internal secession by highlighting the importance of the federation and federalism in justifying internal secession. The federal character within which internal secession occurs is shown clearly through the balance of roles between constituent units and the federation. The federation is not altered unilaterally either by an existing unit deciding to split, or the federation deciding to split a constituent unit without prior consent of the state affected. Hence one of the essential aspects of federalism, mutual respect, is maintained. This however is not the only important element of the process. This is driven by the search for consent. I also highlighted that internal secessions in established liberal democratic federations place an onus on the constituent unit and the federation rather than on the seceding territory or secessionist population. However, as pointed out, the first step is a reiterated and sustained demand for internal secession. It is significant that in all three cases studied the process and stages were similar despite the uniqueness of each federation, its political cultures and history.

Finally, I have alluded to how internal secessions have been justified; however, so far my research has not permitted me to engage with all the moral arguments that may provide the grounds for justifying internal secession in liberal democratic federal contexts. I have made allusions to how the process in each case was justified, however it is important to note that the actors involved in the process have not always been motivated by the will to find a solution. As shown perhaps most clearly in the case of India, party politics seems to have relegated the will to find a solution to a secondary position.

However this part of the thesis sets the groundwork for the next section of the thesis where I focus on discussing how and when internal secession processes are justified. In light of the lack of scholarly attention on internal secession, after having examined cases of internal secession in liberal democratic contexts we are in a better position to answer question such as: can and should a federation be flexible enough to incorporate new units once it has

been established? How can and should the original pact between constituent units be amended to incorporate another constituent unit from a territory that was already part of the pact not as a member unit but as part of one? How can and should this be justified? What are and should be the actors and veto players that must be involved? Are and should decisions in the process be taken by majority rule or unanimous consent of all players? Should such changes require constitutional change?

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Part 3

Justifying state creation within federations: towards a theory of internal secession

Abstract

This part of the thesis addresses the need for political theory to deal with internal secession and its justification in liberal democratic federations. In it, I provide a normative procedural account of internal secession that can be used as a model to evaluate such secessions or demands for it within liberal democratic contexts. I begin by considering the normative questions that internal secession poses and reinforcing the arguments made in part 1 of the thesis. I then set out my procedural theory of internal secession that seeks to address the deficits of existing theories of secession. My proposal explores the relationship between liberal, democratic and federal principles applied across different demoi and actors present in a federation. I end by providing a normative evaluation of the processes of internal secession studied in part 2 of the thesis in order to illustrate the applicability of my account.[1]

[1] The reader should note that this part of the thesis is closely linked to the conclusions reached in both part 1 and 2. In order not to make lengthy repetitions I have included references to these without developing arguments further. This is to add readability and coherence to the thesis as a whole. For publication as a standalone article, it will include a brief outline of the conclusions of previous parts of the thesis.

I. Introduction

Internal secession raises important questions for political theory: Should a federation be flexible enough to incorporate new units once it has been established even if the new members are carved out from the territory of existing members? Who should have a say? Who should decide what? Should decisions in the process be taken by majority rule or consent of all players? Should such changes require constitutional change? This is not an exhaustive list but it does illustrate the significance of the issues that arise from the incorporation of a newcomer to a federation. This part of the thesis discusses how internal secession can be justified in liberal democratic federations. This is not an easy task. As discussed in part 1 of the thesis, there is remarkably little scholarly discussion on internal secession. There are very few studies on which I can directly build. For this reason my account departs from the three stage model presented in part 2 of the thesis.

I have structured this part of the thesis into four sections. Firstly, I identify the normative questions internal secession raises and have not been addressed by the existing literature on external secession. This is followed by the main section of this part of the thesis. This is where I develop my own, primarily procedural, theory of internal secession. In order to do so, I begin by setting out the principles[2], actors and their moral rights[3], and stages[4] involved in the process of internal secession. This includes an assessment on how actors and their rights interact with each other at each stage. After this, I use my account to re-evaluate, in broad terms, the processes followed by the three cases of internal secession studied in part 2 of the thesis. I conclude with a final section where the applicability of my proposal and its moral implications when other types of internal secession (such as those that occur in weaker federal arrangements or territorial exchanges between existing constituent units) are considered.

[2] These are federalism, liberalism and democracy.
[3] The actors are the secessionist, non-secessionist in the secessionist territory, the population of existing state, the federal authorities and federal demos, and the federated units.
[4] These are the demand, response and enactment stages.

Within the overall thesis research, this part of the thesis therefore considers the deficits of the literature on secession and federalism and attempts to fill their gaps in light of the cases analysed in part 2. Ultimately, it provides an attempt at addressing directly the thesis question: *On what grounds should internal secession be justified?*

II. Internal secession and existing liberal approaches to justifying secession

i. The normative questions of internal secession

As demonstrated in part 2 of the thesis, there are three stages in the process of internal secession in liberal democratic federations. At each stage, however, the degree of involvement and the moral and practical weight of actors in the different levels of the federation vary. Equally, the normative questions that arise also develop with the process.

The process starts at the demand stage. This is when a demand for separation by a territorially concentrated population within a constituent unit (often in the form of social movements) becomes politically salient. First it becomes salient in the territory the secessionists occupy, then in the constituent unit it is in, and ultimately it becomes a federal issue that needs to be resolved. The focus of any account that seeks to justify when internal secession may be justified should, at this stage, be on the secessionist demand and when a demand may be justified.

Indeed, in stage one, there are three normative questions that can be discerned. The first is who qualifies or who is entitled to make an internal secession demand. In other words, who or what groups have a right to self-rule and more concretely, who can legitimately claim self-government in the form of a constituent unit of its own within a federation. The second issue is what such a group can legitimately demand. In other words, how an internal secession demand should be articulated for it to have the moral strength to merit a response. Thirdly, we should evaluate whether it is necessary to have tried other solutions to the demand before internal secession is considered by the constituent unit and indeed the federation.

In the second stage, the response, the focus shifts to the constituent unit within which the demand is made. This is the arena where key decisions in the process are agreed by actors directly affected. These include deciding whether a given territory can secede and delimiting this territory. It also includes the bulk of the negotiations on the terms of secession as well as the self rule constitutions for the rump constituent unit and the new unit. While the focus of these discussions is among actors within the constituent unit in question, the federation (in the form of the federal government) plays an important role. Its role is essentially delimiting what it is that can be negotiated and on what terms.

In this stage a further four sets of normative questions arise. Firstly, when should a demand elicit a response, and by whom? In practice internal secessions are political events and thus a demand may be legitimate but refused by a majority. Hence this question can be dissected into a) when is a demand legitimate? and b) does a legitimate demand have a right to receive a response?[5] This leads to a second question that considered what the role of the federation should be. This question has several dimensions to it. Firstly, it includes the issue of whether the moral commitment of the federation is strongest towards safeguarding the liberal rights of all its citizens (including the rights of secessionists), or protecting the territorial integrity of constituent unit. The following question should hence be considered: can these two propositions be reconciled? To a certain extent, this will be dependent on the pact itself. For example, attention should be paid to whether a pact is confederal or federal, whether it is open to new members or not, and so on. But this in turn leads to an additional issue: do all federal pacts have equal moral worth? Indeed, this includes assessing whether other considerations (such as the rights of the secessionist population) may render a particular pact (such as one that strongly favours the territorial integrity of its units above the protection of rights of citizens) morally questionable. If this is the case then we should also consider whether other rights trump the existence of a pact. Furthermore there is also the issue of whether there is a moral obligation on the federation to intervene in a member state (even

[5] I am not arguing here that response means that internal secession is accepted, but simply that the demand should be considered.

with expulsion, and regardless of the terms of the existing pact) if a member state is being oppressive to part of its territory.

The third main normative question that arises in the second stage of the process is a more procedural one. We should consider some of the aspects related to deciding what process ought to be followed. This has two dimensions to it, the first is who ought to be involved in deciding the process and why. The second relates to the more practical matter of what should be decided. Within this last point, there are a number of questions that arise from the experience of the cases examined. Who decides if secession actually goes ahead? How should the seceding territory (boundaries) be delimited? And, who should take part in the decisions? Such questions will allow the exploration of who may veto, on what grounds, and if or how might an impasse be resolved. Also, in the process of the negotiations, it is worth considering again whether the federation may have an obligation to intervene if a member state is oppressive against the secessionists.

Finally, the fourth set of questions refers to how are the terms of secession and the institutions for the new unit to be decided? The particularities of the negotiations will of course be largely constrained by the federation in question, but it is worth considering who has a moral right to take part and whether there are any underlying principles that ought to guide the negotiations.

In the final stage, the enactment or ratification stage, the actors at federal level become the key players. This stage is the ratification or acceptance of the agreements reached (through negotiations between the actors within the constituent unit in question) by the federation as a whole. This is a crucial stage: if the terms of secession are not accepted by the federation it cannot occur. In this stage there are two additional normative issues that need to be accounted for. These are, why ratification takes place at federal level, and on a more normative level, what should ratification require. For example, should internal secession require constitutional amendment? At this stage it is relevant to consider the possibility and moral implication of a potential veto by either the federation, its (shared) institutions, or by one (or a majority) of the existing/ original federated units.

These issues are discussed in this article in the form of a theory of internal secession. But before doing so, I recall how and why existing liberal approaches to justifying secession are not able to address these.

ii. Liberal approaches and external secession revisited

As mentioned before, remedial right theorist A. Buchanan asserts that a territorially concentrated[6] population has a right to secession which conveys a moral duty on others not to intervene "if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort".[7] Alternatively, in liberal states, secession may be morally and practically permissible if the constitution permits it. The moral grounds on which a right to secession can be justified are built on two basic premises. Firstly, individuals are holders of liberal rights and secondly, a liberal state is valuable in itself. That is because the state guarantees and protects liberal rights. Can this approach provide the grounds that justify internal secession in liberal democratic federations?

The short answer is no. It is difficult to envisage a moral right to internal secession only as a remedy for past injustice. This premise establishes grounds for secession that are purely based on the demand. It fails to provide an account that takes into consideration federalisms most important premise: that change to the federal pact should be carried out by mutual consent. It is true that A. Buchanan accepts that in a liberal state, if the constitution allows for secession (implicitly or explicitly), it may be justified. But his account is not sufficiently developed to be extended to examine the questions of why or how a constitution should recognise such as right. Perhaps if he did so, it would be more appropriate for addressing the questions raised by internal secession. Indeed, since internal secession is a process, any theory on internal secession should take the question of whether a constitution should recognise such a right into account. As a result perhaps the greatest problem with this approach is the omission of a developed account that can form the basis of further

[6] As mentioned, I am only restricting myself to territorial claims. Hence I do not develop this point. For a liberal account of the relationship between territory and secession see L. Brilmayer (1991).
[7] A. Buchanan (1997: 34-35).

exploration.[8] Indeed most federal constitutions seem to be open to the idea of new units being incorporated into the federation and have specific clauses on this. Such clauses, for federations such as Canada or Australia, were originally drafted with a view of expansion through the incorporation of new territory into the federation. But there are some constitutions, including India and Switzerland (current constitution) that have clauses designed explicitly to govern internal secession. With regards to external secession on the other hand, virtually no constitution has a clause on it (Ethiopia and St Kitts and Nevis are the only exceptions).

But there are two premises proposed by this approach that are worth noting. Firstly, this approach establishes that the outcome of secession should respect the liberal rights of individuals. When considering internal secession in a liberal democratic federation this premise should hold. Secondly, it sets a moral argument for grounding a justified right to secession in liberal democratic polities on constitutional rules. The process followed by the cases examined earlier in the thesis confirms the importance of respect for the constitution and the importance of the rule of law in the process of internal secession. This approach therefore provides some important considerations that ought to be taken into account when examining the grounds that justify internal secession.

The second approach to justify secession is H. Beran's primary right theory. According to this author "liberal democratic theory is committed to the permissibility of secession [...] if it is effectively desired by a territorially concentrated group and if it is morally and practically possible."[9] The moral premise relies mainly on the proposition that individuals are free to choose, that majority decision is legitimate and that the authority of the state stems from consent. As such, secession (withdrawal from state jurisdiction) is justified if it is desired by the majority of individuals concerned (i.e. decided by democratic means). Can this approach be applied to internal secession?

[8] A. Buchanan concedes that his account focuses on the international arena and assumes sovereignty is absolute, see A. Buchanan (2003: 236-137). He ignores the exploration of the implications this has when sovereignty is divided.

[9] H. Beran (1984: 30). He essentially argues that a group is justified in seceding if it constitutes a substantial majority in a territory, wishes to secede, and will be able to marshal the resources necessary to become a viable independent state.

The answer to this is also a qualified no since being a viable territory seems to be the only restriction to the will of a majority. H. Beran's (1984) approach is built on the moral philosophy of liberal democratic values of freedom, popular sovereignty, and the legitimacy of majority rule. This attaches a normative value to democratic decision making which also applies to the process of internal secession. However it has significant shortfalls. His approach does not consider how consent of the governed can be democratically obtained when there are multiple demoi involved and indeed where citizens are part of more than one demos. Furthermore, his defence of a democratic will does not seem to take into account that this might change over time. His account is important in how it incorporates democratic principles, but it does not extend to cover the relationship of the seceding territory (and its population) with the rest of the constituent unit it is part of or indeed the federation. While it provides guidance that must be considered at the demand stage of the process of internal secession, it does not provide the moral grounds to answer normative questions at the response and enactment stage of the process. For example, it does not engage with why a demand within a federation leads to a corresponding duty on others (the existing constituent unit, the federation and the each of its individual member states) to engage with it. Furthermore, H. Beran's account cannot capture the fact that internal secessions are negotiated processes.

In addition to this, the practical conditions that are associated with H. Beran's account are also problematic for internal secession since they make reference to the practical functioning of an independent state. Internal secession sees the creation of a new constituent unit within a federation. The outcome is not the creation of a new state that joins the international community; so the functions the new unit must sustain are different to full independent statehood. With regards to self rule, the degree of independence a unit must sustain is lower than full independent statehood. For example the competences that are held by the federal level – which generally include at least defence, foreign and economic policy – will not be assumed by the new unit (although the specific power responsibilities or competences of constituent units in each

federation will be dependent on the federal pact).[10] However, becoming a constituent unit also requires a territory and population to take part in the collective government of the federation. For internal secession, therefore, the list of practical conditions, if any, will be different and set by the federal pact in question rather than international norms.[11]

C. Wellman (1995, 2005) has proposed a third approach whereby:

> "individual citizens have no right to secede based merely upon a primary right to political self-determination. Groups may or may not have this right depending upon both the nature of the secessionist group and the status of the potential remainder state. If both the seceding group and the remainder state would be able to perform the functions a state must, then the secessionist party has a right to the territory and the remainder state has a duty not to interfere with the political divorce. Precisely what the size and nature of a group must be is a difficult empirical matter that could be decided only on a case-by-case basis".[12]

In relation to the normative questions that internal secession poses, this approach too is problematic. There are two main reasons for this. Firstly, the moral judgement of secession is based on the outcome. That is, if the end result increases the liberal wellbeing of the secessionists, without damaging that of the rest, then it is justified. It is therefore difficult to use this to guide the process of reaching secession. The second shortfall is common to the other approaches. That is, its reasoning is limited to considering only the demand stage of the process of internal secession. In other words, while it suggests that political self-determination of groups is valuable and therefore if a group wishes to secede it has legitimate right to demand to do so, it does not engage in how this translates into a corresponding duty on others to accept it. This is particularly

[10] For studies on different federal pacts and distribution of competences between levels of government see for example M. Burgess and A. Gagnon (1993) or R. Watts (1999).

[11] The practical conditions proposed by theorists that have adopted this approach are examined in part 1 of the thesis.

[12] C. Wellman (1995: 162). This approach restricts H. Beran's permissive moral right to secede by making groups rather than individuals the subject of this right. I do not dwell on what constitutes a group that merits rights, and why groups should qualify for such a right in a liberal polity. For a discussion on this see for example A. Margalit and J. Raz (1990) or A. Patten (2002).

problematic in federations since changes to the federal pact should be made by mutual consent.[13] When we consider multinational federations however, C. Wellman's proposal may be somewhat more applicable. The importance placed on group identity may be essential criteria for a demand for internal secession being justified in such a federation. Nonetheless, it seems that the grounds that justify internal secession are more complex than those proposed.

Overall, each approach suggests a different basis on which a demand may be morally justified, but none engages in addressing the additional normative questions and issues that relate to the process of internal secession. Ultimately, they therefore fail to provide the grounds that may justify internal secession. The values identified by existing secession theorists may be relevant but they should be redrawn or modified if they are to apply to internal secession. Internal secession affects the federal pact as it changes the territory and composition of one (or more) of the existing constituent units and increases the number of constituent units at federal level. Therefore it has an effect on the participation of all constituent units in shared rule institutions and on the outcome of decisions at federal level. A theory of internal secession should take into account that it occurs within the context of an existing federal arrangement and not in terms of international relations as external secession has done. This leads me to propose a procedural approach to discussing the grounds that justify internal secession.

This is not generally the approach taken by most scholars on secession.[14] They instead favour providing justifications that rely almost entirely on the outcome of secession making reference to the need to sustain the functions of an independent state or avoiding any incentive for state proliferation. As discussed, in internal secession these restrictions are less relevant. Therefore a justification based chiefly on outcome is not adequate. In addition to this, since one of the defining features of internal secession is the

[13] Although it should be recognised that citizens in federated member states may be accustomed to greater mutual obligations by the very virtue of forming part of a federation.

[14] An exception is the aforementioned D. Weinstock (2001). The reason for this could lie mainly in the fact that secession theorists have often been preoccupied with international affairs and the need to discourage an infinite number of states being created and recognised by the international community.

fact that it occurs in a context of multiple and interrelated demoi, it cannot be unilateral. It can only be justified if it is negotiated. If this is so, a procedural approach is better suited to capture how or when a process will be justified. Finally, a procedural approach also allows me to minimise one of the strongest criticisms that have been made of secession theories in general. This is the lack of congruence between the moral and the practical conditions proposed. By grounding my account on the study of actual cases (presented in part 2 of the thesis), and taking a procedural approach to considering how internal secession should be justified, I am able to ensure that my account is founded on a solid reality.[15]

III. A liberal approach to justifying internal secession

In a liberal democratic federation, the justification for internal secession has to abide to liberal, democratic and federal principles. In this section I present my proposal for a theory of internal secession. In order to do so I start by providing a brief outline of the principles (federalism, liberalism and democracy), actors[16] and their moral rights, and the three stages involved in internal secession (demand, response, enactment). After doing this, I turn to examine how actors and their rights interact with each other at each stage (in doing so I considers if a given principle trumps another, or whether the rights of one trump others) as I consider the procedural justification of internal secession.

i. The principles and actors across the three stages of internal secession processes

There are three principles that require attention: federalism, liberalism and democracy. Scholarly debates on the meaning of each of these are extensive. But rather than analyse them in any great depth, I attempt to set out how each affects the rights and obligation of citizens with regards to internal secession.

[15] However the considerations of the outcome of internal secession are not entirely irrelevant given that the outcome also affects the federal pact.

[16] Secessionist, non secessionist in the secessionist territory, population of the existing state, federal authorities -federal demos, and federated units.

The first principle to discuss is federalism. This refers to the idea of a federal system being "partnerships, established and regulated by a covenant, whose internal relationships reflect the special kind of sharing that must prevail among the partners, based on a mutual recognition of the integrity of each partner and the attempt to foster a special unity among them".[17] When considering the functioning of federations and any reforms to it, the idea of federalism is of great importance. It essentially establishes that any legislation or change has to be guided and in line with the *federal spirit*. The *federal spirit* refers to the moral foundations on which the federation is built and drive its evolution. Different federalism scholars have attached different meanings and connotations to this, but in his in-depth analysis of the meaning of federal spirit M. Burgess (2012) identified the notion as having four properties that give rise to series of important premises that should be taken into account in internal secession: self-restraint, damage limitation, moral imperative, and political empathy. He defines these as follows:

> "Self-restraint: the duty and obligation of both the federal and constituent unit governments to take account of each other's interests when exercising their respective constitutional powers. Damage limitation: the duty and obligation of each level of government to exercise its powers in such a manner that will avoid harm to other parts of the federation and to the federation as a whole. Moral imperative: there is both a moral and a political obligation for each level of government to observe the unwritten constitutional norms that together comprise the substantive meaning of the written constitution. Political empathy: the predisposition of each level of government to conduct both vertical and horizontal relations in a spirit of partnership that incorporates friendship, understanding, mutual trust, respect, and good faith".[18]

If we think about what this means when a change to the federal pact such as internal secession is considered, the federal principle establishes at least three important considerations that should be noted. Firstly, it establishes beyond contestation that consent of the different levels is required for internal secession to be justified. This is because the federal pact should not be altered unilaterally by either one or more member units or the shared government. Secondly, federalism establishes a complex set up of multiple

[17] D. Elazar (1987: 5).
[18] M. Burgess (2012: 21-22).

demoi that need to be taken into account when identifying who are the entities that should consent to a change. One the one hand, any change needs to take into account that citizens are members of two overlapping demoi: that of the federation and that of their constituent unit.[19] On the other hand it also needs to take into account that the federation is not only a demos in itself, but is also the aggregate of the federated parts (constituent units). The third consideration is that negotiations between the different levels of government need to be conducted in good faith. By this I mean that they must be guided by the federal spirit, one level cannot seek to undermine the other.

Federalism however is not the only principle that sets limitations or shapes negotiations. The morality of decisions and changes in liberal democratic federation should also be judged in relation to other principles that are imposed by democracy and liberalism.[20]

Is internal secession compatible with liberalism? Before attempting to consider this question, it is worth noting what I mean by liberalism. Without going into great philosophical depth, liberalism is essentially a normative political tradition that sets the fundamental values that our western societies are built on. There are different liberal approaches but perhaps what unites them is the primary political value accorded to liberty and equality. Traditionally, liberalism has been concerned with individual liberty and equality.[21] But stemming from communitarian critiques of Rawlsian liberalism,[22] a liberal approach has been developed, by authors such as W. Kymlicka, where the subjects of equality and liberty are individuals but these are considered to be group members and as such, group identity is considered essential for the

[19] See for example R. Watts (1998: 121).

[20] For some discussions on this please see for example R. Dahl (1983) or J. Levy (2007). In the context of external secession, some interesting conclusions were reached by the Supreme Court of Canada in its deliberation on the possibility of Quebec seceding from Canada.

[21] In the contemporary western world J. Rawls' (1972) is perhaps the most important contribution in this regard.

[22] Communitarian critiques of liberalism include the work of M. Sandel (1996, 1998), M. Walzer (1983), C. Taylor (1985, 1990) and A. MacIntyre (1981). For an account of the main theorists in the liberal-communitarian debate see S. Mulhall and A. Swift (1992).

individual's wellbeing.[23] And it is within this approach that I build my theory. The underlying premise of this approach is that an individual's conception of the self cannot be segregated from the cultural community he/she is part of.[24] This leads to the argument that an important aspect of a liberal state includes issues related to politics of recognition.[25] In other words, in order for citizens to be treated equality, public (state) recognition of identity and difference is required. A liberal state "should recognise the importance of people's membership in their own societal culture, because of the role it plays in enabling meaningful individual choice and supporting self identity"[26] and that "access to societal culture is essential for an individual's freedom".[27] This implication can be extended further when we are considering territorially concentrated national minorities,[28] since these enjoy a right to self government.[29]

It seems therefore, that when there is a demand for internal secession, liberalism offers arguments based on individual rights that could form the foundations of a right to internal secession. If societal cultures are involved, and these are not recognised, or they wish to gain self government, this right could be even stronger. Yet this is not as straight forward as it may seem. When the self government sought amounts to internal secession – that is, it occurs in a federation and the self government claimed is only partial – it is

[23] See W. Kymlicka (1989).

[24] A cultural community according to W. Kymlicka is the community "within which individuals form and revise their aims and ambitions. People within the same cultural community share a culture, a language and history which defines their cultural membership" W. Kymlicka (1989: 135). This contrasts to what the author terms a political community, which is the community "within which individual exercise the rights and responsibilities entailed by the framework of liberal justice. People who reside within the same political community are fellow citizens". W. Kymlicka (1989: 135).

[25] The idea of the politics of recognition has been developed by C. Taylor (1993).

[26] W. Kymlicka (1995: 105).

[27] W. Kymlicka (1995: 107).

[28] What constitutes a nation has been debated extensively, but D. Miller for example argues that a nation refers to a community of people that i., is constituted by a shared belief and mutual commitment, ii., extended in history, iii., active in character, iv., connected to a particular territory and v., marked off from other communities by its distinct public culture; and has an aspiration to be politically self determining. For more details see D. Miller (1995: 27).

[29] This argument has been advanced by scholars such as W. Kymlicka (1995), D. Miller (1995) and W. Kymlicka (1995) A. Margalit and J. Raz (1990).

unclear whether the rights of the rest of the federations' citizens to accept or otherwise the changes that a new until would entail, can at any point be trumped by those of the demand. This seems to enhance the argument that internal secession can only be morally achieved through a negotiated process. In external secession, the rights of the secessionist may be sufficient to provide grounds for secession. But when the secession is not a complete withdrawal, this seems difficult to reconcile with the rights of others.

In liberal democracies, in addition to liberal principles, we should also address democratic ones. How do democratic considerations affect the grounds to justify internal secession? Without engaging in the extensive literature on democracy, let us assume that democracy recognises that individuals are deeply affected by the larger social, legal and cultural environment they are in and establishes an equal voice and vote for citizens in the process of collective decision making.[30] This in itself already challenges the liberal notion of a right to secession based on individual or group rights. It suggests, instead, that unless a majority of an existing demos agrees to secession, it cannot democratically occur. Indeed, J. Cohen's interpretation of democracy would suggest this very point. He argues that democracy requires that collective decision making ensures "equal rights of participation, including rights of voting, association, and political expression, with a strong presumption against restrictions on the consent or viewpoint of expression; rights to hold office; a stern presumption in favour of equally weighted votes; and a more general requirement of equal opportunities for effective influence".[31] This of course is a rather simplistic proposal, nonetheless, it illustrates that liberalism and democracy are not necessarily two principles that complement each other.

The tensions between liberalism and democracy may be affected also if we consider different concepts of democracy, and the mechanisms for establishing majority rule (such as referendums and other direct democracy mechanisms, consensus or majoritarian decision making and so on). In a democracy, decision making processes constrain how people should behave and conveys moral authority on the outcome of decision making. The process provides

[30] This is essentially what C. Gould (1998: 45-85) argues.
[31] J. Cohen (1996: 106-107).

public justification for policy.[32] In other words, the assent of all people conveys legitimacy to law.[33] Hence the democratic decision making mechanisms involved in internal secession processes will impact on the interaction of democratic and liberal argumentations for or against the justification of any given process of internal secession. They may complement each other but they may also offer competing principles.[34] This is particularly relevant in internal secession since secession is only partial (only from the constituent unit). The fact that the federal demos is modified but not reduced (that is, there is no external secession), incorporates stronger requirements in terms of who has to accept the change in order for it to be considered democratic. In external secession, a right to self determination of a territorially concentrated group may be deemed sufficient to warrant secession regardless of the democratic will of the original state demos. In internal secession however, the right to self determination cannot imply an obligation on others to accept to cooperate in shared rule. A democratic decision by part of a territory to seek internal secession, cannot override for example the rights of the federal demos as a whole.

This brief discussion, while in no way exhaustive, illustrates some of the challenges that we face in providing the moral grounds that justify internal secession in liberal democratic federations. Nevertheless, if we consider in greater detail the actors involved in internal secession, and their moral rights, a normative proposal can be made.

In a federation there are five key sets of actors (each of which has rights and obligations) across the different federal levels that should be taken into account when internal secession is at stake. The principles mentioned above should therefore be applied to each of the actors and their rights and obligations.

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[32] J. Cohen (1996: 95) argues that "the fundamental idea of democratic legitimacy is that the authorization to exercise state power must arise from the collective decisions of members of a society who are governed by that power".

[33] This approach is taken by J. Cohen (2002) and A. Gutmann and D. Thompson (1996). It basically extends J. Habermas' (1996) more pure procedural approach and attaches a substantive value to democracy.

[34] For an account of the tension between democracy and liberalism see for example D. Gauthier (1986).

First, there are the secessionists. This is the population in favour of secession in a given territory. For example, in the territory that made up the *Ancien Jura*, the secessionist actors would refer to the umbrella movement *Rassemblement Jurassienne* (RJ), and to the citizens that were in favour of creating the new Jura Canton. Secessionist actors have rights and duties as both citizens of the federation and as citizens of the constituent unit they are part of. The basic liberal principle would suggest that they have rights to be treated equally within both the federation and the constituent unit and have their basic liberal rights protected and upheld. Whether these extend to include a right to claim internal secession might be dependent on: if they are territorially concentrated and if they are sufficiently large to sustain themselves as a constituent unit (according to the duties the federal pact sets for member states). These are conditions that may be derived from the democratic principle. In addition however, the strength of their rights against rights of others will also be dependent to a certain extent on whether it is a cultural community. Hence cultural rights as well as more traditional civic rights may also be of relevance. I return to this later.

Secondly, we should also consider the non-secessionists within the secessionist territory. Since internal secession grants self government on a territorial basis, we should recognise that different opinions may exist within the population in a given territory. In the case of Jura for example, this means taking into account the rights of non-secessionists in the territory of *Ancien Jura* such as the *Deputation Jurassienne* (who favoured increased recognition of Jura within Berne) and the *Union des Patriotes Jurassiens* (who favoured status quo) – as well as all other citizens. In terms of their rights, just as secessionists have a right to have a say on what political community they belong to, so do non-secessionists. Their right to have a voice in the process should be recognised.[35] In addition, as citizens of the federation, they should also have a right to the protection the federation offers to its citizens, and participation in the federation as federal citizens. This includes a

[35] This point is raised by W. Norman (2006) who rightly identifies that unless the rights of anti-secessionists are taken into account, practical as well as moral issues may arise later. In the context of external secession it is also important in M. Seymour's (2007) remedialist account.

right to enjoy protection against undue territorial disintegration. At the constituent unit level, as members of the existing political community, they have a right to participate in public decision making.[36] Their obligation in return is to recognise the rights of secessionists and accept the collective decision making of the constituent unit and the federation which they are part of.

The third actor (or set of actors) refers to the existing constituent unit as a whole. This includes the constituent unit demos and its institutions. In the case of Jura for example, this refers to the citizens of the Canton of Berne as a unit and the Canton authorities (the *Conseil-exécutif* and the *Grand conseil*) as their representatives. The rights of the constituent unit are essentially twofold; to be free from undue interference from the federation in areas where it has jurisdiction (as established by the federal pact) and have a right to shared rule participation as a federated unit. The constituent unit has a right to expect recognition of its condition as a demos with authority, and expect protection of its integrity from outside (federal) intervention. At the same time, the constituent unit also has obligations. Firstly, as a public authority, it has obligations towards its citizens (including the secessionists). Secondly, as a federated constituent unit, it has the obligation to abide by federal rules.

Fourthly there are the federal authorities and federal demos. That is, the authorities that represent the federation as whole and the citizens of the federation as a political unit in itself. In the case of Switzerland for example, it refers to the federal government (the *Conseil Fédéral*), the citizens of Switzerland as a whole, and their representatives (and in particular the *Conseil National*). To a certain degree the actual rights and obligations of the federal authorities will be pact dependent. Nonetheless, in a liberal democracy, we should expect some general ones. For example, the federal demos has a right to participate and accept or veto changes made to the pact (in accordance to the procedures and principles set by the constitution). At the same time, this set of actors will also have obligations. First, they have obligations towards the constituent units. The federal pact establishes the balance of powers between

[36] A. Buchanan has developed this idea in what he terms the morality of inclusion. See A. Buchanan (2003).

federation and constituent unit, and for any given federation, it sets the case specific parameters. Secondly, it has an obligation to act in the interests of the federation as a whole, and not to grant undue favour to either one section of society or a given federated unit.[37] Thirdly, it should respect the authority of constituent units and their territorial integrity, that is, it cannot impose changes without constituent unit consent (expressed or qualified by the federation). Fourthly, the federation also has obligations directly towards its citizens. The federation, as a public authority, has a duty to safeguard and protect the liberal rights of its citizens, including those from abuse from constituent unit authorities.[38]

The fifth and final set of actors is closely related to the above. These are each of the federated units and the federation as a union or collective of units. In the case of Switzerland for example, this set of actors refer to all of the separate Cantons that make up Switzerland as constituent units of the federations, and the institutions that give expression to this in federal decision making (namely the *Conseil des Etats*). Internal secession, which requires a change in the configuration of the shared rule, will affect the federal pact. Consequently all constituent units have a moral right to have a say if the original pact is amended. The federal authorities or one constituent unit alone should not unilaterally or bilaterally establish changes to the federal pact. But the constituent units, like the rest of the actors, are also limited by the obligation to listen and engage with processes of reform (although not necessarily to support), and to abide by the federal pact, including a duty to uphold the liberal rights of others.

From this short outline, it becomes clear that the rights and obligations of the different actors can conflict or indeed may be deemed to contradict each other. But as I attempt to show below, the different rights of actors can be better served by considering secession as a process with different stages, where different actors

[37] This premise is qualified. If the specific federation in question is an asymmetric federation, the federation should respect the asymmetries recognised. This is discussed in more detail later.

[38] It is important to note that these duties may go beyond what a given federal pact legally establishes. The implication of this is that a federal pact, while it raises moral obligations in itself, can also be evaluated for its moral worth.

are involved at varying degrees than by considering only the possible outcomes of secession.

ii. A procedural theory of internal secession

Demand stage

Internal secession is essentially one way of granting a degree of self government to a territory and its population within a state. When we consider who is entitled to make an internal secession demand the debates on who has a right to claim self government may therefore be relevant. As has been discussed earlier, for external secession, three general approaches exist: remedial, primary rightist (based on the individual right to self determination) and the right of societal cultures to self determination. When discussing internal secession the federal dimension of a polity should be taken into account. In this sense a distinction should be made between who has a right to claim internal secession and when internal secession is justified. First let us consider who has a right to claim.

Since the aim of internal secession is territorial self rule, a right to claim is held by a territorially concentrated population.[39] This right to claim, however, is qualified - it must meet certain conditions for it to be considered legitimate. Unlike external secession claims (demands which seek to break away from the pact), calls for internal secession are demands for change within the pact. A demand should therefore not wish to dissociate itself from the federal demos but only from the constituent unit demos it is part of. As such, the claim should respect the existing federal values that underpin the federation.

This, in practice, suggests that at least four conditions should be met. 1., the government claimed ought to be public in nature and function in a similar way to the governance of the rest of the federation. It should not be a claim for a special right or status of self government not envisaged in the federal pact. If it were, then

[39] L. Brilmayer (1991) has offered a particularly strong account of the relationship between self determination and territorial attachment. The importance of the right to territory has also been highlighted by A. Buchanan (1991) and H. Beran (1984).

the claim is not one of internal secession but one of changing the very basis of the federal pact, or for a change of the constitution of the member state (such as for example an autonomous region with a member state); 2., the demand should recognise that the change sought affects all the members of the federation and it ought to recognise that it cannot be morally imposed on others; 3., loyalty and recognition of the legitimacy of the federation should require recognition of the existing constitutional framework. This does not necessarily mean that unless a constitution explicitly allows it, it should not happen. Instead, it means that internal secession conflicts should be resolved with respect to the rule of law; 4., a right to claim should only be legitimate if the population and territory that demands it is able and willing to take over the rights and duties of a member state. The legitimacy of the demand therefore should be measured on its accordance to the federal spirit and the particular pact in question.

This of course assumes that a given federal pact is a moral pact which respects liberal democratic principles. In practise therefore, when evaluating whether a demand is within the federal spirit in question, we should consider the extent to which a pact is liberal democratic. This is especially relevant if we consider, as the liberal principle suggests, that if the secessionists are a territorially concentrated societal culture,[40] then it may be legitimate to claim internal secession based on a right to national self-determination. The fact that the secessionist forms a societal culture should influence (by placing additional moral weight on the duty of other actors) the response, even if the federal pact is not yet constituted as a multinational federation. But a societal culture also has constraints on what it is able to legitimately demand. If such a group wants to remain part of the federation, they must be flexible enough to abide by the existing pact and be able to formulate their demand in such a way as to not question the entire federal pact.[41]

[40] I discussed earlier what a societal culture is. It is based on W. Kymlicka (1989).
[41] In a case where the demand is made to defend a societal culture, which is not recognised, and no formulation for this recognition can be made within the recognised criteria of constituent units in a given federation, then we should consider whether the federation in question is liberal democratic and whether external secession is eventually justified, after demands for internal secession or autonomy have been rejected.

This right to legitimately claim internal secession by a societal culture will be strongest in a federation that is set up as a multinational federation. In such a federation this claim is justified both because the demand is a societal culture and because the federation explicitly recognises societal cultures as candidates for being constituent units. However, in agreement with the arguments provided in favour of liberal type II by W. Kymlicka (1989) and others, a societal culture within a federation that is not set up as a multinational federation should also have a right to demand internal secession. This demand is justified in terms of the moral worth of self government for cultural communities. But in this instance, the moral case that makes a demand legitimate may also depend on the ability of the societal culture to express its demands within the federal pact. In other words, a demand for internal secession expressed solely on the basis that a group is a cultural community cannot be considered to imply any special consideration in the response if the federation is not set up as a multinational community. However, if recognition of a social culture is rejected, as scholars such as A. Patten (2002) imply, there is arguably a case for external secession. This assumes that the federation is a liberal democracy *and* a cultural community is unable to express its demand in terms that the federal pact is able to recognise. That is not to say that in a multinational federation, a demand by a group that does not constitute a societal culture cannot be legitimate. Instead the latter's right would stem from democracy or the will of a majority to become a unit within the federation. However, in this case, the obligation on others to engage with such a request, or the conditions placed on what is a legitimate response, may be curtailed.

The federal pact itself is also subject to moral evaluation. In certain circumstances, the right of the demand may trump other considerations if the secessionist population is suffering (their individual liberal rights are being in some way suppressed) in the constituent unit they are in. In summary, the legitimacy of a demand will vary according to whether or not the secessionists constitute a societal culture or not, and the federal pact itself (including its liberal democratic credential and whether it is a multinational and/or asymmetric federation).

As I alluded to earlier, a right to claim internal secession does not place a duty on others to accept this claim.[42] In external secession, theorists have assumed that by providing the grounds of when a demand for secession is legitimate, they have, by extension, addressed the question of when secession is justified.[43] That is, a legitimate demand is construed as leading to a duty on others not to interfere to stop secession. In internal secession this is not the case because in a federation, the federal principle mandates that change of the pact has to be agreed to by the federated units. It should respect the principle of mutual consent.[44] At best, a legitimate demand provides a duty on others to engage in negotiations.[45]

Response stage

a. Who has a moral duty to respond (how and why)

If a demand meets the criteria set out above, then it ought to create a moral obligation to engage with the demand. This applies to both the constituent unit authorities and the federal ones. In this section I will first concentrate on constituent unit actors and the response stage before considering the role of the federation.

Firstly, a legitimate demand places a duty on the constituent unit to respond. A demand for internal secession questions the demos of the constituent unit and challenges its territorial integrity. The rights of a constituent unit, as an existing unit that has constitutional protection (and moral value – assuming it is liberal and democratic) should not be necessarily trumped by the right of a territorially concentrated population to demand internal secession. This does not mean that the constituent unit authorities have the right to veto or ignore demands made. They have an obligation to respond and

[42] By this I mean grant the demand.

[43] This is a general criticism that has been developed especially by C. Wellman (2005) among others.

[44] A limited number of Canadian scholars, based on the Canadian Supreme Court reference on Quebec secession, have suggested that this may also be the case for external secession. See for example A. Cairns (1998), S. Choudhry and R. Howse (2000).

[45] A similar argument was proposed by the Canadian Supreme Court Reference on Quebec secession. However, its applicability as a model applicable to other federations has been severely questioned by scholars such as H. Aronovitch (2006) and Z. Oklopcic (2011).

moral restrictions on how to do so. They should balance their duty to protect and to safeguard the rights of all their citizens, including the secessionists. As such, I propose that if a legitimate demand is made, the constituent unit authorities should ascertain its popular support and whether a territory could be a viable unit of the federal pact. In order to do so, and in order to ensure that the individual voice of citizens is sought, a referendum set by the constituent unit provides a democratic mechanism of addressing this. At this stage, the referendum should be on the principle of division and not on any given proposal. Its aim should be to ascertain, simply, whether secession is democratically endorsed and potentially viable.[46]

That the referendum on the principle of secession should be set by the constituent unit authorities does not necessarily mean that the referendum should be constituent unit wide. This will depend on the nature of the federal pact. I argue that the referendum should be held across the whole of the constituent unit if the constituent unit is culturally homogeneous. Where the federation is designed as a multinational federation but the demand is not from a cultural community the same procedures should apply. In order to uphold liberal rights among equal citizens, the referendum on secession (a decision on whether secession goes ahead) should be taken by the whole of the existing constituent unit demos where all citizens have an equal vote. But if, for example, the secessionists are a territorially concentrated societal culture, this should be taken into account. In order to uphold the rights of a societal culture to form a political community, a moral obligation should be placed on the constituent unit to restrict the territory in which a referendum is held. This does not mean that a societal culture can claim internal secession, and by implication has a moral right to demand a referendum on the principle of secession across the territory it occupies. Instead it means that the constituent unit is obliged to take into account that if the secessionists include a societal culture, then in order for the rights of the community to be upheld, a forum for this expression is required.

[46] The viability of a state will be dependent (to a degree) on the size of a territory and its population. This is a similar proposition to what external secession theorists have outlined (for more details see part 1 of the thesis). However, as discussed, the practical requirements in internal secession are pact dependent and not set by the international community.

The sub-constituent unit territory in which any referendum is held however cannot morally be set by the secessionists themselves. It is the constituent unit authorities - seeking to balance the right of all its citizens in equal measure - that sets this. If we assume that the existing constituent unit is itself legitimate, then the delimitation of the territory in which any referendum is held should be based on two elements. Firstly, it should take into account the democratic and political history of the federation and that of the constituent unit in question. By this I mean that the boundaries should be based on pre-existing territorial administrative or electoral divisions. In other words, decisions ought to be based and restricted by existing procedures and in accordance with the existing mechanisms.[47] Secondly, even if the demand is by a cultural community, which as I have mentioned implies a stronger right to demand recognition and internal secession, voting should be territorially demarked and not based on membership to particular culture or group identity.[48]

Before progressing with my account, it is worth considering one further point: can a constituent unit refuse to respond to a legitimate demand? In practise, while not morally justified, this can be the case. However, it is also important to bear in mind that the federation may exert pressure on the constituent unit in question and minimise the probability of this occurring. Furthermore, the actions of the constituent unit actors ought not to violate liberal democratic rights. If the secessionist territory and population is mistreated, this might give rise to moral grounds for external secession.[49] This would also be the case if the federal level is either neglecting its duty to safeguard the demand (which arises from the federal duty to uphold the rights of all its citizens) or it is conniving with the constituent unit itself to refuse to recognise the demand as legitimate.

[47] The exception may be if the existing constituent unit has no administrative or political territorial divisions.

[48] This is because although distinctiveness of a territorially concentrated group is required for the demand to be legitimate, the territory will almost always contain individuals who do not identify themselves with that particular group but have nonetheless to be taken into account.

[49] If it is the existing constituent unit the secessionist group is part of that violates liberal democratic rights or those of the federation, there may even be a moral or even constitutional case for federal intervention or even expulsion of the unit from the federation.

b. Delimiting the boundary of the new constituent unit

Once (and if, on the level of the unit) it has been decided that secession is to proceed, the boundary should be set. This is part of the process that ought to be negotiated almost exclusively between actors within the existing constituent unit. The decision on secession and on the boundaries should be two separate issues. The first sets whether a new constituent unit is to be created, the second sets the territory. The moral legitimacy of such a distinction is that an individual's choice may be different once he or she knows that secession is indeed going to occur.[50]

In order for the outcome to be democratically legitimate, the citizens of the existing demos should have a chance to take part in the decision making over the boundary. I am inclined to argue that in order to be consistent with liberal democratic principles and to recognise that the existing set up is itself legitimate, consent for a proposed boundary should be expressed via a second referendum. Unlike in the first referendum, for this second one, there is a strong case to argue that it should always be the population of the original constituent unit as whole that has a say. This is because boundaries divide the territory over which jurisdiction is held and, consequently, it has an impact on the distribution of assets (in terms not only of land resources but also any past investment in infrastructures or industry). This will have an effect not only on the secessionists, but also the citizens of the rump constituent unit. In order to ensure the consent is mutual, the exiting demos of the constituent unit as a whole should therefore agree the boundary. It is important to note that normatively, this second referendum is on a proposed boundary and not on whether separation occurs or not.[51] In other words, a negative vote against a proposed boundary is not a

[50] This argumentation also formed part of the moral basis for accepting the Swiss method of a cascade of referendums for delimiting the boundary of the Canton of Jura. See for example J. Laponce (2004), T. Fleiner (2002).

[51] To a certain extent in the Nunavut case this distinction was not made by teh general public. The referendum on the proposed boundary that took place was heavily intertwined with debate on the merits or otherwise of the Land Claims Agreement being negotiated between the Crown and the Inuit. For more details please see part 2 of the thesis.

vote against secession and therefore the anti-secessionist across the constituent unit cannot morally stop secession taking place by voting no at this stage.

In practice this may be problematic, anti-secessionists in what would be the rump constituent unit may vote against a boundary in an attempt to bloc secession from occurring. Alternatively, the secessionists, knowing that secession at this stage cannot be blocked by the constituent unit, may refuse to negotiate or compromise on a boundary proposal. Morally, if this occurred we once again step outside democratic deliberation and consequently the issue arises of whether the demand might no longer be legitimate or an instance where the constituent unit is being unreasonable and therefore whether external secession could be justified (or whether the federation should intervene directly).[52]

Despite the argumentation made above, there are also potential scenarios where delimitation of the boundary may not require a referendum. This could be the case if, for example, there is a generally accepted border that could reasonably be expected to be the boundary. If this is the case, the fact that the principle of secession has been previously endorsed by a referendum may also reasonably convey legitimacy to a boundary position.[53] This could be the case when the secessionist region already covers some established boundaries such as one or more existing administrative districts in the constituent unit, or there is a natural feature such as a river or mountain range that geographically divides the constituent unit.[54]

Even if this is the case however, there may still be a moral case for allowing communities (or towns) close to a proposed boundary to vote on whether they remain part of the existing unit or the new

[52] The very possibility of either federal intervention or a justified external secession may itself act as a deterrent against undemocratic behaviour.

[53] In other words, while normatively we should consider a decision for secession to go ahead and establishing the boundary as separate issues, in practice, they may, if appropriate (according to the legitimate and existing functioning of the federation), be decisions taken simultaneously.

[54] Whether there is a genuine reasoned proposal or not will also depend on the history of a particular case and the any historical claims to territory. For more discussion on boundaries see for example A. Buchanan and M. Moore (2003).

proposed one.[55] This does not mean that the rest of the existing constituent unit demos is denied the right to take part in collective decision making. The constituent unit is already engaged in the process and so its involvement and consent in secession will be gained throughout the process.

c. Negotiating the terms of secession.

Finally, in the response stage, we should consider the negotiations themselves. By this I am referring to the drafting of a proposal on three key aspects of internal secession:[56] existing constituent unit asset and debt sharing; institutional changes to the rump unit and the initial design of self-rule institutions for the new unit; and the participation of the rump and new unit in shared rule institutions. In many respects, this aspect is perhaps the most complex. A proposal that involves meaningful mechanisms that are morally justified and apply to all federal pacts is virtually impossible to formulate. It is true that democratic principles dictate that actors should be guided by a disposition to engage with the demands of others, amending their original position if necessary. However, a moral standard that dictates what the outcome of such negotiations should be is not easily discerned.

Nevertheless there are three key premises that should guide negotiations. These in turn grant moral worth to the proposals that are reached. Firstly, the negotiations ought to involve the different movements or groups demanding a constituent unit of their own as well as other citizens at all territorial levels (the territory that secedes, the constituent unit and the federation as a whole). This is because no part (demand, constituent unit or federation) can morally (and indeed often practically) impose its choice on others, particularly when this affects the federal pact. Despite this, in practice, given today's mass societies, this would mean that it is not unreasonable to expect negotiations to be held primarily between representatives of the population of the rump constituent unit and representatives of the population of the demos-to-be.

[55] By this I mean a process similar to that used in the case of the creation of the Canton of Jura.

[56] I am calling it a draft at this stage because the ultimate decision, as will be discussed later, requires enactment by the federation.

Representatives of the federal government should also be engaged but with a more limited role of overseeing the agenda of the negotiations. The morality of the negotiated positions taken would not be compromised if the outcome is then ratified by the population.[57]

Secondly, all actors ought to be bound by the morality of the existing pact, which all recognise and abide by. In addition, the democratic principle also establishes that all actors should genuinely engage in democratic deliberation. Actors should act and negotiate in good faith and anchor their arguments on liberal, democratic and federal principles of the particular case. To a degree, therefore, the moral worth of the negotiations can be evaluated from a procedural perspective.

In addition to this, however, the proposal can also be rated against its outcome and its potential political impact within the existing federal pact. On the one hand all actors ought to be morally obliged to seek, in the negotiations, to ensure that the new and the rump unit avoid giving rise to perverse incentives. That is, for example, attention must be paid to evade the creation of one or more units that are dependent on federal fiscal transfers that may distort the federation's essence.[58] On the other hand, the federal pact also establishes shared rule participation and the institutions a constituent unit may have. The outcome of the negotiations can

[57] The rump constituent unit inevitably has an advantage in the negotiations since it is defending a legitimate status quo, hence it is particularly important that the proposal be ratified by the seceding population (this places pressure on the rump unit's representatives to take into account the secessionist' positions). I do not necessarily argue that this must involve a third referendum; a constituent assembly for the new constituent unit elected to ratify the negotiated agreement would suffice.

[58] Consideration should also be given to the demographic dimensions of the new unit and the rump unit to avoid the creation of units that are too small to afford the costs of self-administration, thereby being a burden for the federation. There may also be a need to consider geographical features to avoid the creation of enclaves which could be dominated by other constituent units. Even economic features may need to be considered to ensure not only that the new unit is not disadvantaged, but that the rump unit itself is not left in an untenable position. Again however this will be dependent on the federal pact itself**.** The point however is that if the federal pact has such a crucial role in affecting the justification and process of internal secession, its features must also be taken into consideration.

therefore be evaluated against the practical implications of being a viable constituent unit in a given federation.

d. The role of the federation (federal actors) in the response

Throughout the discussion of this phase I have so far placed emphasis on the constituent unit as the arena in which the response should take place. However, in doing so, I have continually made reference to the federation. The federation, in addition to its role shaping a demand that is morally justified, should also influence the response. Before advancing to discuss the third stage in the process of internal secession I turn to examine the role of the federation in more detail.

The involvement of the federal level actors (be it the government, legislative or judiciary) in the response stage ought to be threefold. Firstly, since the federation has a duty to ensure that the values of the federal pact, and indeed democratic and liberal principles are upheld, it should have a role to play in ensuring that the moral duty of the constituent unit to respond to a legitimate demand is met.[59] The federal pact in this sense is important since it dictates whether the federal government for example can act in support of a secessionist population against the rest of the demos it wishes to secede from, or alternatively, it should hold up existing constituent unit integrity against potential internal secession demands. Whether it supports one or another may be dependent on the processes for constitutional amendments and the extent to which there is a strong federal demos.

Secondly, it should also act as an arbiter for the negotiations, advising on what is permissible (within the exiting pact) and what is not.[60] This function of arbiter should be essentially delimited by the federal pact in question but also by wider liberal democratic principles. Federal authorities, and particularly (but not exclusively) federal courts, need to uphold these during the process. This means that they should make sure negotiations ensure fairness, and are conducted in good faith. In external secession, some scholars have

[59] This might apply to the government and legislature rather than the judiciary.
[60] This role in particular may be reserved for the federal judicial authorities.

explored the need for secession negotiations to be "fair" or "just".[61] This has been expressed as requiring that the outcome of secession not be detrimental (in terms of liberal rights and freedoms) for the populations involved. This includes the need to safeguard the capacity of self government of the secessionist and rump states. In internal secession the functions the constituent unit is expected to sustain are not necessarily as crucial, and interdependence and cooperation between the new constituent unit and the rump one is maintained through their mutual membership of the federation. Consequently, this consideration, so expressed, should be less acute in internal secession. On the other hand however, for internal secession there are additional restraints that apply. For example, the impact of secession on financial equalisation or the exercise of some competences (such as waterways, transport, planning, coast and harbour access, and airports) needs to be taken into account. Therefore proposals should be evaluated against the practical requirements set (directly or indirectly) by the federal pact. The limitations arising from the pact therefore offer grounds that can guide the negotiations.

The federation's role as arbiter does not only apply to the process. The federation should also ensure that any potential outcome is viable. The federation should have a duty to ensure, for example, that: 1. Consideration is given to the demographic dimensions of the new unit and rump unit to avoid the creation of units that are too small to afford the costs of self administration, thereby being a burden for the federation. 2. Geographical features are considered to avoid the creation of enclaves which could be dominated by other constituent units. 3. Economic features are taken into account to ensure that the new unit is not disadvantaged and that the rump unit itself is not left in an untenable position.[62] 4. The result is feasible (for all). The federation should act as a safeguard for liberal rights and ensure they continue to be respected and that the wellbeing of individuals is preserved (this includes assurances that minorities in

[61] See for example A. Birch (1984), D. Gauthier (1994) and A. Patten (2002).

[62] The requirements for this will be dependent on the rights and duties and power distributions established in the federal pact itself since pacts may guarantee or establish very different schemes of division of powers.

the new unit will have their rights respected and guaranteed).[63] 5. The competences or obligations of pact are not overstepped.

Thirdly, the involvement of the federal actors should also be required in negotiations that affect the shared rule of all constituent units. By this I am referring, for example, to the potential division of electoral districts, the number of seats for each constituent unit in the federal legislative chambers, the potential weight of votes in the federal council or government or participatory rights of constituent units in the election or appointment of federal post (ranging from the Central Bank to public broadcasting bodies or judges in the constitutional tribunal). In the third stage, federal actors will have a chance to assent to the proposed secession, however, in this second stage, the federal authorities, acting in accordance to their duty and in good faith, should advise and set what may be an appropriate proposal that is likely to gain the consent of the federated units in the enactment stage.

Much of the role of federal actors should thus be conditioned on the federal pact, to which they are loyal to. However, it must be noted that they should also be obliged to act in accordance to liberal and democratic principles. This places moral obligations on the federal authorities. For example, if a member state is being oppressive to part of its territory, yet the pact established strict safeguards guaranteeing constituent unit territorial integrity, we may yet be able to engage with liberal argumentations to provide a justified and legitimate moral duty on the federation to intervene in favour of the oppressed citizens. The implication of this is that a federal pact's legitimacy as a liberal democratic federation should be judged not only by whether it has consent of its citizens and constituent units but by the substantive effect it has.[64]

In summary, I have suggested that that in order for the response stage in the process of internal secession to be justified we should consider that there is a moral duty to respond if the demand is legitimate. This response includes i., a referendum on the principle

[63] This is similar to the issue of minorities within minorities raised by A. Eisensberg and J. Spinner-Halev (2005).

[64] The implications of this may vary depending on whether, for example, a given federation is multinational or not, asymmetric or symmetric, and on the history of a given case.

of division, set by the constituent unit in question. This referendum should be held across the whole constituent unit if the secessionist demand is not a cultural community, but should be restricted to a suitable sub-unit territory (such as existing administrative districts for example) if it is a cultural community. Voting eligibility however should be territorially delimited and not by membership to any particular group. ii., Negotiations to set the boundary. These should be carried out between the affected parties (secessionist and existing unit representatives) with federal oversight. The outcome proposal should take into account that both rump and new state must be viable in size and able to sustain duties and obligations of a constituent unit as determined by the federal pact. iii., Once the territory has been delimited, negotiations should take place on the division of assets and debts, the new institutions for the new unit and any changes required in the rump unit. This should include shared rule participation. The negotiations should involve representatives of the secessionist territory, representatives of the existing constituent unit and federal authorities and should be conducted in good faith and actors must not deviate from the federal spirit. Recourse to popular referendum may be justified but it is not required during negotiations to resolve impasses. iv., The draft proposal (the outcome of negotiations) should then be subjected to the approval of the existing constituent unit and the proposed new unit. This may be achieved through direct referendum of the relevant constituencies or by consent of representatives - depending on the democratic decision making culture of a given federation. v., This draft proposal (the negotiated position reached) has to be in line with the federal pact. vi., Finally, the draft proposal should be submitted by the existing constituent unit authorities to federations for enactment and ratification.

Enactment

If we recognise that internal secession is the creation and recognition of a new demos within the federation, we must also admit that until it is enacted as such by the federation, it is not a demos. Respect for the existing constitution and recognition of the fact that the new constituent unit can only come into existence after federal enactment places strong normative weight on the need for the existing constituent unit to formally ask the federation for enactment on behalf of the secessionists. By providing this

condition I argue that a non-existing and unrecognised entity (the proposed new unit) should not seek formal recognition as a constituent unit on its own (unless external secession is legitimate and on the agenda). This is because the territory and population it is to cover is already part of an existing demos with a self rule constitution that ought to be respected.

Up to this stage of the process, the federation has been involved, mainly through shared rule federal institutions. In this third stage however I introduce the need for the federated units, as members of the federation, to be involved in the process of internal secession. The existence of multiple demoi, as well as the federal demos itself, and the fact that internal secession affects all the existing demoi means that for internal secession to be successful it should have their consent.

Given that internal secession, in effect, changes the existing federal pact, and there is a moral imperative to uphold mutual respect between constituent units and the federation, internal secession should require constitutional amendment.[65] How this is to be achieved (whether it requires direct referendum, support from at least a majority of constituent unit or unanimity) will be dependent on the federal pact. Nevertheless, the federal pact requirements should reflect the federal spirit. In order to illustrate this I consider the implications of enacting internal secession in a symmetric and asymmetric federation. Four potential scenarios may arise.

First, if internal secession constitutes a split of a constituent unit in a symmetric federation, enactment should be legitimate simply by having the consent of a majority of federated units (assuming each constituent unit has equal say in the federation). A simple majority however may not be morally legitimate if internal secession occurs in an asymmetric federation. Consider a second scenario where internal secession constitutes a split of one of the constituent units that has no special asymmetry.[66] In this case, the consent of a majority of federated units may be sufficient to be morally

[65] By requiring constitutional amendment I am not arguing that internal secession should be constitutionalised. I discuss this later.

[66] By this I mean a constituent unit that is not recognised or considered a unit for which the asymmetries are recognised in the constitution. This contrasts to highly distinct asymmetric constituent units.

legitimate as long as it does not affect the existing asymmetric balance. That is, if the creation of a new unit modifies the asymmetric balance in the federation, then constituent units that are recognised as being asymmetric (and receive special consideration) should consent to the creation of the new unit. As such, the majority of constituent units that approve internal secession should include the units that are recognised as asymmetric. This requirement may carry additional moral weight if the new unit is to be granted self rule features that correspond only to certain constituent units. Unless this is taken into account, we may be legitimising the dilution of asymmetry in a given federation (that is, shifting the federation towards symmetrisation) by diminishing the power of each individual unit within federal shared rule.

This leads on to the third scenario to consider. This is where a constituent unit that has a degree of *de facto* asymmetry (be it in terms of population, geographical or economic) within a *de jure* symmetric federation is divided. Let us consider a specific example where the secessionists are part of a unit that has a high degree of asymmetry within the federation, but if division were to take place, the asymmetry would decrease. In turn this could reduce the influence of the existing (original) unit within the federation. If this is the case, the *de facto* asymmetric unit should be able to veto, or, in other words, the unit in question should be part of the majority in favour of enactment. This suggests that in a *de facto* asymmetric unit, the secessionist and the federal authorities cannot legitimately use internal secession to weaken the asymmetry or influence of the existing unit within the federation without its consent. Finally, we should consider the division of a *de jure* asymmetric unit in a *de jure* asymmetric federation. Here we should expect that in order for enactment to be legitimate, all units should consent to internal secession. This safeguards the potential danger of constituent units collaborating to reduce the influence of a *de jure* asymmetric unit within the federation, and safeguards a powerful asymmetric unit from dividing itself in order to gain increased influence in the federation (by for example, gaining additional votes in the territorial chamber).

We should also consider whether there are any further arguments based on the potential effects of the outcome of secession that affect when the enactment stage may be morally legitimate. Perhaps the

greatest question is whether there are any grounds on which the federal government or legislature can morally refuse to ratify, or veto, enactment. To a certain extent, the process is such that it has involved the consideration of the federal pact and liberal democratic values. Hence we have reason to suggest that there are no moral grounds in which a legitimate proposal may be vetoed at the enactment stage. This does not mean that the enactment stage is therefore irrelevant. It acts as a safeguard to ensure that the proposed secession takes into account the rights and duties of all actors. At the enactment stage, limited changes to the proposal can be made but the actors must respect the expressed will to secede. This is not to say that, practically, it is possible for a proposal to be vetoed. Indeed unless it attains the required majorities for enactment, secession cannot legitimately take place. But if a legitimate demand is repeatedly blocked, then we may question the liberal credentials of the federation, and consider whether external secession is a justified option for the secessionists.

When considering the above, however, we should bear in mind that actors in federations are used to (by daily practice) negotiating, compromising, seeking majorities of double demos and so on. Maintaining within the pact and accepting some constraints while being flexible are therefore common political practices in federal politics. My proposal's emphasis on negotiations is therefore perhaps not surprising, and its applicability may be enhanced because of this.

Finally I turn to consider whether a right to internal secession should be constitutionalised. In terms of external secession, H. Aronovitch (2006), writing on the Quebec Secession reference of the Supreme Court of Canada, is sceptical that a constitution should make reference to or set a process which is essentially political.[67] The first argument for this has been termed "abuse of democracy". This basically "makes the move to 'exit' part of the game, and it puts pressure on the system to accommodate it".[68] Secondly, this very idea undermines the concept of unity and diversity which is a

[67] For a discussion on the constitutionalising external secession see for example D. Weinstock (2001), C. Sunstein (1991, 2001), W. Norman (2006).
[68] H. Aronovitch (2006: 558). This is similar to arguments made by A. Hirschman (1970), D. Horowitz (2003) and Anderson (2004).

central idea of federalism. Thirdly, and perhaps more importantly, it results in an over-commitment to legal rights, which "can demand and command grand things and do so even if various considerations of other sorts stand in the way".[69] This can be further exacerbated by the fact that a constitutional right basically favours one particular position and "handicaps available options and actions by denying them a constructive flexibility".[70] If internal secession is conceived as a process, as I have in this thesis, it may be difficult to set it out as a strict constitutional right. In this sense internal secession should not be restricted by a legal right but instead be recognised as "a process that is inherently conflictive, liable to be explosive and bound to be problematic as regards equity and rights",[71] and assume that it relies on moral-political claims.

This does not undermine arguments for the need for internal secession to require constitutional amendment. Constitutions, by virtue of naming the constituent units of the federation can introduce the need for constitutional amendment for internal secession. This is because if a new unit is created, its name would need to be added. Hence while I do not argue that there are strong arguments in favour of incorporating constitutional clauses on internal secession, this does not mean that a constitutional amendment should not be required for it to take place. Indeed given the important impact the creation of a new unit can have on the federation, constitutional amendment may be advisable to ensure the negotiated nature of federal governance is upheld.

In summary, the enactment stage suggests three further points be added to my account of when internal secession is justified. Firstly, the new constituent unit should be legally created via legislation that meets the requirements set for federal constitutional amendment. Secondly, this legislation has to reflect the outcome of the negotiations at the response stage. And thirdly, federal actors deliberate in good faith (respecting the wishes and position of others).

[69] H. Aronovitch (2006: 559).
[70] H. Aronovitch (2006: 560).
[71] This is how H. Aronovitch (2006: 556) refers to external secession, but it essential also applies to internal secession.

The account I have provided above, is a largely procedural normative one of when internal secession is justified that allows for extrapolation and provides a framework for the evaluation of cases. Despite this, it is not without imperfections. In this sense, four sets of limitations need to be considered when my account is used. Firstly, any case should be contextualised and evaluated in relation to the federal pact in question. This is particularly important because any process of internal secession will be deeply rooted within the federation takes place, but also because no two pacts are the same.

Secondly, the history and culture of each federation is also unique, and this affects the federal spirit and the way a federation operates. For example, respect for rule of law and democratic mechanisms of decision making may vary depending on the federation. This does not invalidate my account, but it suggests that the actual steps that may be taken within each stage of the process may differ.

Thirdly, in practice, internal secessions are political events and hence a demand may be legitimate but vetoed. Consequently while my account provides a moral ground for when and how internal secessions ought to be recognised, this cannot stop a veto in practice. For example, a constituent unit could refuse to engage with a legitimate demand, or the constituent unit in question and the federation could collude against a legitimate demand. Nevertheless, should such a scenario arise, my account does not rule out the possibility of there being a moral case for the population in question to claim a right of external secession, or at the very least, for the legitimacy and moral value of the federation as a liberal democracy to be questioned.

Finally, the applicability of my account is limited by the fact that it is built on the study of part 2 of the thesis. Therefore, while it may apply to some cases of internal secession – those where a new unit is created from the division of an existing one – it may not apply to, for example, cases that involve territory and population from more than one constituent unit or territorial exchanges between states.

IV. Evaluation of past processes

I now turn to briefly reengage with the three cases studied in order to consider whether my normative account can be used to assess empirical cases. In doing so I test the applicability of my account as a standard from which cases can be evaluated.[72] I do not provide an exhaustive analysis of each case; instead I highlight some of the main areas which could be considered to be in line with the grounds that justify secession provided in my account, and those where reservations are in order. In doing so, elements of the particular federations in question are necessarily included.

Switzerland: Jura

According to my account, the demand for Jura could be considered a legitimate one. This is because the demand came from a territorially concentrated population. It sought self government similar to that which constituent units of the federation enjoyed. It did not claim a special right or status of self government but that of a Canton. The secessionist territory also recognised that it could not gain Canton status without the consent of the Swiss federation and the Canton of Berne itself. The loyalty and recognition towards the legitimacy of the federation was continuously upheld. This is reflected for example, in the secessionists' overall commitment to the rule of law and the existing constitutional framework, and their acceptance of the key role the Canton of Berne played by virtue of being a legitimate and recognised demos, including setting the process for internal secession. Finally, the territory the secessionists claimed was able and willing to take over the rights and duties of a member state. It is true that some radicalisation and violence erupted during the process, but these involved a relatively small minority of the secessionists and were sidelined during the negotiations.

In the response stage, as we would expect, Switzerland's particular federalism becomes evident. But there are some concrete aspects that suggest the process was morally justified. For example, the solution to the *question jurassien* was within the existing rule of law and was carefully drafted within the legality of the federal and Cantonal constitution. Since the federal constitution did not provide

[72] The reader might find it useful to bear in mind the tables that summarise the processes followed in each case that are presented in part 2 of the thesis.

for internal secession to occur (nor did it prohibit it), a process that could be legally recognised was negotiated by the Berne and federal authorities within the existing legal framework of Berne. This is important because it shows a balance was reached between the federation's explicit role to guarantee and safeguard the territorial integrity of its cantons, with an opportunity for the *jurassiens* to express a democratic wish to secede from Berne. The federal mandate to protect all Swiss citizens and guarantee peace and stability in the whole of the Swiss territory was also upheld.[73]

The steps taken in the response stage itself appear morally sound from a procedural point of view. A first referendum on the principle of secession, approved by the federal authorities, over seven district of Berne is acceptable given the demand constituted a cultural community. The cascade of referendums for delimiting the seceding territory is also democratic and in line with Switzerland's tradition of direct democracy. The fact that the negotiations for the split and the reforms required were led by representatives of both the existing demos and the demos-to-be is also commendable. As is the fact that it was conditional on federal approval.

Nevertheless there are some objections that may question the morality of the process. Firstly, the constituent unit initial response was, in practise, a reluctant one. It was only after some violent episodes including some (minor) terrorist incidents, when the issue threatened the very liberal and democratic tradition of Switzerland that Berne authorities engaged with the demand. Furthermore, Berne's response was to engage with the federal actors to seek whether a legal procedure could be enacted to allow internal secession rather than negotiating with the secessionist demand. Indeed, these negotiations excluded the secessionist movement. A detailed process was enacted (as a constitutional addendum to the canton of Berne constitution), before secession was discussed with all actors involved. This raises moral reservations since it provided the Berne authorities with the opportunity to shape the process to its advantage. While the Berne authorities were constrained by the federal actors and constitutional considerations, in practice it meant that the envisaged process would lead to the division of the *Ancien Jura* territory. To a certain extent one could argue that Berne had a

[73] For an account of the Jura process see P. Talbot (1991).

moral imperative to uphold the morality of inclusion. That is, not to provide a mechanism whereby some of its citizens could potentially be forced out from the Berne community. For this reason, the democratic process envisaged could be construed as a practical formulation of balancing the principle of inclusion with the right to self government of Jura. However, the division of the *Ancien Jura*, means that the issue of reunification remains a significant political point today.

In the enactment stage, the process required scrutiny and assent from the federal actors and endorsement by referendum in order to be approved. It essentially required a federal constitutional amendment. As such, the process itself seems to be morally justified. Indeed the fact that federal authorities removed two clauses on the draft proposals for being beyond the remit of cantons, illustrates the role the federation has in ensuring compliance with the federal pact.

Canada: Nunavut

In the case of Nunavut, the claim was also legitimate. The demand was territorially concentrated and could potentially become a viable Territory within the Canadian self government framework. The request was not for special status. Indeed, the Inuit demand for Nunavut can be contrasted with the call for the creation of Denendeh by the Dene Nation that was articulated at the same time. The Dene Nation called for special institutions where government office would be held by elders, not directly elected officials. This would be in accordance to the culture and values of the Dene Nation, however, they did not fit within the liberal democratic framework of Canada.[74] Finally, and particularly important in this case, the demand was never articulated against the federation. In the context of Canada this is particularly significant given that it is a federation that has been blighted by debate on external secession from one of its provinces (Quebec).

[74] This is not to say that a demand of the Dene could have been made legitimate, for example they could have argued for some asymmetric arrangements such as a consultative council of elders.

In the response stage there are some aspects which are particularly noteworthy from a procedural perspective. Firstly, most of the negotiations on secession were conducted at the constituent unit level, but with federal government oversight. Secondly, it included a constituent unit wide referendum on the principle of division. It is true that the Inuit (the demand actor) constituted a cultural community, and an existing electoral district could have been used as the basis of delimiting territory in which to hold a referendum, however, the constituent unit in question was comprised of a number of different cultural communities and there were competing demands on dividing the territory. Thirdly, a proposed boundary was also set by referendum across the constituent unit.

However, there are also some considerable drawbacks that make the specific case of Nunavut morally questionable. The main shortcoming relates to the fact that the creation of Nunavut, although a separate process, was conducted in parallel to the Crown and Inuit negotiations over aboriginal land claims. Indeed the creation of Nunavut was accepted alongside, and makes explicit reference to, the Inuit Land Claims Agreement. Hence the negotiations could be argued to have been skewed towards the demand actor and federal actors, sidestepping the constituent unit ones.

Finally, the enactment process, while in line with constitutional provisions, did not provide sufficient input from the other constituent units. The enactment of Nunavut was passed by simple legislation in the Canadian Parliament. It is true that the Northwest Territory does not have provincial status and so constitutionally, simple legislation passed by the federal chambers was legally sufficient. However, since in practice territories operate in a similar way to provinces, in order for the incorporation of Nunavut to have express acceptance and input from the other constituent units, constitutional amendment processes should have been followed.

India: Jharkhand

The process followed in India is perhaps the most questionable in terms of my proposal. It is also a very particular case since the very federal pact may be morally questionable. In India, constituent units do not have constitutions of their own and it is a much centralised

federation. Nevertheless I will comment briefly on the three stage process applied to this case.

In the first stage, the initial demand could be considered a legitimate demand. It emerged from a territorially concentrated minority with some claim to cultural distinctiveness and could potentially form a viable state within India. The demand was also expressed within the constitutional framework of India and did not include a call for external secession. However, the initial demand quickly became part of partisan power struggles between large political parties vying for power not only in Bihar, but at federal level. The BJP and other actors were guided not by the need to engage with a demand for internal secession but were motivated by potential political gain.

The response stage is also morally questionable. It is true that, as I have set out in part 2 of the thesis, the creation of Jharkhand was endorsed by the Bihar State and incorporated elements that had been negotiated at Bihar level. However, the process' strong centralisation stifles the deliberation aspect of the democratic principle. Indeed, Bihar's consent was not constitutionally entrenched and, in the formal process, a proposal had to be referred to the state(s) affected only for consultation. This in turn also questions whether the federal principle itself is upheld by the constitution of India. It is perhaps not surprising that the case of Jharkhand also fails to meet the terms of my account with regards to the negotiations and use of referendums. Indeed, the brunt of the negotiation was carried out after the new state was enacted.

At the enactment stage, the process is also morally questionable. The proposal was designed deliberately so that it would allow a split to occur before negotiations took place. Constitutionally, such changes could be enacted by simple majorities in both chambers at federal level. However, this meant that it became politically very difficult for any party to oppose the split without risking political loss of support,[75] and meant that secession was approved and enacted without a clear proposal of how either the new state or the rump one would operate.

[75] Indeed, the Bihar Reorganisation Act was passed by near unanimous support in both federal chambers. For more details see part 2 of the thesis.

Despite these shortcomings, the creation of Jharkhand could be termed a practical success for the federation of India in granting self government to a territory. Indeed the negotiations that followed the enactment of the new state were conducted rapidly and the issue of Jharkhand self determination has been settled (which contrasts to the Swiss case where Jura unification remains a salient issue). Nevertheless, the same system and process that allowed the creation of Jharkhand is also stifling the legitimate historic demands for the state of Telengana, for example.[76]

I have not engaged in detail with the processes of each case as these have been described before, however, this tentative discussion suffices to show that my account does provide at least some elements that are useful and adequate for engaging with cases of internal secession. It also shows that my account can indeed provide answers to the normative questions internal secession raises and can be used to critically analyse, from a normative perspective, those internal secession processes that have occurred in existing liberal democratic federations.

V. Conclusion

This part of the thesis has provided an account of when internal secession is justified in liberal democratic federations. This has been based on the discussion of the normative questions that the process of internal secession (with the stages identified in part 2 of the thesis) raises.

My account departs from the view that the grounds to justify internal secession are to be based on the process followed; a process which is guided or justified with reference to liberal, democratic and federal principles. I have presented my account as incremental, that is, as a sequence, a process that advances from a first stage (demand) to a second one (response) before being finally enacted in third stage. At each stage the main sphere of actors (potential secessionist territory, constituent unit in which it is located, and federation) differs. However it is important to note that these *three*

[76] The demands for Telengana have once again recently become salient political issues. For more details on this case see for example J. Harriss (2009). G. Shah (2002) and A. Pradesh (2007).

levels are involved in all three stages. In fact, stage 3 for example, has an impact on stage 1. The need for federal ratification is an incentive for the search for consensus at earlier stages.

I have suggested and argued that internal secession must be the result of a negotiated process if it is to be justified. The moral justification for it combines liberalism's main underlying principles (equality and liberty) with the principles often discussed in external secession theory (majority rule or democratic decision making, minority protection, constitutionalism and the rule of law) but is innovative in the way that I adapt these to the context of internal secession where federalism is a principle that must be considered at all stages and in relation to all other principles. This is significantly different from the international context in which (external) secession has been considered to date by liberal scholars.

In practice, in terms of the outcome, my account suggests that for internal secession to be justified, the conditions it must meet are somewhat different to those that external secession theorists have proposed. Like external secession, internal secession must respect liberal rights of citizens, respect minorities and abide by democratic rules. However in addition to this, it must also meet the requirements and standards set by the federal pact for constituent units. In internal secession, apart from evaluating the outcome, the moral justification also lies in the process followed.

A morally legitimate process may be simplified into three main points. Firstly it must be demanded, not imposed. That is, there must be a demand for it from the population in a territory. Secondly, it should be negotiated. And finally, the federation should enact the change. Internal secession therefore involves actors across different levels. Justifying internal secession is thus considerably different to scholarly justifications of external secession. This does not mean that internal secession is morally less restrictive than external secession. Indeed it seems that internal secession is less restrictive in terms of practical conditions that restrict the applicability of a moral right, but at the same time, the existence of a federal pact establishes additional restraints that are not present in the justification of external secession.

My account however has limitations. First of all, it is restricted to cover only internal secession that occur within federations, and hence may not necessarily apply in other federal arrangements. Secondly, it is strongly biased towards considering only the creation of new constituent units from territory that was previously part of one constituent unit. It may therefore not be appropriate for examining the moral implications of other types of internal secession (such as territorial exchanges between existing constituent units or where the new unit comprises territory from more than one constituent unit). Thirdly, while I have provided a general account, due to the importance that is attached to the federal pact, it may need to be adapted when different types of federal pacts (such as asymmetrical or multinational ones) are examined. All these factors limit the possible applications of my account.

In addition, it is also worth noting that the proposal made in this thesis is only one possible normative account. The interpretations I make of the underlying principles of liberal democratic federations are by no means the only plausible ones. And the procedural elements proposed may not be the only ones that stem from the proposed argumentation.

Despite these shortcomings, this part of the thesis offers significant contributions. It is a first attempt at drawing attention and providing a proposal for justifying internal secession. It may therefore be used as a springboard for political theorists to address this neglected issue. My account can also be used to normatively analyse the processes that have taken place. In addition to this, part 3 of the thesis contributes towards shifting the focus of current secession theory from assessing the morality based of secession based on outcome to placing emphasis on the process. This in turn provides the basis from which debate can be extracted on constitutional debates on territorial modifications. Finally it also sets a background from which we can explore the normative debates of secession in different contexts, not least the current debates on independence in Europe. If the EU is considered some form of federal system, the justification of Independence in Europe might benefit from the proposals made in this thesis.

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Conclusion

States are no longer absolute holders of authority and sovereignty. Some authors such as D. Elazar (1996) have pointed towards a paradigm shift from statism to federalism. This, it could be argued, is especially the case in the European Union. With greater pooling of sovereignty among the member states, the meaning of statehood has evolved. However, in some of Europe's larger multinational states such as the UK or Spain, there are salient sub-state parties that stand for independence. This aim, as many scholars have rightly pointed out,[1] has evolved. Adapting to growing EU integration, the demand of many such parties has become independence in Europe. This raises important questions for political theory in terms of considering the grounds that may justify secession given that what is envisaged are the creation of new units within the EU rather than the creation of a new state understood in the traditional sense.

There is currently no empirical precedent for such a scenario, which is not envisaged in EU treaties. However, as I have shown in this thesis, examples of the creation of new units within federal arrangements do exist. Nevertheless, they have so far attracted very little academic attention. Instead, when the creation of new states has been examined, it has essentially been assumed that this affects the international community. In federal arrangements however, the creation of a new constituent unit occurs not in the international context, law and jurisprudence, but within the context of the federal pact in question.

[1] M. Keating (2004, 2001) and K.J. Nagel (2005, 2011) are some examples.

My thesis attempts to make a contribution towards filling this gap. More specifically, the thesis has focused on the grounds that may justify internal secession in liberal democratic contexts, rather than external secession, which has already been widely studied.

As I set out in the introduction, the thesis consists of a set of three chapters with the intention that they may be submitted for publication as stand-alone articles.[2] In this final part of the thesis I highlight the cumulative conclusions that can be drawn. I start by providing a general overview of the arguments and proposals. Then I discuss the limitations and contributions of the thesis as whole. Finally I address areas for further study.

I. Thesis summary

Internal and external secession

The thesis concerns internal secessions. If external secession is the creation of a new state that joins the world order - the international community, then internal secession is the creation of new state inside a federal arrangement.[3] In external secession, as scholars have rightly argued, it is the international community – particularly the UN – that, through recognising statehood, ultimately establishes theoretical success.[4] For external secession, it is therefore relevant that discussion and debate be framed in the international context (the question being when the international community should accept a right to secession). For internal secession on the other hand, it is the federation that grants recognition (or accepts) the new unit, without such acceptance, it cannot happen. The normative questions should therefore shift from being focused on the international community, to placing emphasis on the federal pact.

[2] As noted earlier, for the convenience of the reader of the whole thesis, the introductions to each chapter have been written specifically to avoid lengthy repetitions. In addition, references to earlier parts of the thesis are incorporated throughout.

[3] In this thesis I have focused primarily on federations.

[4] The recognition of statehood by the UN may be the ultimate seal of practical approval. In this sense, success should not be confused with being morally justified. The UN does not confer a moral justification to a process of state creation or indeed the outcome of such a process.

Apart from what is internal and what is external secession, we must also bear in mind that the claim or demand for one or the other is framed differently. They are both demands for greater self rule, but they are different demands. A demand for external secession is a demand to break away from the existing demos and authority. It is in a way, a complete rejection of the status quo. In very broad terms, according to existing secession theorists, a territorially concentrated population can legitimately reject the status quo by majority decision. This in turn establishes a moral duty on others to respect this decision unless the seceding territory fails to meet a set of practical conditions. These include, for example, being large enough to sustain a viable state (primary rightist approach). Alternatively, other theorists suggest the population of a territory has no right to secede unless it has a strong grievance against the original state (remedial rightist approach). Finally, a third group of theorists argue that a right to secession exists if the claimants constitute a societal culture. All three approaches argue that if their respective conditions are met, other states have a duty to accept the new territory joining the club.

A demand for internal secession on the other hand is a demand for a partial break. By this I mean that it is a demand for a break away from the constituent unit the secessionist population and territory is part of, but it is not a demand to break away from the federation. Therefore the moral grounds and the context within which to evaluate demands are different and none of the existing approaches to justifying external secession will apply as they stand.

The lack of theory on internal secession

In part one of the thesis I presented the exiting literature on external secession and argued it is inadequate for internal secession. I exposed the shortfall of liberal theories on secession and argued that any theory on internal secession needs to consider the moral and practical implications of the existence of a federal pact. I identified that some debates on secession and federalism, especially those stemming from the Supreme Court of Canada's reference on Quebec secession, do recognise the significance of the federal pact, but this is done with regards to external secession. However, since internal secession is not a demand against the federation, existing

proposals in liberal democratic theory are not appropriate for cases where the secessionists themselves claim to maintain the federation.

The practice of internal secession

Departing from the position that existing theory does not provide an adequate framework for discussing the creation of new states within existing liberal democratic federations, in part two of the thesis I examined past precedence. I explored the process followed and the justifications provided in three cases of internal secession. I found that despite the fact that cases are heavily influenced by the context of the federation in which they take place, they follow a three step process: demand, response, and enactment. In such a process the secessionist demand, the existing constituent unit in question, the federation and the other constituent units that make up the federation all have a role to play. But at each stage the focus is on the actors of different levels. The demand is focused on the seceding population and their claim for secession. The response places emphasis on the constituent unit level and the actors present in this demos (with a role for the federation as mediator). Finally, the federal level actors (the federation as a whole and the other constituent units) become the focus in the enactment stage. The examination of the arguments used to justify the steps in the process show that the justification relied heavily on references to democracy, a respect for distinct minorities and a distinct appreciation for group rights, the constitutional set up and a respect of the rule of law. Part two of the thesis therefore lends further weight to the argument that internal and external secessions are indeed different, and therefore to expect that the grounds that may justify the former differ to those that justify the latter.

This study also provides the foundation that illustrates why a procedural approach to justifying internal secession is appropriate. It shows that the morality of the creation of a new constituent unit in a federation cannot be fully assessed only from considering what the outcome would be. It requires the process of negotiation and compromise - which is a crucial element in decision making within federations – to be taken into account.[5]

[5] This does not imply that there are no considerations based on outcome that need to be taken into account.

Justifying internal secession

In the third part of the thesis I presented an account that may be used as a standard in order to evaluate processes of internal secession. The account combines the principles (federalism, liberalism, democracy), the actors involved in the process of internal secession (the secessionists, non-secessionists in the secessionist territory, the population of existing state, the federal authorities and federal demos, and the federated units), and their moral rights in each stage (demand, response, enactment).

In summary, it argues that in order for an internal secession demand to be legitimate, it should meet six conditions. One, it should be territorially concentrated. Two, the territory that seeks secession should be able and willing to take over the rights and duties of a member state, and in particular those regarding the shared government of the federation. Three, the demand must be for the creation of a new state within the federation, and so it must not be against the federation. Four, the government (self rule) claimed must be public in nature and function in a similar way to the governance of the rest of the federation. It cannot be a claim for a special right or status of self government not envisaged in the federal pact. Five, secessionists must be willing to negotiate in good faith. Six, the demand actors should be loyal to the federation and respect the constitutional principles on which it lies.

According to my account, there is a moral duty to respond to legitimate claims (those formulates on the terms defined above). This response should include: 1, a referendum on the principle of division, set by the constituent unit in question. This referendum should be held across the whole constituent unit if the secessionist demand is not a societal culture, but should be restricted to a suitable sub-unit territory (such as existing administrative districts for example) if it is a cultural community. Voting eligibility however should be territorially delimited and not by membership to any particular group. 2, negotiations to set the boundary. These should be carried out between the affected parties (secessionist and existing unit representatives) with federal oversight. The outcome proposal should take into account that both the rump and new state must be viable in size and able to sustain the duties and obligations of a constituent unit as determined by the federal pact. 3, a

referendum approved by the constituent unit on the proposed boundary should (except in some particular cases) be held across the whole unit. 4, once the territory has been delimited, negotiations should take place on the division of assets and debts, the new institutions for the new unit, any changes required in the rump unit and shared rule participation. The negotiations should involve representatives of the secessionist territory, representatives of the existing constituent unit and federal authorities. Negotiations should be conducted in good faith and no actor should deviate from the federal spirit.[6] Recourse to popular referendum may be justified (but it is not required) during negotiations to resolve impasses. 5, the draft proposal (the outcome of the negotiations) should then be subjected to the approval of the existing constituent unit and the proposed new unit. This may be achieved through direct referendums of the relevant constituencies or by consent of representatives depending on the democratic decision making culture of a given federation. 6, this draft proposal (the negotiated position reached) has to be in line with the federal pact. 7, finally, the draft proposal should be submitted by the existing constituent unit authorities to the federation for enactment and ratification.[7]

Finally, no internal secession proposal is legitimately acceptable without enactment. This is the final approval by federal level actors. This includes not only the federal demos as a whole but also the other member states that form the federation. According to my account, approval is only morally justified if the following are met: Firstly, the new constituent unit is legally created via legislation through requirements set for federal constitutional amendment. Secondly, this legislation has to reflect the outcome of the negotiations at the response stage. And thirdly, the federal actors deliberate in good faith (respecting the wishes and position of others).

Overall then, the existence of a federal pact means that the list of possible (and practical) grievances that may morally compel the federation, the constituent units in question and the other federated

[6] I am assuming that the pact is liberal democratic. Otherwise, as I have advances in the course of part 3 of the thesis, other implications arise.

[7] It is possible, in practice, that a legitimate claim to internal secession is rejected. If this is the case, such rejection may give way to a legitimate claim for external secession.

units to respond may be more permissive than those outlined by remedialist theorists like A. Buchanan in the context of external secession. Similarly, H. Beran's list of conditions that restrict applicability of his permissive moral right to secession will be shorter. Finally C. Wellman's proposal would also need to be reassessed as societal cultures are part of both a federation (from which they do not want to break away and are loyal) and a constituent unit. This however does not mean that internal secession is necessarily 'easier' or more morally permissive than external secession. The federal pact not only establishes duties on the federation and the constituent units but also imposes additional constraints by virtue of establishing the obligations and duties that a constituent unit is required to meet.

II. The limitations and contributions of the thesis

My thesis offers a contribution to the literature of secession and federalism by examining internal secession. In part one, I have provided the first critical review of the literature from the point of view of internal secession. This is a contribution in itself within the growing literature on autonomy and internal self rule.[8] In the second part, I offer a comparative study of processes of internal secession. Although there are accounts of the process followed for each of the individual cases, to my knowledge mine is the first comparative one. My contribution focuses on why the process occurs, and identifies the main actors involved. Its particular value lies in the analysis of the arguments used, placing special emphasis on how the process was legitimised or justified. Finally, and perhaps most importantly, part two of the thesis serves as a basis from which a normative account of when internal secession is justified in liberal democratic federations can be built. In the third part of the thesis I offer the first account (and attempt) of providing the grounds that justify internal secession adopting a procedural approach, placing emphasis on the process and not simply judging the morality of secession by its outcome.

As a whole, there are three main limitations to my thesis that should be noted. Firstly, I have built a normative account of internal secession that is based on the empirical study of three selected cases

[8] For an account on such debates see for example M. Seymour (2011).

that occurred in liberal democratic federations. By default therefore, normative value is inevitably granted to the practical simply by virtue of having occurred. In addition, this also restricts the account provided to liberal democratic federations. The second limitation of my thesis is that it has only been able to provide one possible account of the grounds that justify internal secession. This is primarily because there is a lack of existing literature on which to engage with, but also due to the very nature of what is being analysed. I have engaged with principles that do not have a generally accepted value hierarchy. I have also examined the interaction between these. Alternative conclusions may therefore be reached if the moral weight given to the principles or their definitions is modified. Finally, although internal secession applies to a variety of scenarios, my account is limited to apply only to a specific type. Generalisations that apply to other types of internal secession may be obtained from my account, however, the fact that it is built from restricted examples is nonetheless a limitation. This is inevitable given the lack of attention internal secession has received to date.

Despite this, my thesis provides a basic and first account from which different alternatives can be examined and specific cases discussed. For this reason there are various avenues for further research that stem from my thesis.

III. Areas for further study

The thesis' originality raises a variety of potential areas of research through which my theory and model could be further examined. Firstly, and most importantly, the analysis could be broadened to examine whether the model and account derived from the examination of three cases can apply (or how it should be modified in order for it to apply) to other similar instances of internal secession. This analysis could be extended by considering cases of internal secession that amount to territorial exchanges between constituent units, or the creation of a new constituent unit from territory of more than one constituent unit. Furthermore, the application of my model could also be examined in relation to different types of federal pact. I have partially considered this in my thesis; however, further research could be carried out focusing particularly on how the grounds that justify internal secession are

affected when the federal pact in question is, for example, multinational or asymmetric. This could be done through a systematic analysis of different scenarios and assessing the actors involved and the rights of these.

Secondly, the implications of my model or its applicability to other forms of federal arrangement that are not federations could be extended. This might be particularly meaningful if it is applied to confederations for example. Here the federal pact is based on a treaty not a constitution and hence the basis of membership is skewed more strongly towards the member states. In addition, the voluntary basis of membership is greater than in federations and so there is no direct bond between the confederation and the citizens, and no recognised federal demos.[9] As a result, the case for the confederation having a role to play in any *process* of secession from a member state may be weaker (irrespective of whether the demand assumes continued membership of the confederation after independence or not), while the role of the other member states may be greater. However, this in turn means that the role of the member states is magnified in the final approval of the admission of a new member into the confederation. It might be the case that the creation of a new member state within a confederation can only be achieved by first secession and then adhesion.[10]

Thirdly, further research could focus on whether lessons can be derived from my model and account for the European Union's unique federal nature and the calls for independence in Europe that exist in some of its larger multinational states. On a tentative note, whether or not the creation of new member states within the EU can be discussed as internal secession or not seems to be complex and largely dependent on how the EU is interpreted. On the one hand, the EU in many ways functions as a federation. In terms of institutions, it has a legislature and an executive that operate largely

[9] Indeed the confederation may even have a stronger moral duty to protect the member state, as a member of the pact, against secessionists.

[10] This would be guided by external secession justifications. One of the implications in practical terms is that it could mean that a secessionist territory secedes from the member state and it is not then admitted to the confederation. Depending on the confederation, the issue of continued membership after secession could fall under the international provisions on state succession established in the Vienna convention.

by majority not unanimity. It has its own budgetary resources, and has its own judicial institutions which can adjudicate between levels of government and its rulings can apply directly to citizens and member state governments without the need for ratification by each member state. To an extent it seems to have a demos too. In a sense therefore it has features that are not normally associated with intergovernmental organisations.[11]

On the other hand there are significant traits that make the EU confederal in ways that are relevant for the issue at hand. The EU has no constitution but is based on a Treaty, and it requires unanimity for some changes to be made. This includes the addition of a new member or changes to the voting weights or participation rights in shared rule institutions and decision making. In addition, the EU is fundamentally based on the member states. Ultimate sovereignty emanates not from the people, but the people of the member states. There is therefore no clear federal demos or an established EU citizenship. For this reason the federal principle may be weaker and the role of the EU as the federal level restrained. However, since the EU displays elements of a federation, there may be a case for arguing that contemporary aims for independence in Europe should not be solely discussed as demands for external secession.

Fourthly, my thesis could be extended further by examining more thoroughly its implications and relationship with debates on the right to self determination. As set out in part 1 of the thesis, there is no recognised legal right to external secession in international law (other than for colonies). However there is substantial literature that places importance on arguments for national self determination and territorial autonomy. Internal secession may have implications that are relevant to these debates. Furthermore, the relationship between internal and external secession should be further explored, including questions such as, for example, whether it is possible for a group to have a right to internal secession but not external secession, and whether a refusal to grant internal secession provides grounds for

[11] For accounts on how the European Union is closer to a State than an intergovernmental organisation see for example R. Schutze (2009) or M. Burgess (2006).

justifying external secession. My thesis has discussed these questions but further analysis is required.

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