

## Secession, Democracy & Human Rights

Secessão, Democracia e Direitos Humanos

Secesion, Democracia & Derechos Humanos

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### Keywords:

Secession,  
Catalonia,  
Human Rights,  
Separatism,  
Democracy.

**Abstract:** The United Nations (UN) officially declared "self-determination" as a right of all peoples. Although the United Nations Charter (1945) offers some guidelines for the application of this right, there are major challenges in its implementation in the case of secessionist tendencies. Faced with this situation, the economist Jörg Guido Hülsmann, in his essay *Secession and the Production of Defense*, discussed not only the argument that pure private production is always superior to public and compulsory schemes, but also the current process of secession which, should always be justified against violent and coercive behavior of governments against (part of) its population. Hülsmann's ideas are presented in the contrast of the latest secessionist movements in Catalonia and Scotland, and in combination with Hayek's concept of "spontaneous order." The separatist movement in Catalonia is also analyzed based on the ideas of political scientist Margaret Moore, who advocates three types of normative theories that can justify the right to secession.

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### Palavras-chave:

Secessão,  
Separatismo,  
Catalunha,  
Direitos humanos,  
Democracia.

**Resumo:** As Nações Unidas (ONU) declararam oficialmente a "autodeterminação" como um direito de todos os povos. Embora a Carta das Nações Unidas (1945) ofereça algumas diretrizes para a aplicação desse direito, existem grandes desafios quanto à sua implementação no caso de tendências secessionistas. Frente a isso, o economista Jörg Guido Hülsmann, em seu ensaio *Secession and the Production of Defense*, discutiu não apenas o argumento que a produção privada pura é sempre superior aos esquemas públicos e compulsórios, mas também o processo atual de secessão que, como afirma, pode sempre ser justificado contra um comportamento violento e coercivo de governos contra (parte) de sua população. As ideias de Hülsmann são apresentadas em correlação aos últimos movimentos secessionistas na Catalunha e na Escócia, em combinação com o conceito de "ordem espontânea" de Hayek. O movimento separatista na Catalunha também é analisado com base nas ideias da cientista política Margaret Moore, que defende três tipos de teorias normativas que podem justificar o direito à secessão.

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**Resumen:** Las Naciones Unidas (ONU) declaró oficialmente la "autodeterminación" como un derecho de todos los pueblos. Aunque la Carta de las Naciones Unidas (1945) ofrece algunas directrices para la aplicación de este derecho, existen grandes desafíos en cuanto a su implementación en el caso de tendencias secesionistas. Frente a ello, el economista Jörg Guido Hülsmann, en su ensayo *Secession and the Production of Defense*, discutió no sólo el argumento que la producción privada pura es siempre superior a los esquemas públicos y compulsivos, sino también el proceso actual de secesión que, como afirma, siempre puede ser justificado contra un comportamiento violento y coercitivo de gobiernos contra (parte) de su población. Las ideas de Hülsmann se presentan en correlación con los últimos movimientos secesionistas en Cataluña y Escocia, en combinación con el concepto de "orden espontáneo" de Hayek. El movimiento separatista en Cataluña también es analizado con base en las ideas del científico político Margaret Moore, que defiende tres tipos de teorías normativas que pueden justificar el derecho a la secesión.

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## Introduction

There are several examples of the breakup of an existing state into several smaller state entities throughout history. Nowadays, the specific right to secession cannot be found in any significant, currently valid international document. However, it is implied in the right to self-determination, which became the cornerstone of the modern international system. The concept of self-determination certainly passed through different phases and forms and was fully integrated into the UN system, where it was recognized and guaranteed to all people ([UN CHARTER, 1945](#)). Article 1, Paragraph 2 of the United Nations Charter proclaims the principle of equal rights and self-determination as one of the main values in modern international law. Moreover, Article 55 of the Charter defines it as fundamental for economic and social cooperation. Paragraph (b) of Article 76 points out at least two constituent parts of the right to self-determination: the right to self-government and the right to independence.<sup>1</sup>

The former USSR and Yugoslavia have collapsed, and the world has seen the peaceful dissolution of the Czechoslovak Federation. This series of events, whether considerably peaceful, as in the USSR, or rather violent, as in the former Yugoslavia, has proven the international community the need for a final solution to the matter of the right to self-determination, and, more particularly, the right to secede, or the right of secession.

Clark, DiLorenzo and Block ([2016](#)) believe that often peaceful secession and nullification are the only option to establish a system of government that rather respects than destroys individual liberty. Also, Ludwig von Mises ([1919, p. 34](#)) concludes that “No people and no part of a people shall be held against its will in a political association that it does not want”.

In a UN context, the right to self-determination in its external shape is applicable to people (not to national, ethnic, and religious minorities, whose rights are recognized in Article 27 of the ICCPR, 1966) or to the nations in the cases of: a) a colonial context; or b) in a situation of any foreign domination or occupation ([UNGA, 1970](#)).

The UNGA Resolution 2625 from 1970, “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, opens the door for ‘legitimate secession’ or ‘implicit secession’. Secession is seen as legitimate, if certain conditions are met, and the (coercive) State acts contrary to the principle of equal rights and the self-determination of people - for example, if the State’s central government does not represent the whole nation.

In the first part of his essay ‘Secession and the Production of Defense’, Prof. Dr. Jörg Guido Hülsmann (2003) points out that simply referring to “secession as a one-sided disruption of bonds with a larger organized whole” can be misleading. To be more precise, we need to clearly differentiate improper and illegal “breaches of contract” from the justifiable “disruption of hegemonic bonds”. As Mises states, one must distinguish between “cooperation by virtue of contract and coordination” on one hand, and “cooperation by virtue of command and subordination or hegemony” on the other. Property can be acquired either with the consent of its present owner, or acquired against his will –consequently violating his property rights or,

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<sup>1</sup> Charter of the United Nations

as Franz Oppenheimer pointed out, one can “either use the economic means of appropriation or the political means of appropriation”.

The Anarcho-capitalist economist Hans-Herman Hoppe (1993) states that, initially, secession was simply the control shift over nationalized wealth from a larger, central government to a smaller, regional one. It cannot be generally inferred if this will lead to more economic integration and prosperity, since in each case, it will depend on the new regional government’s policies. However, due to secession, the formerly hegemonic domestic relations will then be replaced by mutually beneficial contractual relations. Consequently, Hoppe states, forced integration will and should be replaced by voluntary separation.

Thomas Jefferson stated that “If any state in the Union will declare that it prefers separation... to a continuance in union... I have no hesitation in saying, ‘let us separate’..... Whenever any form of government becomes destructive of the ends of life, liberty, and the pursuit of happiness, it is the right of the people to alter or abolish it, and to institute new government” ([Thomas Jefferson in 1816](#))

## 1. The Global Evolution of Secession versus Centralization

For most mainstream ‘progressive’ economists and historians, centralization is generally considered a “good and progressive” movement, while disintegration and secession are considered as reactionary anachronism. Even politicians and economists who consider themselves liberals often believe that larger political units automatically lead to wider markets, assuring peace and increased wealth. As evidence of this, it is argued that economic prosperity has often increased during the periods of significant centralization. However, we must understand that correlation or temporal coincidence do not prove causation ([HOPPE, 1993](#)).

Roughly nine-hundred years ago, Europe comprised thousands of independent territorial units. During the second half of the 17th century, Germany consisted of some 234 countries, 51 free cities, and 1,500 independent knightly manors, while by 1871 its complete unification was ‘achieved’. In 1291, on the other hand, Switzerland began as a confederation of three independent cantonal states, and by 1848, it was a single state – but with approximately two dozen cantonal provinces.

First of all, one must carefully distinguish political integration (centralization) and economic (market) integration, as they are completely different phenomena. While political integration involves the territorial expansion of a government’s power for taxation and property regulation, an economic integration is the extension of the interpersonal and interregional division of labour as well as of market participation.

Generally speaking, taxing income earners and regulating private property owners are always counterproductive for a society, not only from a moral, but also an economic perspective.

Throughout most of the past millennium, Europe possessed a highly decentralized power structure of many independent political units, which helps to explain the origins of capitalism. It first flourished during times of political decentralization; for example, in the northern Italian city-states, and in the South of Germany.

Moreover, we need to understand that, in the past, states which taxed and regulated their economies to a very small extent, have often expanded their territories at the expense of less liberal states. This explains why, in particular throughout the 19th century, Western Europe dominated the rest of the world. Hans-Hermann Hoppe (1993) stated that “progress results whenever a less taxing and regulating government expands its territory at the expense of a more expropriative one.” However, history has also shown that the fewer the remaining states (consequently increasing the total size of their individual territory), the less their governments will continue to defend and strengthen domestic liberalism.

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be... to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement. ([CHARTER OF UNITED NATION, 1945, art. 76](#))

The collapse of the socialist Soviet Union led to the creation of several new states within its former territory, as well as in Eastern Europe. The majority of the population within these new states often belong to groups that differ ethnically, religiously, and/or linguistically from the former Soviet Union’s majority. Also, former Yugoslavia turned into several independent new states, such as Slovenia, Croatia, Serbia, and Bosnia, while also the Czechs and the Slovaks have split into two individual countries. Other parts of Europe have separatist movements which attempt to achieve independence by very different means. These groups include South Tyrolians in Italy, Scottish nationalists in Great Britain, separatists in the Basque Country and Catalonia, as well as Flemish groups in Belgium.

According to the economist Philipp Bagus (2017), smaller organizational units are more flexible, innovative, and less threatening. They lead, therefore, to more prosperity and peace. Bagus stated:

Small political units foster competition and therefore offer more advantages like low taxes and less regulation. Historically, if the citizens didn’t like the policies of their country, they could leave easily because the border was closer. If you lived in a vast country like the Russia of the Tsar or the Soviet Union, that would be much more challenging. ([BAGUS, 2017](#))

In the early 19th century Germany, a citizen of Royal Bavaria could quickly move to the neighbouring Kingdom of Württemberg if living conditions were better. Thus, it is argued that when Germany was fragmented into many different states, regents were competing peacefully to get the best talents. Peaceful competition among the German states ended when the two most powerful German units (Austria and Prussia) started a war, ultimately leading to the second German Reich with Prussia at the helm in 1871. ([BAGUS, 2017](#))

In contrast, throughout the past decades, the European Union (and its predecessor, the European Community) has been trying to minimize cultural identities and particularities, as well as the political and economic independence, of its member states. However, despite the intentions to centralize all political power with the EU, separatist movements are gaining

support. The motivation for secession can be different, either based on the aim to achieve linguistic, cultural and/or religious independence, or based on purely economic/ financial aspects. Hans Hermann Hoppe (1993) criticized the public perception of the state as just and necessary, arguing that without the public's voluntary cooperation any government would implode and its powers evaporate.

## 2. Hülsmann's Thought on Secession & Self-Determination

In line with Murray Rothbard (1973), also Hülsmann (1989) criticizes that governments violate individuals' rights and property without being considered criminals. The 'hegemonic bond' between the so-called 'director-ruler' and its subjects is down to the fact that (a majority of the) members of society consider such violations of other people's property rights as compatible with civilized intercourse. Consequently, one way to act against such coercive violent behavior by the state is secession, defined as the one-sided disruption of hegemonic bonds by certain subjects. Either in this case, subjects can oppose the ruler's property rights violations by refusing to pay taxes, for example; or, alternatively, they may simply start resisting the ruler whenever he violates their own or other people's property rights. The secessionist may abolish the hegemonic aspect of the existing (coercive) institutions. Hülsmann explains different forms of secession that have occurred in history, also referring to the geographical dispersion of political regimes and the present-day example of the city of Baarle, a Belgian town located in the Netherlands. Baarle has Belgian enclaves within its Dutch enclaves, causing certain streets to have some houses that belong under Belgian law, whereas other houses in the same street may actually obey Dutch laws.

Former colonies of European powers in other parts of the world were another example of geographically disconnected territories under common hegemonic bonds, and their later process of independence can certainly be considered 'secession'.

Forced integration always creates tension and conflict, while voluntary separation leads to harmony. As secession usually involves the breaking away of a smaller population from a larger one, it is also a vote against the general principle of democracy (in the sense of 'dictatorship by majority'), while instead being in favor of private, decentralized property.

However, secession does not automatically mean that people want to completely break all hegemonic ties between them and their ruler; they might only intend to change certain unfair regulations, such as demanding lower taxes or refusing certain privileges to other individuals within the territory.

In addition, bonds between government and the individual subjects within a territory can be very different; such was the case in the so-called "Jewish ghettos" in several European cities, where Jews were often exempted from non-Jewish jurisdiction and certain forms of taxation. Even though these 'special' treatments were not a result of prior secession movements, they show that different systems can exist within one greater geographic territory. Hülsmann (2003) concludes "the only limit for geographical dispersion of political regimes is given by the boundaries of private property", while each property owner, in their turn, may theoretically establish different sets of rules for the users of his property/land.

The establishment of isolated secessionist strongholds can be considered a first important step to the ultimate goal of full liberation of a certain territory. Hülsmann (2003) points out that such small, independent areas usually rely on the exchange of goods and services with other regions. The smaller the country, the greater will be its pressure to defend free trade, rejecting protectionism. While Russia might still be able to achieve a comparatively high standard of living while rejecting any form of foreign trade, smaller new countries, which were founded based on secession, could not follow such protectionist policies without significantly losing wealth and living standards. Truly unrestricted free trade would allow even the smallest state to fit into the world market, while also benefitting from the division of labor. Thus, the smaller a territory is, the more crucial it is likely to be to promote and benefit from free trade.

As Hülsmann (2003) pointed out, there are two major benefits of political reforms by secession:

First, secession abolishes hegemonic bonds, including those of core organizations like the former (hegemonic) army, police, the courts etc. Consequently, at least in the beginning, the new governments will potentially defend crucial aspects, such as political transparency, free enterprise, freedom of speech, and generally individual liberty, more properly than the former hegemonic regime. However, these new secessionist territories might actually turn into a more coercive violent political system than its former hegemonic power had ever been. Hülsmann (2003) compares the “implementation” of a new freer political system to the laws of the business cycle: Business investments not supported by genuine savings will lead to an economic bust after a short period of economic growth illusion. Simultaneously, political territories on which “liberty is being imposed” may (after a short period of liberty illusions) soon suffer from even more coercive, totalitarian regimes. In line with M. Rothbard (1962), J. Hülsmann also states that classical liberalism has never managed to establish a properly working public order which protected private property and individual liberty for more than a few decades. In contrast, in the Middle Ages, the Christian religion did not only define the duties and rights of all citizens for centuries, it also limited medieval aristocrats in their endeavors, consequently defending and ensuring certain liberties to all subjects.

Hülsmann (2003) critically evaluates classical liberalism, stating that it is no surprise that it has never succeeded in bringing lasting, long-term liberty and justice to any country so far. Hülsmann favours a naturally evolving secession, which, if properly done, can lead to genuine reforms that “do not already automatically contain the seeds of their own destruction”.

Second, if secession is an “activity fully harmonious with the respect of private property and the **economic means**”, it is the only possible type of political reform that could achieve a private-property regime in which the principles of such regime are respected. Thus, this specific reform would not create new violations of property.

The Purposes of the United Nations are... to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace. ([CHARTER OF UNITED NATIONS, 1945](#), art. 1)

### 3. Political, Legal and Scientific Challenges to Secession

Alexander Martinenko (1996) pointed out that full recognition and enjoyment of the right of secession in the modern world faces three major difficulties: political, legal, and scientific ones.

Politically, most states are not willing to give up a part of their territory and population. Thus, the road to ultimately recognizing independence is usually very painful. From the legal point of view, the process is often even more challenging due to the States' internal legal systems, as most legal systems/ constitutions do not envisage the possibility of dividing the state or the right of secession for any part of its population. Many legal systems even consider criminal punishment for any activity related to secessionist activities. The former Soviet Union officially recognized the possibility of demands for secession in its Constitution, which is far from unique. However, even under such favorable legal circumstances, it took a long time for some of the former Soviet nations to actually claim that right. The situation seems more favorable from the point of view of international law, as the right to secede can at least be seen as a constituent part of the complex right to self-determination. Also in this case, however, conceptual difficulties arise. The right to secede is beset by too many questions to be easily managed in modern international legal terms. First, it is necessary to identify the entity which shall enjoy this right. Individuals cannot claim it, because it is not purely a right of an individual human being, but the collective right of a people. But what constitutes a people depends on the definition. None of our humanities or social science disciplines, not to mention legal science, offer a precise definition of "people." And if a population does enjoy the right to secede from another state, the next question is in what legal form such a decision should be framed, and what procedures need to be followed to make it valid. If such a decision is to be made through a referendum, the kind of majority of votes necessary to be required needs to be defined: should it be the majority of the people seeking secession, or of the population of the specific area, or of the population of the entire state? Possibly the most complicated question related to the right of secession arises after the right has been conquered: How to distribute rights and duties, population, and assets, and liabilities between the original state and the seceding one? (MARTINENKO, 1996).

#### 3.1. Conditions for Secession

Hülsmann (2003) points out that, in most cases, the hegemonic power is much better equipped than the secessionist movements in terms of arms and machinery needed for violent conflicts. Consequently, secessionists must find the means to overcome hegemonic coercion, despite the central government holding monopoly over typical war material and 'war organizations' (such as the military). However, governments are never able to fully control the entire population, since the government always represents a minority within the entire 'society'. Thus, Hülsmann states, "hegemonic bonds exist because a majority voluntarily complies with them". It is the members of a coercive system that establish their own subjection, meaning that people choose by themselves to subject to a ruler.

People justify their own acceptance of hegemonic bonds, assuming that 'any change could possibly make it even worse'. Successful secession requires a previous transformation

of the people's political beliefs. Hülsmann vaguely says that "a substantial majority of the population' must strongly reject the present hegemonic bonds".

### 3.2. How to Achieve True Self-Determination: Hoppe, Hülsmann and Deist

Ludwig von Mises ([1944, p. 47](#)) already understood that "mass democracy is no substitute for a liberal society, but rather an enemy of it". Nowadays, by looking at the United States of America, it is hard to believe that a physically vast, multicultural state of roughly 330 million people, with very diverse economic, social, and cultural interests, can be properly steered by one central government which defines common laws and regulations, valid for all people living in that territory ([DEIST, 2016](#)). Both Hülsmann ([2003](#)) and Hoppe ([1993](#)) argue that self-ownership, self-determination, and decentralization need to be applied in all parts of the world, whether it is Catalonia, Scotland, Flanders, or South Tyrol. Hoppe, as well as Jeff Deist, believes that secession movements do not necessarily need to be backed by political mass movements, but should much rather focus on 'hyper-localized resistance' to the federal government in the form of a "bottom-up" revolution.

Hoppe states that force is justified in self-defence and, consequently, the use of democratic means is justified to achieve nondemocratic, libertarian, pro-private property ends: a bottom-up revolution shall use persuasion and democratic mechanisms to secede at the individual, community, and local levels, withdrawing consent from and fully ignoring the rules of the coercive rulers (the corresponding governments). ([HOPPE, 2003](#))

Deist states that nowadays, in countries like the USA, the road to secession cannot work if it begins directly on the national political level. Financial and human resources of libertarians, secessionists and anarcho-capitalists are simply too weak to significantly change the thinking of the majority of the society. From a Libertarian perspective, political change in today's Western society is not possible without a philosophical, educational, and cultural base for change. Hoppe envisions a growing number of "implicitly seceded territories" engaging in noncompliance with federal authority.

It seems advisable to engage in a policy of passive resistance and non-cooperation, by stopping to support the enforcement of federal law. The ultimate goal must always be complete self-determination at the individual level, granting each of us sovereignty over our lives. Ludwig von Mises ([1919, p. 34](#)) said "if it were in any way possible to grant this right of self-determination to every individual person, it would have to be done.

Secession begins with actions taken in our everyday lives to distance and remove ourselves quietly, non-violently, inexorably from state authority. In order to prepare for self-cultivation, people need to cultivate stronger personal relationships (while the state prefers atomized individuals without strong family structures or real-life social networks). People need to secede from state dependency by becoming more self-sufficient in regards to food, water, security – and certainly regarding economic/financial – and ultimately monetary independence. Independence from the mainstream public media, from public education, and public healthcare are also crucial to achieve true financial and mental independence from the central State's institutions.

### 3.2.1. Justification for the Use of Violence & Foreign Weapons

A very relevant aspect Hülsmann (2003) mentioned, but which could have been discussed in more detail, is the moral justification to use weapons and violence, in particular if said weapons for secessionist movements are provided by foreign, and potentially totalitarian, regimes. First, who can ultimately decide whether a government is violating the rights of its citizens, certain minorities or a few individuals? Which precise government behaviour justifies the use of mortal weapons against other human beings for the sake of “secession” and “self-determination”? By generally refusing any form of public order, vigilante justice/ arbitrary law and any form of violence in the name of “secession” seems to be justified against “the State” - and ultimately against its servants (e.g. Police officers). Hülsmann can certainly be seen as an economist and author who often points out his idea of a respectful, capitalist society of peaceful coexistence, but in this specific essay, he could have taken the opportunity to explain his thoughts on the justification of the use of violence more properly. Moreover, it is not clear whom the ‘secessionist guerrilla groups’ he mentions are actually fighting for: is it a fight of independent individuals who claim individual liberty and self-determination within a fully anarcho-capitalist society? Or is the establishment of a new separate State for thousands or millions of people the actual goal? If it is the latter, how can one ultimately guarantee that, within this specific territory, a majority of the population truly desires full political independence from the former hegemonic bond? This discussion also shows one more critical aspect which will need to be analyzed: Is it really the vast majority of a population who is asking for secession, or is it simply a very active, well-organised minority?

## 4. Hayek & the Extended Order

Friedrich A. von Hayek must be seen as one of the most relevant economists of his time (1899-1992). Some of his most important works focused on money and credit conditions and their impact on business cycles in the 1930s, but one must certainly also mention his analysis of the comparative efficiency of socioeconomic systems in the 1940s and 1950s. His most famous work, “The Road to Serfdom,” published in 1944, is an anti-socialist classic. It warns against the threat of tyranny resulting from governmental control of economic decision-making through central planning. Hayek’s latest work, ‘the Fatal Conceit’, written at the end of his long and impressive life, mainly approached one common theme: the nature and societal role of knowledge and information, and their corresponding use and misuse. Hayek (1944) stated that our civilisation depends on what can be described as the extended order of human cooperation, which is more commonly, if somewhat misleadingly, known as capitalism. Consequently, Hayek’s spontaneous order is a concept of unplanned social order, generated unconsciously by goal-oriented individual action, stating that these self-organizing social phenomena are transmitting more relevant information than any centrally steered, conscious design. Hayek’s thesis is that political/economic systems evolve just as organisms do: the fittest will survive. Such spontaneous orders do not arise from rational planning, and the fatal conceit is that planners can ever understand such an order at a comprehensive enough level to predict the consequences of centrally/artificially changing it. Moreover, people’s instincts and consciousness regarding “fairness” are suitable only for small communities which can agree

on goals, but lead to disaster when applied to large modern societies. Culture and society are not the product of human reasoning. The opposite is true as it is our culture and the evolution of society that defined our reasoning ([BOYKIN, 2010](#)).

The extended order of human cooperation plays a central role in Hayek's beliefs, which need to be understood and respected, to maximize prosperity and freedom of humankind. Hayek defines the "extended order" as a society based on a voluntary exchange within a free market, with limited government, property rights, and the Rule of Law. The extended order can be seen as a species of the "spontaneous order" process, being the result of human action but not of human design. ([HAYEK, 1988](#))

Hayek ([1988](#)) not only detects the major disadvantages, inconsistencies, and threats of any form of central-planning; he also synthesizes all free market theory into one concise concept of "spontaneous order". The basis of spontaneous order is that a stable and effective form of relationship can develop from evolved rules. These rules can be implicit, not explicit, and might not even be rationally justified. They develop without any conscious central planning and steering. Taking the examples of money, law, and language, all major aspects which have shaped most civilizations throughout decades or centuries came about by the process of spontaneous order. The most important of all such spontaneous orders is the extended order. Both, the evolution of the common law, as well as the evolution of the barter economies towards monetary economies can be seen as components of extended order.

#### **4.1. The Rule of Law**

The *Rule of Law* is the legal framework appropriate to the extended order. Hayek ([1979](#)) described it as a "political ideal", which requires that laws be more than just legally binding and temporarily valid regulations. There must be general rules, which are universally applied. Hayek distinguishes between "Law" and "Legislations". While true Laws are universal and can be discovered, actual "legislations" often and unfortunately are only orders defined by governments to control certain people/ groups. The state's power must be limited, only applying general rules to individuals, without the authority to oblige certain individuals to do certain things ([HAYEK, 1979](#)). Within the range of these general rules, individuals have the right to pursue their goals. Important to note that, to Hayek, equality refers to equality before the law; it does not mean material equality. However, Hayek considers the influence of interest groups in politics as a potential threat also to liberal governments and the extended order. Political parties can become coalitions of interest groups, imposing costs on the public. The rule of law can be violated once government intervenes in the market in order to support certain influential groups. Moreover, if a legislature, the institution that makes the rules, can distribute favours through its designing of policies, it violates the Rule of Law, serving special interests. In previous works, Hayek also defined an "ideal constitution", showing how the separation of powers might work most efficiently, limiting the influence of interest groups. Hayek proposes a clear distinction between laws and "commands", in a bicameral legislature with a "Legislative Assembly" and a "Governmental Assembly". Moreover, Hayek pointed out the importance to protect private property, as there is no true justice without property. A peaceful cooperation among individuals requires the recognition of private property by any political authority. ([HAYEK, 1979](#))

## 5. Comments & Criticism to Hülsmann's Thoughts

### 5.1. Secession as the Desire of the Majority: A Practical & Moral Need?

Hülsmann (2003) mentions several times that, in most cases, **“a necessary condition for successful secession is that a substantial majority of the population repudiates the hegemonic bonds... that a great number of citizens are in a secessionist mood”**. However, from a purely “operational & pragmatic” point of view, a government can also be inoperable if only a minority within the secessionist territory successfully prevents government officials and public servants from doing their job. An area can be rendered ungovernable without the support of the majority of the population. Moreover, secessionists can reduce the need for public support by maintaining secrecy and self-sufficiency. This means that unidentified individuals and small groups can be able to supply their own attacks, without a need for public support, for example, by ‘fleeing to the wilderness to become rural guerrillas’.

Hülsmann (2003) justifies secessionism if “a substantial majority of the population” supports it, vaguely stating that there is the need for an “ample popular support... to replace police, judiciary and public officials with individuals independent of central government.” However, one may very well argue that by constantly referring to “majorities”, Hülsmann justifies the entire democratic system, a system that can ultimately be considered “a dictatorship by majority”. It is not clear what “substantial majority” means – is it 51% or 67% of the entire population – or only of those that previously participated in a referendum or corresponding elections? Just like, at least from a military/ operational perspective, there is no need to actually have ‘the majority’s’ support to successfully overturn a (coercive) government, the simple fact of having “the support of the majority” does not guarantee that a freer, less coercive new secessionist State can be accomplished. Moreover, it is possible that “the new minority” will be treated much worse in the new secessionist state than the new State’s majority had ever been treated in the former “hegemonic bond”.

### 5.2. “What Majority?” – Secession & the Challenges of Self-Determination

The increasing strength of the independence movement in Catalonia has given rise to a direct confrontation between two opposing conceptions regarding the legitimacy of secession in democratic nation-states. On one hand, pro-referendum Catalans believe that a vote on the matter would be fully consistent with the basic principles of democracy. On the other, the Spanish government justifies its denial of a referendum on the legal authority of the Spanish Constitution, which points out that Spain must remain united. What is not sufficiently discussed in Hülsmann’s essay is how a peaceful secession could actually work from a political, sociological and constitutional perspective.

#### 5.2.1. Secession without entire Self-Determination?

Hülsmann (2003), who considers himself a libertarian, anarcho-capitalist, and, consequently, a supporter of complete privatization, does not clearly distinguish between self-determination and the secession of a territory. Moreover, it is not clearly stated whether he completely condemns the concept of “democracy”, whether every “democratic decision” is seen as a

coercive, unjustified and as a hegemonic ‘dictatorship by the majority’, even within a new secessionist State. ([HOPPE, 1989](#))

Hülsmann mentions the example of the Dutch-Flemish city of Baarle, which partially belongs to Belgium and partially to the Netherlands. However, Baarle must be seen as a very “soft”, and therefore not fully satisfying, example for “unproblematic self-determination” - both countries, Netherlands and Flemish-Belgium, share the same currency, the same language and belong in the European Union. Contrarily, the cultural, political, and economic impact of secession in the case of a (partial) independence of the Republic of Kosovo from Serbia, could be much more significant – in particular for the minorities living within the new secessionist State.

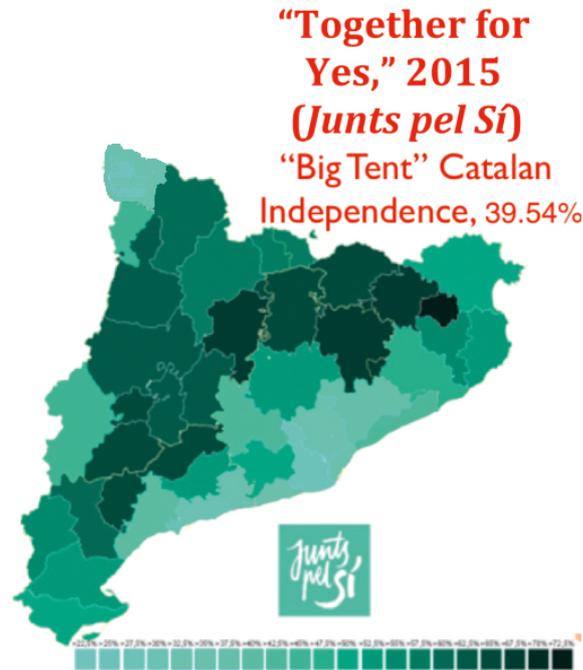
## 6. The Cases of Scotland & Catalonia

The recent refusal by the central Spanish government to consider any kind of referendum on Catalan independence contrasts sharply with the way the British government responded to Scottish nationalist aspirations. The “Edinburgh Agreement” between the British Prime Minister and the then first minister of Scotland to allow a binding referendum on Scottish independence stands in sharp contrast to the Spanish government’s outright opposition to a similar vote in Catalonia. Moreover, demands for self-determination are also still strong in Flanders (Belgium), as well as in South Tyrol (called ‘Trentino-Alto Adige’ by the Italians). Even in Germany’s Bavaria, in the Basque Country, and certain parts of France and Italy, separatist ideas have re-gained relevance. ([SIMMS; GUIBERNAU, 2016](#))

First, it seems crucial to clearly define to which geographic extent and in which political cases ‘secession’ can be – legally, politically, and morally - justified. What happens if opinions significantly differ by county, district or even by urban quarter within a territory which is generally considered as a stronghold of separatism? By looking at Scotland and Catalonia, we can see that even within these territories the ‘general opinion’ significantly differs by district when it comes to the idea of political independence. If Scotland had chosen independence in their past referendum, what (from a libertarian or anarcho-capitalist point of view) would have happened with those Scottish regions that heavily voted against independence?

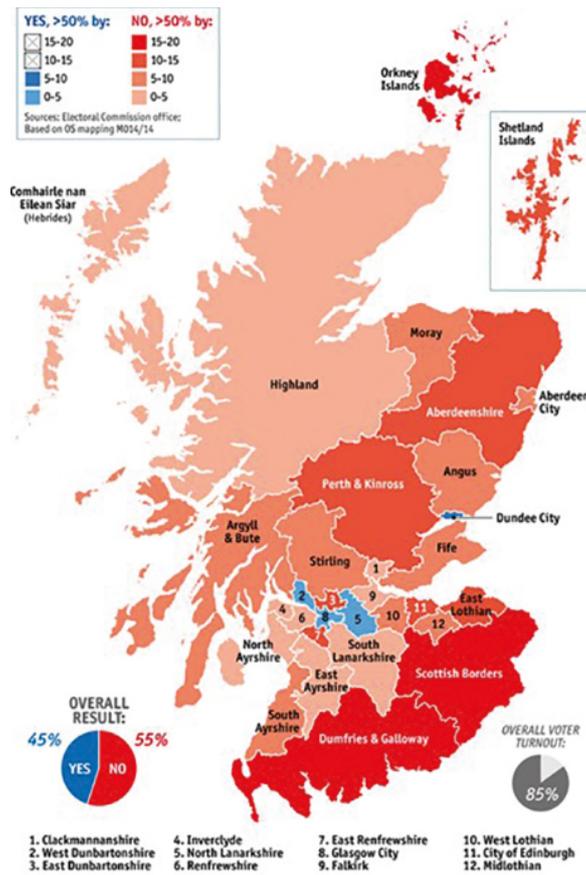
The same applies for Catalonia: it is important to understand the current situation by analyzing the main historic events, explaining “how we got to today’s crisis”. Towards the end of the 19th century, nationalism among the Catalan middle class had grown based on a sense of separate identity, due to a unique culture, including language, literature, architecture and music.

Also, Spain’s defeat by the United States in 1898 and the following loss of the last remnants of empire – Puerto Rico, the Philippines, and Cuba, which was a major market for Catalan exports – led to a growing political movement in Catalonia. Like their counterparts in the Basque Country, the Catalan elites were reacting to the failure of Spain’s central state to respond to their requests, including the desire for greater political recognition and a more liberal tax regime. In 1931, a new political party, the Esquerra Republicana de Catalunya (ERC), a Catalan separatist republican left-wing party, enjoyed success in the municipal elections. Simultaneously, the monarchy was swept away, and the Second Republic was established on 14 April 1931. Colonel



**Figure 1.** “Divided in Unity” – Variation on Support for Independence by Region. Support for the political Catalan Independence Movement in the 2015 Catalan elections – split by region.

Source: *The Economist* 2015, *Catalan Election Results 2015*.



**Figure 2.** The North-South-Split: Result of the Scottish Independence Referendum 2014

Source: *Wikipedia*, *Scottish Independence Referendum 2014 Results*.

Francesc Macià, the Catalan ERC party leader, immediately made a unilateral declaration of independence. However, the new Republican-Socialist coalition in Madrid managed to talk him out of this plan by promising a wide-ranging autonomy statute for Catalonia. Then in 1934, Lluís Companys, Macià's successor as president of the Generalitat, or government, of Catalonia, declared a short-lived independent Catalan state. Catalonia's quest for independence and Companys' success did not last long. Soon, Companys was imprisoned and accused of military rebellion. Thus, the roots of the 20th century political antagonism between Madrid and Barcelona were also seen in the civil war that broke out on 17-18 July 1936, when some sectors of the Spanish army rebelled against the legitimate government of the Second Republic. The rebels rejected democracy, the party system, separation between church and state, and the autonomy of Catalonia, the Basque Country and Galicia. Hostility to regional nationalism was one of the main motivations behind the military coup of July 1936, which ultimately put 'General Franco' into power. Franco's forces overtook region after region, leading to a considerable repression of civilians – not only in Catalonia. The industrialization of Catalonia and the Basque Country had left the most economically developed parts of the Spanish state politically subject to the less prosperous Castile. One of the first acts of the occupying forces was to ban the use of Catalan in public, and there were systematic property confiscations. Franco's victory led to the suppression of Catalan political institutions, the prohibition of all symbolic elements of Catalan identity, such as the national flag (the Senyera) and the Catalan national anthem ("Els Segadors"). The authoritarian state designed by Franco used brutal force also to suppress Catalonia, Galicia and the Basque Country within the Spanish territory.

For some years after Franco's death in 1975, things changed under the monarchy of Juan Carlos, who tried to create the image of a "king of all Spaniards". From October 1977 to October 1978, the three historic nationalities – Catalonia, the Basque Country and Galicia – were permitted autonomy statutes, and thirteen other regions were subjected to vaguer autonomy arrangements. In 1979, the (first) Catalan Statute was approved by a referendum and became law. In 1980, the first elections to the Catalan Parliament were held, won by the centre-right catalanist *Convergència i Unió* (Convergence and Union), led by Jordi Pujol, who would stay in power as Catalan President of the Generalitat for the next 23 years.

Within those years, the relatively slow transfer of powers from Madrid to Barcelona increased Catalans' dissatisfaction. Tensions grew, and the support for independence increased in Catalonia. After long negotiations, a new Catalan Statute was approved by the parliament in Madrid in June 2006. Although not all fiscal/ legal demands of the Catalan government were met, the principal Catalan parties (including the socialist PSC, but excluding the *Partido Popular/PP*) accepted the new Statute because it recognised that Catalonia was "a nation". The new Statute was also endorsed by the Catalans in a referendum. ([SIMMS; GUIBERNAU, 2016](#))

From 2003 to 2010, Catalonia was governed by the so-called *tripartit*, a coalition between 3 groups: the Catalan Socialist Party (PSC), the *Esquerra Republicana de Catalunya* (ERC) and the *Iniciativa per Catalunya Verds*, which itself was a coalition of Communists and Greens).

At the point of becoming law, the Statute was challenged on constitutional grounds by the conservative *Partido Popular* (PP). The case was referred to the Spanish constitutional court, and on 28 June 2010, the Spanish constitutional court revoked several clauses. It removed vital points from the Statute of Autonomy 2006 and declared them non-constitutional. The original

text's definition of Catalonia as a nation was replaced with the word "nationality", and eight references to the "indissoluble unity of the Spanish nation" were inserted in the text. According to the Spanish high court of justice, some of the statute's initial content did not comply with the Spanish constitution. This outraged many Catalans. It was also a major defeat for the moderate Catalan Socialist Party (PSC), and it boosted support in Catalonia for radical separatism. In 2014, the new Catalan government, led by Artur Mas, initiated an 'Independence Referendum', which was held in November 2014. Madrid declared the process illegal, but 'the referendum' was still held. The voter turnout was only 37 per cent, but the vote in favor of independence was 81 per cent. While separatists focused on the "strong support for independence" reflected in the 81% that voted "yes", those opposed to independence simply defined the 'referendum' as illegal, and not representative due to the low turnout. ([CRAMERI, 2015](#))

Tensions increased after the Catalan elections in September 2015, when the pro-independence coalition known as *Junts pel Sí* (Together for Yes) won a 40 percent share, being supported by the even more radical, ultra-catalanist and anti-capitalist Candidatura d'Unitat Popular (CUP), getting 8 per cent. Pushed by the CUP, the new nationalist coalition announced to hold 'a definitive referendum' on Catalan Independence in October 2017.

Spain's Prime Minister, Mariano Rajoy, had previously already announced that the Spanish state was entitled "to use any available judicial and political mechanism contained in the constitution and in the laws to defend the sovereignty of the Spanish people and of the general interest of Spain" ([REUTERS NEWS, 2015](#)). The preamble to the constitution proclaims the Spanish nation's desire to "protect all Spaniards and the peoples of Spain in exercising their human rights, their cultures and traditions, languages and institutions". Probably the most disputed articles are 2 and 8, which state, respectively, that "the constitution is based upon the indissoluble unity of the Spanish nation, common and indivisible patria of all Spaniards" and that "the army's mission is to guarantee the sovereignty and independence of Spain, to defend its territorial integrity and the constitutional set-up" ([SPANISH CONSTITUTION, 1978](#), p. 9). Rajoy's implication was clear: the country would remain united.

The evolution of the negotiating process between the Catalan and Spanish governments since the re-establishment of democracy in 1977 has recently led to a clearly deteriorating political relationship, in which the Spanish government has gradually renounced the accommodation of Catalan territorial demands. The Catalan plea to justify a referendum on political independence has been mostly based on the idea of a 'democratic Right to Decide', based on a "national right to self-determination". The demand for political independence has been legitimized by the democratic principle, arguing to defend the rights of 'the Catalan people'. The Greek word *demokratia* comes from δῆμος (demos, people) and kratos (power): "the people hold power". From a separatist view, the Catalans are "a people", and must therefore have the power to decide. In a modern democratic State, the Rule of Law and democratic legitimacy need to be reconciled, and cannot remain opposed in the long term. Levrat and Antunes ([2017, p. 139](#)) argue that if Spanish national authorities deny Catalonia the right to negotiate its Right to Decide within the Spanish political framework, "then the only path left for Catalonia's authorities is the call for a self-determination referendum". The recent escalation could have been avoided. Catalan separatism feeds off Madrid's centralist intransigence. Thus, although the Spanish President M. Rajoy legitimately insisted that the Spanish constitution did not permit a Catalan referendum

on autonomy, a constitution is certainly not ‘an eternal, immutable truth carved in stone’, but rather a document written at a specific point in time which is certainly open to amendments. Consequently, a constructive procedure could easily be started. The Spanish government could, for example, suggest that the original 2006 autonomy status shall be recovered, including the definition of Catalonia as “a nation” in the statute, and additional fiscal independence. To go a step further, one could possibly even set up a referendum on Catalonia’s independence, but only under specific conditions: a certain, clear majority (e.g. 2/3 of the votes = 67%) must be achieved, and a minimum voter turnout (e.g. at least 50 per cent) must be given.

However, we must generally discuss which individual political entities should be given the right to declare their independence unilaterally. Suppose Catalonia were to hold a referendum, and the overall majority of voters supported independence; however, most inhabitants of provinces such as Tarragona or Barcelona preferred to remain a part of Spain. To which state would these provinces belong? In the 2015, Catalan regional elections, parties opposed to Catalonia’s secession from Spain (Ciudadanos, PSC and PP) received a majority of votes and seats in some of the ‘comarques’ such as Tarragonès, Baix Penedès, Garraf and Baix Llobregat, including the city of Tarragona. Would these people, against their respective majority decision, be forced to belong to a potential new independent Catalonia? If so, what happens if, at a later stage, the citizens of Tarragona or Barcelona request a referendum for their own independence from Catalonia – or on possibly belonging once again to the Spanish state? To break this further down into the respective city districts: there might also be significant differences between the individual districts within bigger municipalities, such as Tarragona and Barcelona. What would be the “fair and proper” solution, if certain neighborhoods of Barcelona, like Gràcia and Les Corts, prefer to belong to Catalonia – while others such as Ciutat Vella want to belong to Spain?

### **6.1. Independence, Self-Determination and/ or Anarchy**

This question can be broken down into smaller units, by finally having individual referendums in every single village, in every neighborhood – until ultimately reaching the individual level of true self-determination.

Once ‘the right for secession’ is given to a certain region, allowing that region’s population to autonomously decide on their independence, without needing the support of the hegemonic bond’s majority population, there is no more moral or legal justification to prohibit any form of further secession movement – be it by individual districts, villages, neighborhoods – or even for each individual citizen. The example given by Hülsmann on the Dutch-Flamish city of Baarle cannot be taken as a general ‘best-practice approach’, as both the Netherlands and Flanders have the same official language, and both belong in the EU and the same currency zone – consequently differing only in a few specific aspects regarding their cultural, political, and economic structure.

In the case of a consistent and limitless right to secession, ultimately leading to complete self-determination, the households within one single street could potentially belong to a dozen different countries – or to no country at all.

Margaret Moore (2000), argues that a “slippery slope” could emerge as a result of the choice-based autonomy argument, as it could lead to the general questioning of any political unit. If, for example, the majority of Catalans chooses independence from Spain, certain districts within Catalonia that voted against independence might feel entitled to claim their own secession from Catalonia, in the name of the same principles which justified the independence of Catalonia.

Consequently, also Hülsmann (2003) fails to specify which groups of people can actually ‘justify complete secession’ from a ‘hegemonic bond’, as he does not indicate how self-determination should be achieved and how it should function economically and legally.

The issue of the Catalan ‘Right to Decide’ can legitimately be considered beyond the reach of the law. The discussion shall, therefore, be seen in political, ethical, or philosophical terms, and not exclusively in a legalistic perspective.

## 6.2. Avoiding a Pyrrhic Victory – An EU-controlled Scotland & a Socialist Catalonia?

Moreover, any secession always bears the risks that the new State will actually be less liberal and less capitalist than the hegemonic bond it previously belonged to. An ‘independent’ Scotland would very likely become part of the EU, potentially introducing the Euro currency. In Catalonia, the two most radical political separatist movements currently represented in the Catalan parliament are *Candidatura d’Unitat Popular* (CUP) and *Esquerra Republicana de Catalunya* (ERC). Both are left-wing parties, supporting in inner-Catalan issues more interventionism of the (Catalan) State on economic aspects. ‘CUP’ especially, but also the radical wing and the youth organization of ‘ERC’ openly pretend to set-up a “socialist & independent Catalonia’, combining patriotism with planned-economy ideas and collectivist populism. Historically, most separatist movements were initially based on the completely rational desire to protect one’s own cultural roots, language, religious beliefs or other traditions. However, throughout these processes for independence, an initially healthy combination of patriotism, cultural bonds, and the desire for freedom, has often been mixed with an aggressive populist nationalism which, unfortunately, often led people to support collectivist, anti-liberal secession movements. One might certainly respond that, ultimately, liberals will have to accept ‘the people’s democratic’ decision, because if the majority of the new State’s citizens prefer a coercive secessionist government, this is “the people’s” own choice. This argumentation, however, can only be justified if one believes in democracy, and the ultimate democratic concept of a “dictatorship by the majority”, since even within a new secessionist State there is certainly not “one public opinion”, but many different and autonomous opinions and desires, represented by the State’s individual citizens.

Huerta de Soto defends the concept of independent nations in an environment of free trade, based on the protection of private property. He argues that secessionism shall only be supported if the movement is based on the ideas of national liberalism, on free market concepts and the protection of private property (DE SOTO, 2008). However, these standards are difficult to apply in practical terms. In regards to Catalonia, a decision on the legality of a unilateral referendum would need to be taken years before the new country’s constitution could be finalized, and at a stage where no one knows how a future Catalonian government could be shaped ideologically regarding aspects such as taxation and free trade. Thus, the



**Figure 3.** Separatism Leading to Catalan Collectivism? Images from the Streets of Catalonia

*Source: Pictures taken in Catalonia, photographers and artists unknown.*

decision on whether “a territory’s fight for independence” is reasonable, will need to be taken before the future political and constitutional structure of that planned new State can be evaluated. Moreover, the political party ‘PDeCAT’, which used to belong to the liberal ALDE group in the EU-parliament, currently leads the separatist government in Catalonia. PDeCAT is a liberal and pro-European Catalan nationalist party, successor of the former ‘Democratic Convergence of Catalonia’, and representing rather liberal positions on several politico-economic, socio-political, and civil rights issues. Thus, Catalan separatism currently unites parties representing a rather civic, secular, liberal-conservative approach with far-left collectivist parties, such as the anti-capitalist, socialist CUP. Thus, at the current stage, it is impossible to predict whether a potentially independent Catalonia would be based on a rather liberal and republican constitution, or if it would turn into a socialist state. Whoever believes in Hayek’s extended order must also agree that such a “prediction” regarding the country’s future political, economic, and legal structure would simply be of no value at the current point. ([HAYEK, 1988](#))

## 7. The Right to Decide

Supporters of unilateral independence mention several sociological, philosophical, and even constitutional aspects to justify the Right to Decide. They often argue that

it flows from the liberal-democratic principle of individuals’ right to democratic self-expression, and that democratic political philosophy supports sub-state entities and corresponding referendums. In recent history, sub-state entities have challenged states’ constitutional orders by exercising the Right to Decide. Governing political parties in Catalonia, as well as organized grass root movements and NGOs, have intensified the idea that the citizens of Catalonia must decide their own destiny. But a growing dissatisfaction of many Catalans with the way Catalonia has been treated by the central Spanish government in regards to political, cultural and fiscal independence also fuels the idea. Levrat and Antunes ([2017, p. 139](#)) argue that the overarching reason to vote for independence in a referendum is founded in the democratic idea of the “Right to Decide” which embodies “a civic, democratic and liberal conception of a national project, rather than the materialization of the essentialist version of the right to self-determination of nations”. The polysemic motto of the ‘Right to Decide’ is therefore

based on democratic theories that provide a democratic approach to secession based on the right to individual self-determination. Thus, the Catalan right to decide involves questions of economic, demographic, linguistic, cultural, and political levels, ultimately asking for the right to define the institutional structure in which they want to live and evolve.

In contrast, “The (Spanish) Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all” ([SPANISH CONSTITUTION, 1978](#), p. 8). This wording was used by the Spanish Constitutional Tribunal to bar any claims that the Catalan people could be understood as a sovereign body.

### 7.1. Margaret Moore and the Three Major Types of Normative Theories

According to the political scientist Margaret Moore, of Queen’s University in Canada, three types of normative theories can justify the right to secession.

The first is the **just-cause theory**, where the right to secession is justified when an oppressed collective has been forced to belong to another oppressive one. The idea of an unjust annexation of Catalonia by the Spanish state may be difficult to use due to the fact that Catalonia became part of Spain three centuries ago, and no massive violation of human rights is currently caused by the Spanish institutions. ([MOORE, 2000](#))

The second option is based on the *Right to Decide on choice*, i.e. on the significant liberal idea of individual autonomy, where “individuals who are the members of a political community have a legitimate right to define the territorial limits of the collective in which they exercise their right to self-government”. In this approach, a direct link is established to individual autonomy, allowing an individual to join a group in the state of nature and the right to withdraw from it. This concept, however, would lead us to the already mentioned scenario in which, ultimately, smaller and smaller political entities could separate from a new, independent Catalonia, leading to true individual self-determination. From a libertarian perspective, this theoretical concept may be preferred, but it is far from being a realistic option from a short or mid-term perspective for the Catalan case.

Lastly, the third option mentioned by Moore is “the theory of collective autonomy”. It abandons the individual perspective, focusing on a communitarian approach of political subjects whereby groups enjoy a specific moral status. Self-determination can be correlated to the human right of certain, clearly defined groups. Such collective link between individuals can be based, for example, on a shared language, or a shared culture. In international law, this reasoning is connected to the “principle of the nationalities”.

Such justification can be applicable in the case of Catalonia, whose specific cultural characteristics are widely acknowledged, especially, from a legal viewpoint, in the Autonomous Communities Statute. Catalonia clearly has its specific history, an original culture, its own language, and has struggled for several years to push for an institutional evolution by peaceful and democratic means. Thus, the Catalans have built a strong collective project.

Nevertheless, the “collective autonomy” thesis can be confronted with several objections. One may argue that this perspective ignores “the spontaneous order”, downplaying the

fluidity of cultures and the possibility for them to evolve, by neglecting the fact that constant intercultural exchanges imply that no culture is self-contained and totally fixed. Moreover, the individuals who compose a group, might have “multiple selves”, many of them overlapping, meaning they may feel both Catalans and Spaniards. Still, the autonomy, or “democratic argument”, appears to be a premise that cuts across all the main theses that justify secession.

## Conclusion

According to Hülsmann (2003), any existing government can be seen as a compulsory territorial monopolist of ultimate decision-making and a compulsory territorial monopolist of taxation. As several other Austrian School economists have already explained before, it is obvious that such an institution cannot arise “naturally”, as the outcome of voluntary contractual agreements among individual property owners. The main purpose of all existing States is to grow bigger and to re-distribute and consume the wealth of its citizens. In this essay, Hülsmann generally questions that central governments could provide any type of service more efficiently than the free market. Apart from criticising the efficiency of public services, Hülsmann thoroughly analyses the general concept, benefits and possible implementation strategies of secessionist movements as such. The most relevant activity for any secessionist movement is the successful battle of ideas, and of political beliefs. The population needs to understand the importance and the legitimacy of secessionism. The focus must be on establishing a true private-property order, as it is counterproductive to rely on compulsory concepts. The necessary support of the people must be gained with constructive concepts.

From an economic point of view, Hülsmann considers competition between states absolutely positive. History has shown us that the fewer the remaining states (and the larger their individual territories), the less interest their governments will show in defending liberalism, civil rights, political transparency, and economic free competition. Secession must therefore not be seen as reactionary, but as utterly ‘progressive’, being economically efficient while also increasing linguistic and cultural diversity. Secession supports economic integration and development. A European continent consisting of hundreds of distinct countries, or even independent free cities, could lead to a panorama of more truly liberal governments that are economically integrated through free trade, leading not only to more social and political harmony, but certainly also to economic progress and development.

In regards to the specific secessionist movements in Catalonia, it is argued that democratic legitimacy at both Catalan and Spanish levels may exist, depending on the interpretation of the terms “demos” (people) and “nation”, and also depending on what is seen as more relevant: the Spanish constitution or the self-determination of the “Catalan people”. The issue of the Catalan ‘Right to Decide’ can legitimately be considered beyond the reach of the law. The discussion shall therefore be seen in political, ethical, or philosophical terms, and not exclusively in a legalistic perspective. In his ‘Proclamation regarding Nullification’ Andrew Jackson (1832) properly said that it is almost impossible for any secessionist movement to be constitutionally legal, as it is precisely the oppression by the larger coercive State that justifies the struggle for secession. Consequently, “secession, like any other revolutionary act,

may be morally justified by the extremity of oppression; but to call it a constitutional right is confounding the meaning of terms”.

When conflicting political legitimacies compete, there is a strong need for democratic authorities to negotiate. In a genuine liberal democracy, rule of law and democratic legitimacy need to be reconciled and cannot remain opposed in the long term. However, based on Hayek’s idea of the spontaneous order, we consider the natural evolution of the Catalan society, their desire for cultural and political independence as well as their quest for self-determination, as more relevant than eternally defending the current Spanish Constitution. Although the former Spanish Prime Minister Mariano Rajoy Brey legitimately insisted that the Spanish constitution did not permit a Catalan referendum on autonomy, a constitution is certainly not ‘an eternal, immutable truth carved in stone’, but rather a document written at a specific point in time, which may certainly be open to amendments. Catalan separatism has been fed by Madrid’s centralism, and one may argue that some of the secessionist emotions are steered by a frustrated Catalan ‘act of defiance’. However, contrary to the British Brexit movement, which was in particular supported by elder and rural British voters, in the case of Catalonia it is mainly young people, often urban university students, who push for secession. One can therefore expect that the number of Catalans who, for cultural (*e.g.* linguistic) reasons do not ‘feel Spanish anymore’, may rather increase throughout the next years. Thus, if Spanish national authorities keep denying Catalonia the right to negotiate its ‘Right to Decide’ within the Spanish political framework, then the only path left for Catalonia’s authorities seems to be the call for a unilateral self-determination referendum, ideally through a sovereignty negotiating process within the EU framework. Whether the current Spanish government under Prime Minister Pedro Sánchez Pérez-Castejón will give “the right to decide” to the Catalan people is rather unlikely. The socialist governors of several autonomous communities, such as Sanchez’ fellow socialist party member (PSOE) and former President of Andalusia, Susana Díaz Pacheco, have clearly opposed any further political independence of Catalonia. Meanwhile, as a counter-reaction to Catalan separatism and the socialist Spanish government, new centralist movements such as VOX are gaining notable support among Spanish voters, mixing anti-immigration positions with conservative values and the “need for a strong, united Spain”. It is highly-unlikely that from a short- or mid-term perspective there will be a “pro-referendum” majority in the Spanish parliament. Considering the strong influence of those PSOE party members which reject the concept of a “Catalan right for independence” and combining their parliamentary representation with that of the generally centralist anti-referendum parties such as PP, Ciudadanos and VOX, we believe that in the nearer future, it is unrealistic that such a referendum could be tolerated or even initiated by the ‘Cortes Generales’, the Spanish bicameral parliament. On the other hand, the cultural gap between the younger Catalan generation and the Spanish state seems to grow, not only due to the increasing political tensions, but also because in several rural areas of Catalonia many (public) school students have increasing difficulties in properly speaking and writing Spanish. When looking at the corresponding inaction of the European Union, another significant problem is the EU’s lack of a proper institutional framework to deal with Catalan demands to become a nation within the Union. The author of this paper, a German who studied in Madrid and worked for several years in Barcelona, believes that by trying to ignore or to postpone the

problem, insisting on “the Spanish constitution and the Spanish State’s sovereignty” will not resolve the crisis, but rather lead to its further intensification.

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