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The meaning of the self-determination norm

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Declaration

I, Ugljesa Lazarevic, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature *Ugljesa Lazarevic*

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Abstract

The self-determination is quite confusing norm to comprehend. The confusion around the norm arises because on one hand the norm entails a universe of human rights and values of freedom and equality and on the other, it has a wide penumbra of uncertainty and a number of inconsistent meanings. In regard to that, the thesis re-defines the meaning of self-determination using Rawlsian veil of ignorance and argues how uncertainty and confusion around the norm produce dangerous consequences for groups demanding rights under the norm. To support the assumption about dangerous consequences, the thesis covers the Catalonian 2017 independence referendum arguing how it was securitized by the Spanish central government.

Spain was criticized by the EU and UN for excessive use of police force and for violating human rights during the referendum. However, the thesis argues how it is precisely the reluctancy of international community to deal with the meaning of self-determination that produces these dangerous consequences. By proposing a new normative meaning conceived behind the veil of ignorance the thesis suggests how self-determination can be more cohesive than disruptive norm for the relation between states' authority and human rights.

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1. INTRODUCTION

Many independence groups and movements with intention to either secede or achieve greater degrees of cultural and political autonomy from the country they are a part of are similar in one regard: they call upon the principle of self-determination to legitimize their different demands (Brahms, 2020). The majority of these groups emphasize repressed position in a state as well as their unique identity as the political and cultural reason for the need to be independent, gain more autonomy or just to be more included in a political decision - making process." Today a multitude of indigenous, ethnic, and other groups have invoked the concept of self-determination in formulating demands against actual or perceived oppression of the status quo." (Anaya, 2004, p. 132). Archibugi (2003) also notes how different demands, often contradictory, have been "grouped under the single banner of self-determination" (p. 488). The self-determination norm is quite difficult idea and confusing legal norm to understand considering how it is interpreted and respected in some political scenarios but limited or rejected in others. The norm was publicly mentioned for the first time in Wilson's Fourteen-point speech in which he made a promise of "self-determination" for oppressed minorities ("Our Documents - President Woodrow Wilson's 14 Points (1918)", 2020). However, from then on self-determination received broader meaning. For example, in UN's Vienna declaration from 1993 "the right had arguably expanded to be assertable against a government that is unrepresentative of people who are defined by characteristics not limited to race, creed or colour." (Kirgis, 1994, p. 306). In addition to that, self-determination is a part of customary international law and it is supposedly "protected" in the UN Charter and International Covenant on Civil and Political Rights (Self-determination (international law), 2020). However, disputed rights to self-determination of different independence movements (in Biafra, Somaliland, Catalonia etc) have not proven that notion of protection to be reliable. The lack of clear explanation of the circumstances that would have to occur in order for people to demand their self-determination right makes it confusing to comprehend the conditions under which this right could/should be enjoyed. Moreover, confusion surrounding the definition and meaning of the norm often results in double-standard politics where for example one political group such as Kosovo Albanians is allowed to secede from Serbia through referendum, but the same right does not appeal to Catalans in Spain who demand their right to referendum and eventual secession to be respected and enabled. The self-determination is interesting and problematic norm because it is often treated through double standards. In one case the principle of self-

determination is proclaimed as legitimate right of peoples but in the other it can be perceived as something as dangerous as coup d'état. This thesis suggests a different approach to the meaning of the self-determination. An approach rooted in political philosophy, normative political theory and Rawlsian thought experiment called veil of ignorance. As a result of this, two important concepts will guide this thesis. First concept, the veil of ignorance will have a purpose of providing a new normative meaning to the self-determination norm, a meaning derived from hypothetical agreement between people. This new normative meaning will explain the reason why the self-determination norm seems so confusingly comprehensive and broad in terms of its content and scope. The second concept, securitization, will support the need for re-defining the norm by illustrating how in the absence of clarity in the meaning, the self-determination norm can be easily securitized and presented as a state threat. Catalonia's independence referendum will be used as an example of securitizing the right to self-determination. Finally, the aim of this thesis is to call for urgent re-evaluation of the meaning and scope of the self-determination norm, because although the norm is conceived to be just and fair, in reality its meaning is unclear in terms of international law which leaves states with the possibility to easily securitize it. Also, in order to better define the norm of self-determination behind the veil of ignorance, it is first necessary to explain its relation to the concept of statehood, and then to discuss states' lack of initiative in making the law of self-determination more precise and clearer (Saul, 2011). To the same extant, before discussing about how the right to self-determination of Catalans was securitized, the thesis will provide historical background of Catalans relation to Spain and a discussion about why Catalans changed their preferences from demanding autonomy to striving for secession.

1.1. RESEARCH QUESTIONS

The self-determination norm was chosen as a central subject for this thesis because researcher is under the impression that many political groups demanding independence or greater autonomy are treated differently. For example, while one group is allowed legally to have a referendum like Scottish people in UK through the 2014 Scottish independence referendum, others like Catalans in Spain are legally forbidden to have that right. Members of their independence movement were prosecuted for organizing the referendum in 2017. Also, the excessive use of police force against Catalan people during the referendum caused criticism from the global media. In addition to that, the idea that political demands concerning self-

determination can provoke harmful reactions from authorities had an influence on my decision to choose the norm as a central subject for the thesis.

First research question: What would the self-determination norm mean and imply if people were to define it behind the veil of ignorance?

Second research question: Was Catalonian self-determination referendum in 2017 securitized?

Third research question: Do confusion and haziness in scope and content of self-determination produce dangerous consequences for political groups demanding their rights under that norm?

The research questions of this thesis were formed and articulated in this way because the researcher was puzzled about the meaning of self-determination principle. The struggle with this puzzlement generated the abductive reasoning: "researcher may feel caught up in the puzzle and if there is an ensuing struggle, it is the researcher grappling with the problem of sense making..." (Schwartz-Shea, P., & Yanow, D., 2013, p. 28) The puzzlement and curiosity underlying this thesis were caused by the notion how different independence movements and autonomy groups use the same norm/principle to legitimize their different goals despite the norm being itself confusing in content, applicability and scope. This remark served as a starting point for the idea how confusion and haziness in the meaning of self-determination are producing dangerous consequences: Maybe there is danger for political groups who call upon the principle, because there is no clear international consensus on how to treat groups demanding rights under the principle. Therefore, states can treat the principle arbitrarily and, in some cases, regarded it as a security threat. Also, the suggestion underpinning my thesis is to improve the discourse and discussion around the self-determination, because otherwise many independence movements and autonomy groups will suffer politically or be prosecuted, or eventually succeed in their goals without the logic or legitimate explanation behind it.

1.2. OUTLINE AND STRUCTURE OF THE THESIS

The thesis' structure entails both, the normative analysis of self-determination norm and the case study (literature/discourse analysis) of the Catalonia's 2017 referendum. The first part of the thesis encompasses the normative analysis which has a purpose in reconceptualizing the meaning of self-determination through the Rawlsian veil of ignorance. The second part embodies the case study which has a task to explain how the self-determination right can be

securitized. Furthermore, the normative analysis will support the argument for re-defining the self-determination as a reconciling norm between states' authority and human rights. In addition to that, the case study will support the necessity of redefining the norm by showing how without the clear definition and certainty in content and scope, the self-determination norm can easily succumb to the process of securitization. On the one hand thesis will suggest the different meaning of self-determination using the normative vocabulary of Rawlsian veil of ignorance. On the other, the case study of Catalans' referendum in 2017 will show how Catalan's people right to self-determination was intentionally designated and proclaimed as a security threat under the logic of securitization. Finally, by offering a different meaning of the self-determination norm thesis calls for the re-evaluation of the norm by the international community.

The first part has three chapters. First chapter deals with the role self-determination has in relation to the concept of statehood. It revolves around discussion about the legal progression of the self-determination norm from a right of colonized people to the source of legitimacy for statehood. Second chapter deals with the confusion surrounding the norm which leaves the norm open for misuses in the sake of political purposes. In the third chapter the thought experiment veil of ignorance will be presented as the normative method for defining self-determination.

The second part of the thesis is also divided in three chapters. First chapter covers the historical aspect on the Catalans' relation to Spain, second chapter discusses the progression from Catalan autonomy political demands to demands for secession and the third chapter explains the securitization process behind the Catalan referendum for independence in 2017.

The first part of the thesis should be understood as a normative analysis of the self-determination precisely because its purpose is to answer the question of "what ought to be" the definition of self-determination. Second part dealing with Catalonian referendum and their right to self-determination exemplifies how that right becomes the threat which has to be dealt with employing police, law and in the end constitution to suppress it.

Before the first and second part of the thesis, conceptual framework, and methodology are introduced in order to explain the reason why the thesis is organized in this way. After the first and second part, one more chapter will follow analysing the findings, calling for the re-evaluation of the norm and explaining whether there are practical implications of the new meaning for international community. Finally, in the conclusion chapter, I will summarize the

thesis and explain its purpose in the context of normative and political status of self-determination and the dangerous political consequences (securitization) that lie ahead if the principle is left in haziness of its meaning.

2. CONCEPTUAL FRAMEWORK

"A general conceptualization of the social world is an integral part of any methodology. It defines what to think about and what to look at." (Leander, 2018, p.15). Following this line of logic, in this chapter the crucial concepts are presented and explained because they are helping tools in prioritizing what is important in this text. Also, the reason for their role and use in the thesis is explained and justified. The most important concept to be discussed here is the self-determination norm followed by the concepts of veil of ignorance and securitization. Deleuze and Guattari (1991) argue that all concepts have components and are defined by them. Drawing on their opinion Jabareen (2009) mentions several traits that concepts have such as history and interlinked components which make them relatable to other concepts. For example, norms have universal intrinsic value, and this component is also embedded in human rights which makes those two concepts (norms and human rights) relatable and open to comparison as well as distinction. This notion is important for the research because it supports the argument about how a certain norm and human right such as self-determination can fall under the concept of securitization. At first glance, those two concepts (Self-determination and securitization) are different in scope and meaning, however they both have a component of freedom. Saul (2011) defines the self-determination norm as a freedom from subjugation, while Wæver (1993) addresses securitization as a freedom from threat. Therefore, it is possible to relate those two concepts having in mind the case in which the self-determination turns into a threat under the concept of securitization and loses its own intrinsic value. Jabareen (2009) defines conceptual framework as a network of interlinked concepts that "provide a comprehensive understanding of a phenomenon or phenomena" (p.51). "A conceptual framework is not merely a collection of concepts but, rather, a construct in which each concept plays an integral role" (Jabareen, 2009, p. 51). In addition to this, concepts mentioned here play crucial role in grasping the intention of this thesis to emphasise the importance to define the meaning and normative status of self-determination.

2.1. THE NORM OF SELF-DETERMINATION

The norm of self-determination would not have emerged in international law without the idea that sovereignty lies within people. During the course of several centuries, sovereignty was often seen as belonging to a powerful individual "whose legitimacy over territory (which was often described as his domain and even identified with him) rested on a purportedly direct or delegated divine or historic authority…" (Reisman, 1990, p. 867). Mayall (1999) also notes how traditional societies were largely composed of dynastic sovereign states. Consequently, the border of states and patrimony of rulers could be changed either as a result of war, alliances through marriage or/and the acquisition of the title through inheritance (Mayall, 1999). The members of world politics were thus the sovereigns, not their populations (Mayall, 1999). However, during the French and American revolutions in eighteenth century this view on sovereignty was challenged and deprived of its credibility. Even before the French and American revolution, political philosophers came to challenge the conception of divine right by arguing how legitimacy of the governs actually comes from the consent of the governed. Significance of social contract theories of Hobbs, Rousseau and Locke lies in the implicit acknowledgment that justification is needed to legitimize sovereigns' reign. Although different in content and argumentations these theories recognize that the power of rulers is delegated through the consent of people. The self-determination norm presupposes a conception of sovereignty which traces all political power among people. The normative precepts of freedom and equality adduced in The French Revolution (1789) and American Revolutionary War (1775–1783) were early progenitors of modern concept of self-determination (Anaya, 2004). "The French Revolution itself affirmed a principle that had already been developing in the Anglo-American world, that is, that the 'source of all sovereignty resides essentially in the nation." (Lynch, 2002, p.422). Reisman (1990) argues how American and French Revolution initiated and inaugurated the conception that political legitimacy is derived from popular support meaning how a governmental authority is baseless without the consent of peoples in the territory in which a government purports to exercise power. The views on sovereignty started to change and this was necessary for the recognition and emergence of the self-determination. The self-determination norm depends on the acknowledgment that all political power and sovereignty comes from the peoples. But it was not until the time of the WWI that the term self-determination gained prominence in the international political discourse (Anaya, 2004). Prior to the involvement of US in the World War I Woodrow Wilson held a speech at

Congress in January of 1917 in which he claimed how there will be no peace without acknowledgment that political power of the authority comes from the consent of people. “No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property” (Wilson, 1917). Wilson envisioned self-determination as a self-government for all people (Lynch, 2002) and that idea served as a liberal ideological justification behind the USA aim and mission during The World War I. According to Hill (1995) Wilson claimed that Allies' objective was to free the many small nationalities of Europe trapped in empires of the Germans and the Russians. “He made this clear on January 8, 1918, when he announced the goals of World War I in his Fourteen Point Plan to a joint session of Congress.” (Hill, 1995, p. 121). “Wilson’s Fourteen Points were based on a major idea—the principle of self-determination, under which nationalities would have their own states.” (“Facing History and Ourselves.”, 2017). Wilson introduced the concept of self-determination to the League of Nation in 1919 as “the right of every people to choose the sovereign under which they live, to be free of alien masters, and not to be handed about from sovereign to sovereign as if they were property (Cass, 1992, p. 24) As a norm that presupposes how sovereignty lies within people, self-determination was embraced by both liberal western democrats and Marxists who viewed self-determination in association with Marxist precepts of class liberation (Anaya, 2004). In addition to that Saul (2011) claims how despite having many different dimensions the core meaning of the self-determination norm is freedom from subjugation. The self-determination norm conceptualized by Wilson had a role in justifying the breakup of the German, Austro-Hungarian and Ottoman Empires by serving “as a prescriptive vehicle for the redivision of Europe in the wake of the empires' downfall” (Anaya, 2004, p. 76). However, apart from using the self-determination norm to delegitimize imperial and colonial establishments of fallen Empires Wilson conceived the norm more in civic terms as a tool for advancing the rights and autonomies of people within independent states (Lynch, 2002). Nonetheless, many scholars criticized Wilson for articulating and embracing the idea of self-determination uncritically and without assuming that it might encourage the disintegration of multinational states (Lynch, 2002). To explain the relation between the colonialism and the concept of self-determination it will be helpful to present the two different aspects of the self-determination concept: external and internal. Anaya (2004) explains how the external aspect of self-determination promotes “the demise of colonialism and other forms of alien occupation” (p. 138). The internal aspect of self-determination, however, ensures that states allow its people to be in “control of its destiny”

(p.138). Iorns (1992) explains how before the US joined the war Woodrow Wilson addressed the internal aspect of the self-determination norm by equating the norm with the concept of self-government. “By equating self-determination with self-government - "the consent of the governed" - he equated it with democracy” (Iorns, 1992, p. 242). However, in the context of the war “consent of the governed also came to mean external self-determination: "the right of every people to choose the sovereignty under which they shall live free from foreign rule (Iorns, 1992, p. 242). Encompassing both aspects, internal and external, the meaning of self-determination norm can be interpreted in at least three different ways (Archibugi, 2003). The first meaning equates the self-determination with the right of colonial peoples to become a state. The second meaning contains “the right of minorities of a state (or more than one state) to become an autonomous (or to join another) state” (Archibugi, 2003, p. 493). Finally, the third meaning underpins “the right of ethnic minorities to benefit from certain collective rights” (p. 493.) Archibugi (2003) notes, however, that three different meanings are intertwined because, for example, people can “demand certain collective rights from its own state, and if such demands are ignored or repressed, it can claim political independence as a means of achieving such rights. This is the case of the Kurds” (Archibugi, 2003, 493). Following this line of argumentation, self-determination embodies three basic ideas; 1) there needs to be a group 2) concerned about its political status 3) thus exercising its “own choice with regard to its political future” (Cass, 1992 p. 24). But can this “exercise” in the political future allow ethnic minorities to secede from their “mother” state and form their own? Some scholars argue how international law should support “states’ efforts to preserve their territorial integrity so long as they do a credible job of protecting basic human rights but deny that states have the right to suppress secession when secession is a remedy of last resort against serious injustices” (Buchanan, 2007, p. 331). Other scholars explain how the self-determination norm is subordinated to the principle of territorial integrity (Ker-Lindsay, 2013, p. 838). “Except in cases of decolonisation, or in the event of the break-up of a state, the right of peoples to self-determination leading to independence has been heavily circumscribed” (Ker-Lindsay, 2013, p. 838). In addition to that, the norm of self-determination retains the reputation of being not just confusing in content, but dangerous in practice. Philpott (1995) describes self-determination as a controversial norm which critics usually blame for bringing war, economic chaos, and political turmoil caused by secessionist movements who pose the threat of taking away a larger state’s territory (Philpott, D. 1995). The confusion around the norm arises because on one hand the norm entails a universe of human rights and values of freedom and equality (Anaya, 2004) and on the other, it has a wide penumbra of uncertainty and a number

of inconsistent meanings (Cass, 1992). For this thesis, the most important is the substantive meaning of self-determination as one of the measurements of legitimate government. “Despite divergence in models of governmental legitimacy, relevant international actors at any given point in time after the creation of the U.N. Charter have shared a nexus of opinion and behaviour about the minimum conditions for the constitution and functioning of legitimate government” (Anaya, 2004). Anaya (2004) identifies the norm of self-determination in that nexus of minimum conditions for legitimate government. Anaya (2004) makes a distinction between two aspects of self-determination in the context of its substantive meaning. First one is constitutive aspect, and it requires from the governing institutional order to be the “creation of processes guided by the will of the people, or peoples, governed” (p. 81) Second one which Anaya (2004) defines as ongoing aspect, requires that the governing institutional order, “independently of the process leading to its creation or alteration, be one under which people may live and develop freely on a continuous basis.” (p. 81) These aspects of self-determination norm being one of democratic conditions for governmental legitimacy are compatible with the conception of the norm as being “assertable against a government that is unrepresentative of people who are defined by characteristics not limited to race, creed or colour” (Kirgis, 1994, p. 306). Kirgis (1994) explains how for “many years the majority of states in the UN General Assembly asserted that the expressed will of peoples to be free from colonial domination was the only face self-determination had.” (p. 305). Any attempt to encourage or legitimize dismemberment of state under the principle of self-determination was disclaimed by UN declarations. However, Kirgis (1994) notes important distinction between disclaims of the General Assembly's 1960 Declaration on the Granting of Independence to Colonial Countries and People and the disclaims conveyed in the General Assembly's 1970 Declaration of Principles of International Law concerning Friendly Relations and in the 1993 Vienna Declaration. The 1960s Declaration was clear on disclaiming any attempt of dismemberment of states as compatible with the purposes and principles of the Charter of the United Nations. However, the 1970s Declaration and the Vienna Declaration had a different formulation: “the disclaimer of any intent to authorize dismemberment of a state - the most destabilizing form of self-determination - is tied to the proposition of democratic government representing at least all the races, creeds, and colours within the state, or - according to the 1993 Vienna Declaration representing all people belonging to the territory without any distinction.” (Kirgis, 1993, p. 308). In other words, declarations do not approve of dismemberment of a state as long as it represents all its people (without distinction) within its territory. “The principle of self-determination represents an important movement away from the old legal view under which

international law rights pertain only to states and governments, and not to groups or individuals" (Navaz, 1965, p. 101). It is outside the scope and reach of this thesis to argue about whether the mentioned declarations on self-determination leave an open option of secession against authoritative states which are not representative of all of its people. Buchanan (2007) explains that international legal scholars appear to agree that there is no international legal right to secede under the self-determination norm except in two specific circumstances regarding (1) decolonization (liberation of oversee colony) and (2) the reclaiming of state territory which was subjected to unjust military occupation (Buchanan, 2007). "Some scholars would add a third circumstance: where a racial group has been denied meaningful access to participation in government" (Buchanan, 2007, p. 333) Nonetheless, for the thesis, the concept of self-determination based on the constitutive and ongoing aspects (Anaya, 2004) is important because it shows how the norm of self-determination can be one of the measurements of whether the government is democratically representative of all of its people and whether it allows people to live freely and develop on continual bases (Anaya, 2004). The constitutive and ongoing aspects of the norm will be used latter on in the thesis to explain the relation between governmental legitimacy and the self-determination.

2.2. THE VEIL OF IGNORANCE

The veil of ignorance is a thought experiment and concept developed by John Rawls in his influential and monumental book "A Theory of Justice" published in 1971. Freeman (2002) notes how Rawls had a widespread influence on academic community because of his controversial ideas. "A Theory of Justice has been translated into twenty-seven languages. Only ten years after Theory was published, a bibliography of articles on Rawls listed more than 2,500 entries" (Freeman, 2002, p. 1). Rawls had a major and crucial role in revitalizing the normative political theory. Emergence of positivism and behaviourism in the early twentieth century had a negative impact on moral philosophy proclaiming it useless, devoid of reality and involved in its own self-invented questions (Pogge, 2007). Bauböck (2008) also notes how the rise of positivism and law in the social sciences "shrank the space for normative political theory and prepared the ground for empirically oriented, behaviouralist political science whose explicit goal was to explain social and political facts without making value judgements" (Bauböck, 2008, p. 40) Having that in mind, "A Theory of Justice" was a turning point for

moral philosophy and its influence was also reflected in the social justice debates from 1970s and 80s. Pogge (2007) argues how "A Theory of Justice" was a formative event for 20th century philosophy because Rawls "showed how philosophy can do more than play with its own self-invented questions (Are moral assertions capable of being true or false? Is it possible to know that the external world exists?" (Pogge, p. 1, 2007). Opinions about moral philosophy changed and according to Pogge (2007) many people who read the book had the opinion how it is worthwhile to teach and study philosophy. "It became a paradigm, within academic philosophy, of clear, constructive, useful work, a book that made the profession proud" (Pogge, 2007, p. 1). Veil of ignorance is very important concept in Rawls theory, but its meaning is impossible to grasp without explaining shortly the main points of Rawlsian theory of justice. Rawls (1971) argues how each person possess "inviolability founded on justice that even the welfare of society as a whole cannot override" (Rawls, 1971, p. 3). In this sense, justice does not allow that the "sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many" (p. 3). However, even though these remarks about justice make sense intuitively Rawls thinks how they cannot explain what justice really is because they do not provide normative justification against the moral logic of utilitarianism. Utilitarianism would justify the sacrifices imposed on a few if they are outweighed by the advantages of many. Therefore, Rawls comes up with the thought experiment called the original position in order to define justice in terms of fairness. Rawls hoped that justice defined in terms of fairness would have a stronger moral value than utilitarianism to be the foundation of moral principles guiding our social order. "A social order is to be accepted as just if and only if it could be the object of a fair agreement—of an agreement that takes equal account of the interests of all the individuals who are to live under this social order." (Pogge, 2007, p. 66). To provide intuitive moral justification for defining justice as fairness Rawls creates the thought experiment called original position. Original position is a hypothetical thought experiment, and it invites us to imagine ourselves in the position to make a just social contract based on moral principles on which we all agree and will respect in reality. "The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair" (Rawls, p. 11, 1971). The essence of original position is rather simple and can be narrated as a story. We all have talents, ambitions, convictions, social/economic status but in original position, all of the sudden we find ourselves behind, what Rawls calls, veil of ignorance which makes us temporarily ignorant about our features while agreeing on a just social order (Dworkin, 1973). Dworkin (1973) explains how Rawls tries to show that if we are rational, and act only in our own self-interest, we will choose his two principles of justice if we are behind

the veil of ignorance. Two principles of justice "provide, roughly, that every person must have the largest political liberty compatible with a like liberty for all, and that inequalities in power, wealth, income, and other resources must not exist except in so far as they work to the absolute benefit of the worst off members of society" (Dworkin, 1973, p. 500) The concept veil of ignorance implies how we do not decide to be born in certain social circumstances or with certain agendas or preferences rather they are result of genetic lottery therefore they are morally irrelevant to agreement on a fair social order. "The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances" (Rawls, 1971, p. 11). Rawls defines justice in tradition of social contract and in that context "justice is conceived to be what persons would agree to under conditions for choosing principles to regulate the basic structure of society that are ideally fair." (Arneson, 2006, p.48). The purpose of veil of ignorance is to deprive us of knowledge we have about ourselves, about our intentions, gender, agendas, interests while making agreement about regulating principles. While agreeing about these principles in the original position we are trying to maximize our own self-interest without knowing who we would be in the real world; would we be the least well-off, unhealthy, marginalized or quite the opposite. Rawls (1971) argues how behind the veil of ignorance we would agree on the two principles of justice. First principles would mean that each person has an equal right to the "most extensive total system of equal basic liberties" (Richardson & Weithman, 1999, p. 9) and the second principle would mean how social inequalities would be allowed only if they are arranged "to the greatest benefit of the least advantage" (p. 9). This second principle is called the difference principle and it is considered Rawls's most widely visible contribution to the political philosophy (Richardson & Weithman, 1999). Rawls argues how the veil of ignorance is a guarantee that individual in the original position would maximize own's self-interest by having in mind that he/she could end up as anyone in the real world, a marginalized native Indian or as a rich Caucasian in US etc. "For example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle" (Rawls, 1971, p. 17). In original position veil of ignorance ensures that "no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like." (Rawls, 1971, p. 118). Rawls (1971) writes that the parties in original position would not even know the "conception of the good, the particulars of … rational plan of life, or even the special features of … psychology such as … aversion to

risk or liability to optimism or pessimism." (p. 118). The moral principles chosen behind the veil of ignorance are fair because individuals who choose it maximize their own self-interest without knowing who the "self" is; in that sense "self" is everyone we can think of. Therefore, the participants behind the veil of ignorance choose the moral principles that are equally good for everyone. Consequently, these principles of justice seem fair because justice as fairness protects everyone equally under its moral principles. Following that line of logic, it is obvious how the theory of justice could not work without the veil of ignorance; it is crucial concept for "A Theory of Justice". But concept of veil of ignorance can also work independently and be used in other studies involving ecology, economy, law etc. For example, Wolf & Dron (2015) use the veil of ignorance in their study about intergenerational sharing of non-renewable. Wolf & Dron (2015) write about "dictatorship of the present" explaining how the current generation utilizes non-renewable resources without considering the future of upcoming generations. Wolf & Dron (2015) argue how it would be different if a current generation decides about distribution of non-renewable resources behind the veil of ignorance. Behind the veil current generation would be ignorant about whether they are actually a current generation or a future one. Therefore, they would probably not agree "with the way the current generation depletes natural resources respectively overuses the Earth's sink capacities" (Wolf & Dron, 2015, p. 1). This is just one example of veil of ignorance being used in studies about contemporary burning issues such as utilization of non-renewable energy. For this study veil of ignorance is used for hypothetical agreement about what the self-determination norm and right should mean and encompass. In Rawls theory participants behind the veil of ignorance have no knowledge about themselves, but in this thesis participants in original position do have a sense of belonging to a certain ethnicity with its own culture and identity. However, the crucial knowledge they are ignorant of behind the veil of ignorance is whether they have a state (and constitute majority) or whether they live in other states (being ethnic majority) without their own. Defining and agreeing on the meaning of self-determination norm behind the veil of ignorance will provide that norm with stronger moral justification and meaning which can be comprehended in terms of fairness. The concept veil of ignorance is slightly modified for this thesis because participants in the original position would actually have a sense of belonging to a certain ethnicity, however they will remain ignorant about whether they belong to ethnic minority, indigenous group, 'historical nationalities' or a nation state. Finally, the thesis aims to show how even if self-determination is to be defined behind the veil of ignorance its meaning would still be broad and comprehensive although not as confusing and uncertain as it is in reality.

2.3. SECURITIZATION

Nyman (2018) defines securitization as the process "whereby issues are presented as security threats and, if relevant audiences accept these representations, emergency measures are enabled to deal with them" (p. 100). Also, Nyman (2018) explains how security is no longer layered and marked by the Cold War mindset; security is not primarily focused on military threats to state survival, the number and types of security issues has "proliferated since the end of the Cold War" (p. 100). However, the aspect of securitization important for this thesis is the one that uses the political theory of Carl Schmitt on sovereignty for the basis of securitization processes. Roe (2012) explains how Schmitt regarded sovereignty as being constituted by the ability to define the exception and sovereign as having power to determine "situations of emergency requiring suspension of normal rules and procedures" (p. 252). Although Schmitt's definition of sovereignty and his general political theory is a critique against liberal parliamentarism (Aradau, 2004) nonetheless some security studies theorists (Copenhagen school, CoS) use it as a definition of the process and concept of securitization. Ejdus (2009) notes how Schmitt's conceptualization of political as a domain of exception is similar to definitions of security as a domain of breakage from established rules through "obtaining legitimacy for extraordinary measures" (Ejdus, 2009, p. 9). In addition to that, reason behind using Schmitt's theory lies in the distinction between the normal policy of democratic procedures and rules (Roe, 2012) and the policy of exceptionalism embedded in the securitization process and used to contextualize a certain issue as a security threat, dealt with speedily and without barriers of slow legislative procedures. Moreover, Schmitt's distinction between "us and them/enemies" is reflected in extraordinary politics surrounding securitization. Williams (2015) defines politics of extraordinary as a declaration of existential threat which, if successful, creates the capacity for breakage of rules of "normal" politics. This policy of extraordinary and exceptionalism is often emphasized in academic discussions as an example to point out the negative aspects of the securitization concept (Aradau, 2004). For this thesis it is important to mark this aspect of securitization because it will be used in the explanation about Catalonian self-determination. Also, by addressing the Schmittian aspects of the securitization that were evident in Spain's exceptional response on the Catalan's referendum in 2017, this thesis argues for a process of re-evaluation of the self-determination right moving it in the area of normal politics. The concept of security in IR and security studies is commonly associated with alleviating threats to cherished values (Williams & McDonald,

2018). Additionally, Williams & McDonald (2018) note how security could be defined as a freedom from life-determining threats. Following this line of argument, Williams & McDonald (2018) remark how there are two philosophies of security; first one defines security as accumulation of power and as a commodity and the second one does not relate security to power but perceives it as a relationship between different actors concerned with "justice and the provision of human rights" (p. 6). During the Cold War security was mainly associated with state as a referent object of analysis and military security as its prioritizing sector. However, besides military security which is concerned with relation between offensive and defensive capabilities of states as well as how states perceive each other (Buzan, 1987) there are several sectors of security which have broadened the field of study. William & McDonald (2018) mention political security (focused on organizational structure and government of the state), economic security (centred around access to resources), societal security (revolving around preservation of national identity, language, culture) and environmental security (maintenance of local and planetary biosphere). "When security and insecurity are seen to rest on much more than military factors, then Strategic Studies will cease to suffer so much from distorted images and in inflated expectations" (Buzan, 2008, p. 257). As Buzan, Wæver & De Wilde (1998) explain theorists were dissatisfied with security studies being narrow and focused on military threats which was a consequence of the Cold War heritage. During seventies and eighties there were economic and environmental issues and during nineties attention shifted on transnational crime (Buzan, Wæver & De Wilde, 1998). Therefore, many theorists argued for widening the security studies and for including those different issues in spite of criticism that broadening the scope of referent objects and sectors might endanger the essence and meaning of security studies (Buzan, Wæver & De Wilde, 1998). Just as field of security studies got widened and broadened by incorporating above mentioned sectors of security same has happened to the referent object of security studies. Williams & McDonald (2018) explain how for a long-time referent object of security studies were states and security was synonymous to national security, however after the end of Cold War this view has been challenged. There is an ongoing debate about incorporation of different referent objects in security studies, some theorists argue about humans being one, others tend to name society as one and there is approach which incorporates individual identities and collective identities (civilization) as well as approach which prescribes the planet as the referent object of security (environmental studies) (Willliams & McDonald, 2018, p. 8). Insights gathered from this notion of incorporating more sectors in security studies as well as broadening the referent object, suggest that analysts are left to choose the sector and

therefore a referent object. With this choice a threat is identified to specific sector and referent object and that same threat is securitized: turned into a security issue to be dealt with.

"From Ebola to cyber hacks to ecological collapse, a wide range of issues could be – and have been – considered issues of security (Nyman, 2018). In the 90s a group of scholars developed securitization theory to address this phenomenon; their approached is referred as Copenhagen school of security studies (Nyman, 2018). Nyman (2018) points out to a division in security studies between traditionalists who strongly identified security with addressing the military threats to a state and wideners who wanted to incorporate other sectors of security like human and environmental security in studies. Securitization theory was developed to find a balance between these conflicting views. The theory "opened possibility that a range of issues could potentially be conceived and approached as security issues (a position advocated by wideners), while retaining a core focus on issues of survival and the role of powerful political actors…to the concern of traditionalists" (Nyman, 2018, p. 102). Buzan, Wæver, Wilde (1998) claim that security takes politics beyond normal rules and established procedures. According to them (1998), issue can either be non-politicised (which means that state, government and other political structures do not deal with it), politicised (issue goes through the political structure and decision is being made within a political system) and securitized (the issue poses existential threat requiring emergency measures without the normal political procedure of decision making). Usually explanation concerning which issues should be securitized and which left out to politics (desecuritized) is consisted of the notion that securitized issues have to be perceived as possessing an existential threat and therefore demanding emergent and immediate measures without regular political procedures to slow it down. However, security" is … a self-referential practice, because it is in this practice that the issue becomes a security issue—not necessarily because a real existential threat exists but because the issue is presented as such a threat." (Buzan Wæver & Wilde, J., 1998, p. 24). How does an issue get to be defined and labelled as security threat demanding extraordinary measures? Nyman (2018) explains by drawing on Buzan, Wæver and Wilde how securitization is the process that starts with language; to speak security is not just to describe it, it is an act itself, a speech act. "This makes a security a very particular type of language: like saying 'I do' at the weeding… the saying itself does something". (Nyman, 2018, p. 102). For Balzacq (2005) securitization is a meaningful procedure carried out through performative utterances which establish certain events as a shared concern demanding immediate measures. The example of securitization in practice can be found in the Unocal affair. Nyman (2014) argues how key actors (two US congressmen and

two committees: Economic Review Commission (USCC), and the House Armed Services Committee) sent a letter to White House in order to stop the Chinese partially owned energy company CNOOC from putting a bid to buy UNOCAL, a US energy company. In the letter they emphasized the threat coming from China which was described in terms of China wanting to endanger the American companies with their aggressive energy politics. Chinese bid was being described as a threat to US national, economic and energy security. Eventually in the House of Representatives the resolution was passed and called for presidential review of the bid in context of national security (Nyman, 2014). "Securitizing actors repeatedly endorsed emergency measures and linked CNOOC with the Chinese government, which they labelled as both aggressive and as a threat" (Nyman, 2018, p. 105). In the end, CNOOC withdrew the bit and US adopted an amendment to the 2005 Energy Policy Act which required a national security review on international energy requirements, predominantly targeting China. As Nyman (2018) explains, this example serves to show how a commercial acquisition bid moved from a non-politicised issue to a securitised issue which in turn created animosity and security crisis between US and China. Buzan, Wæver & Wilde (1998) argue how to designate something as a threat and ascribe it to the referent object there also needs to be an acceptance from an audience which will in turn legitimize the whole process. In other words, the discourse around designating threat is not enough, there needs to be a discourse of legitimacy in which ascribed threat will be recognized as such and audience's alignment will legitimize the usage of emergency measures in contrast to normal political procedures to tackle on the issue. Importance of the discourse of legitimacy in context of security serves to, in a way, democratize the securitization process by involving people outside the decision-making spectre. People demand explanations and they need to be persuaded as well as assured because their reaction whether affirming or not will also play a role in a decision whether an issue will successfully be securitized or not. Balzacq (2005) argues how successful securitization depends on securitizing agents' ability to identify with the audience's feelings/needs/interests. Furthermore, just as securitizing agents are not the same in context of the scope of influence and power they possess in securitizing an issue, the same applies to audiences. Balzacq (2005) makes a distinction between moral and formal support noting how moral support is important but not crucial in making securitization successful. It can be argued how moral support comes from ordinary citizens and non-governmental organizations while formal support for securitization needs to be provided by either Parliament, Security Council or Congress. Nonetheless, securitizing agents strive to gain moral support as well for immediate measures because "political officials are responsive to the fact that winning formal support while

breaking social bonds with constituencies can wreck their credibility" (Balzacq, 2005, p. 185). However, there are theorists who disagree with the notion that legitimacy coming from moral support is in any way making securitization more democratic and less in accordance with Schmittian politics. McDonald (2008) explains how Schmitt defined politics in terms of enmity and exclusion, "with sovereign's designation of threatening 'others' central to political life and allowing 'exception': the suspension of the normal rules of politics" (p. 578). Additionally, Schmittian view was incorporated in the security framework because it went along perfectly with securitization process: articulating threats and enabling 'emergency measures' by avoiding normal political procedures. Tying security with Schmittian theory is what makes it undemocratic and authoritarian precisely because of processes such as othering, exclusion, and extraordinary measures. This Schmittian logic of security gave an idea to some theorists to argue how it might be better to encourage the process of desecuritization: removing an issue from the securitized area and moving it to the realm of normal politics. Aradau (2004) claims how the speed required by the exceptional and extraordinary politics limits the chance of judicial opinion and public influences on executive decisions. Therefore, Aradau (2004) concludes how exceptional politics of securitization has a negative and dangerous impact on democracy and threatens to make the policy of extraordinary measures into a usual practice. Consequence of this exceptional politics is a process called othering. In the context of security othering (a process in which a person or a group creates a barrier between themselves and others who are perceived as being alienated or enemies) is a product of designating certain groups as a security threat. Aradau (2004) gives an example of rising criminality of migrants based on statistics that accounts crossing clandestine borders as a crime for comparison to other domestically committed crimes. Consequently "migration becomes connected with crime and continuity is then prolonged through the ethnicity of some migrants to organized crime" (Aradau, 2004, p. 9). Othering migrants demonstrates the exclusionary measures of Schmittian logic of security and non-democratic politics of securitization. The solution offered by some theorists to avoid issues being left in securitized area is an opposite process called desecuritization. Hansen (2012) agrees with the definition of desecuritization as the shift of issues from extraordinary politics produced by urgent measures to the normal bargaining processes of the public sphere and makes an important distinction suggesting how issue is moved to 'normal politics' (politicised) rather than to non-politicised sphere (state does not deal with it). For an issue to be politicised it means becoming "a part of public policy, requiring government decision and resource allocations or, more rarely, some other form of communal governance" (Hansen, 2012, p. 551). According to Hansen (2012), desecuritization also

changes the identities and interests of Self and Other, because it requires moving out an issue from the friend-enemy context. “To give an example, immigration discourse might be couched in 'civilised' terms where 'immigrants' are not 'threats', but for instance 'better helped in their own environments'.” (Hansen, 2012, p. 551). The aspect of desecuritization important for this thesis is what Hansen (2012) calls rearticulation. Hansen (2012) defines it as a process of removing an issue from securitized area to politicised by offering political solutions through democratic debates and practices. Aradau (2004) remarks how desecuritization stands as the democratic challenge to the Schmittian logic of security and how “it needs to create a different relation from the one of enmity, a relation which is not rooted in the exclusionary logic of security” (Aradau, 2004, p. 13). However, for conclusion it is worth mentioning that Schmitt’s political theory is conceptually and ontologically very different to the securitization theory developed by the Copenhagen school. Ejdus (2009) explains how Schmitt, inspired by the philosophy of Thomas Hobbes, believes in objective reality in which political world is intrinsically consisted of enmity and antagonism whereas CoS theory of securitization is ontologically based on social constructivism which defines world as a social construct built through performative language. Also, Schmitt thinks how politics of animosity and enmity is absolutely necessary in the political world whereas CoS views securitization as an answer to the failure of normal politics to deal with issues effectively. Nonetheless, despite acknowledging the conceptual and ontological differences this thesis argues how securitization is similar to Schmitt’s political logic, not conceptually, but in practice. In other words, within securitization process certain groups (in this case Catalans and their right to self-determination) viewed as threatening are perceived and constituted as enemies through speech act and dealt with extraordinary measures.

3. METHODOLOGY

3.1. RESEARCH DESIGN

In this segment discussion is provided on research design, data collection and limitations. Hopefully, this part will give answers to the questions about what research design was chosen and why, how was data collected and what limitations does this particular methodology have.

In the early stages of the thesis preparation, qualitative research method was chosen as a research strategy and design because it offered sufficient methods in answering the RQ’s.

Creswell & Poth (2016) explain how qualitative design method was developed in sociology by Barney Glaser and Anselm Strauss in 1967 as an answer to a problem of a priori theories limiting sociologists to incorporate in their research something they have learned along the way. Contrary to a priori theories usually used in quantitative analysis, qualitative design serves to implicate and suggest how theory is grounded and inductively reached. "… theories should be "grounded" in data from the field, especially in the actions, interactions, and social processes of people." (Creswell & Poth, 2016, p. 63). Also, Bryman (2016) argues how in contrast to the natural science's method of quantitative studies, in qualitative analysis emphasis is on understanding the phenomena through people's interpretations of it. However, criticism which qualitative analysis receives is directed towards its subjectivity in understanding and interpretating. Baglione (2018) notes how there is a misconception about qualitative analysis being just a story of particular incidents, although that can be argued for any kind of writing. "As any historian, journalist, and political scientist knows, whenever writers provide versions of events, they are including some information and leaving out other elements" (Baglione, 2018, p. 156). This approach of excluding and including information, in regard to the point researcher is trying to make, can also be considered as a process of prioritized selection. RQ's present criteria and guidance underlying and directing thesis' prioritized selection from the available data during research and as a result analytical focus stays sharp. In this thesis the formulation of RQ's in the early stages of preparation had conditioned the preference for the above-mentioned research design.

Having established the RQ, the next process that follows is creating a research design. "A research design provides a framework for the collection and analysis of data" (Bryman, 2016, p. 46). However, Maxwell (2012) argues how the issue to be considered when designing a qualitative study is the extent to which methods are decided upon in advance, rather than developed and changed during a research. Maxwell's notion concerns this thesis, because RQ and research design were developed before the research started but had to be changed and modified throughout the research due to practical reasons (explained bellow: Limitations). As mentioned before, the objective of this thesis is to explore the norm of self-determination through thorough review of different interpretations of it as well as through the normative thought experiment; no preconceived notions or a priori theories are involved in this thesis, emphasis is on understanding what self-determination means and what are the political consequences of its meaning. Therefore, in the absence of preconceptions, "learning along the way" is underlying thesis' research.

Combination of the normative analysis of self-determination with the case study of Catalonia's referendum in 2017 presents the essence of research design for this thesis. Creswell & Poth (2016) argue how case study is a qualitative approach allowing researcher to explore a case through in-depth data collection involving "multiple sources of information (e.g., observations, interviews, audio visual material, and documents and reports), and reports a case description and case-based themes" (p. 73) Bryman (2016) names several case studies that were influential in sociology studies; they involved a single community, a single school, a family, an organization, a person and a single event. Although, this categorization should not be interpreted here as a rule, for this thesis a single event (Catalan referendum) and a single community (Catalans) are chosen as a case study. Methodology of normative study for this thesis is conceived as analysis of different interpretations and stances that authors have on the meaning and law of self-determination. Also, in the tradition of normative political theory thesis offers a new answer to the question of "what ought to be" regarded as a self-determination. Case study embodies the historical review of Catalonia's relation to Spain, the distinctive Catalan's identity as well as repression Catalans endured during the referendum in 2017. Qualitative research design was chosen because the concept of self-determination is a normative concept, which means that it was not empirically discovered rather it was conceived and made up through various normative theories. Concepts like freedom, human rights, democracy etc. are normatively conceived concepts, and quantitative studies use them for, simply speaking, quantification by involving different variables for translating those concepts to percentages and numbers. However, since the aim of this thesis is not to quantify self-determination but rather to examine its meaning, qualitative research was chosen in order to provide the normative analysis with an empirical background (case study).

3.2. DATA COLLECTION

Maxwell (2012) argues how qualitative researchers do not develop their main research questions until they "have done a significant amount of data collection and analysis" (p. 78) Although, the topic for the thesis was conceived before my research started, research questions were articulated after reviewing the different literature on self-determination and reading articles and history books on Catalonia's independency movements and aspirations. Primary and secondary sources were used in data collection. According to general categorizations,

primary sources can be diaries, treaties, government documents, interview speeches, newspaper articles, video recordings while secondary sources can be books, biographies, research articles, dictionaries, dissertations, political commentary… (UNSW Library, 2020) Primary sources are created when some important events occur; they are first-hand account on event. (UNSW Library, 2020).

For this thesis primary sources were essential in writing about Catalonia's referendum. Speeches, video recordings documents, journal articles reporting about referendum were used because they were crucial for understanding how Spanish government reacted on referendum and why did it react the way it did. All in all, primary sources were mostly used in the second part of the thesis where it was important to gather data on actual event and first-hand accounts on the event were crucial to establish empirical background for thesis' theoretical assumptions. Secondary sources (sometimes in combination with primary) were used in regard to the first part of the thesis where self-determination is reviewed as a concept through different articles, books, and treaties/documents (primary source). For data collection and research, google scholar and NMBU's library database were used extensively. Articles and books on self-determination are vast in numbers, however the ones chosen for this thesis were usually analysing the meaning of concept and its political implications and more so problematizing it. For primary sources online newspapers which covered the referendum event were used as well as video reports on the use of police force during voting. Also, speech made by Spanish president Mariano Rajoy as a response to the events of Catalan referendum was used as the important empirical evidence for the process of securitizing the self-determination right. Credibility of sources was checked using parameters of relevance and date on google scholar and in discussion with my supervisor.

3.3. LIMITATIONS

In the early stages of thesis preparation, it was planned to conduct survey and have interviews with supporters of Catalan independence movement. This would have meant speaking with Catalan people about how they perceive pro-independence aspirations as well as how they have experienced the referendum in 2017. Also, they would have been questioned about their identity, culture and opinions on self-determination and their familiarity with the norm. Researcher would have been in Barcelona, the capital of Catalan autonomous community,

conducting a survey on the streets. However, since restrictions on travels due to COVID-19, this survey and interviewing method could not have been conducted at the time when it was crucial to gather data for research. Therefore, researcher relied only on primary and secondary sources for thesis. Because this limitation happened during the thesis preparation, I have changed my thesis to emphasize how normative analysis of self-determination is crucial in the research along with the tradition of normative political theory analysis. Absence of interviews which could have provided my research with strong empirical data about perceptions regarding the norm of self-determination influenced the decision to choose normative theorizing in analysis of the norm instead. Overreliance on secondary sources has limited my goal to answer the research questions fully and provide sufficient empirical data to support my notions. Additionally, criticism which normative political theory receives about its lack of methodology are also appliable to my thesis; in the absence of sufficient methodology this thesis suffers from being involved in too much theorizing without empirical evidence to prove its conclusions. Also, Queirós, Faria, Almeida (2017) argue, how regarding limitations in case studies, there is difficulty to establish cause-effect connection in reaching conclusion and "it can be hard to generalize, particularly when a small number or case studies are considered" (p. 377).

FIRST PART

4. NORMATIVE ANALYSIS OF THE SELF-DETERMINATION NORM

In this part the thesis will offer the normative analysis of the self-determination norm. Firstly, the relation between the norm and the statehood legitimacy will be explained and examined. Understanding the norm as an important element that consolidates statehood legitimacy is a theoretical precondition for an attempt to propose a new normative meaning of the norm using the concept of veil of ignorance. Also, the thesis will justify its attempt to propose the new normative meaning by exemplifying uncertainty, haziness and confusion that surround the meaning and the law of self-determination. The underlying theoretical aim of the first part is to illustrate the progression of the norm from the freedom of subjugation of colonial people to the normative reconciliation of the states' authority and peoples' rights. Therefore, this part elaborates on the attributes and meanings ascribed to the norm of self-determination throughout the history, emphasizes the contradictory nature of these attributes and meanings, and finally suggests the solution to the question of "what ought to be" the meaning of self-determination.

Also, using the Rawlsian vocabulary in suggesting a new normative meaning of the self-determination should be understood in terms of moral political exercise on our intuitive beliefs. If people were not aware about how a certain conceptualization of the self-determination might affect their particular position in life; on what meaning of the norm would they agree on to stay secure and acquire rights?

4.1. THE SELF DETERMINATION NORM AS A TEST FOR STATEHOOD LEGITIMACY

The self-determination norm gained wide recognition as a principle of international law when Woodrow Wilson addressed it in his speeches to acknowledge political will of peoples in the aftermath of World War I. But it was not until the end of World War II that the concept acquired status of a legal norm in the United Nation Charter in 1945 (Sterio, 2013). From then on the legality of the norm was affirmed through various UN resolutions. Sterio (2013) defines the self-determination as a legal right of international law allowing "people" to attain a certain degree of autonomy from its sovereign. The principle of self-determination was first embedded in a major treaty with adoption of UN's Charter after the World War II in 1945 (Sterio, 2013). This happened at UN's founding conference in San Francisco. "In Article 1(2), the United Nations Charter provided that one of the purposes of this organization was "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" (Sterio, 2013, p. 10). Interestingly, it was the Soviet Union that introduced the "principle of self-determination" into the UN Charter. "This secured the Soviet Union the approval of the colonial regions" (Fisch, 2015, p. 191). However, the Charter did not impose direct legal obligations on member states, nor did it grant a right to minorities to separate from their "mother" states or the right for colonized peoples to achieve independence" (Sterio, 2013, p. 10). In spite of that, Roman (1998) notes how various resolutions of General Assembly adopted shortly thereafter "invoked the principle of self-determination and further explained its importance and applicability" (p. 946). For example, Roman (1998) explains how Resolution 545, adopted in 1952, is particularly significant because it recognizes "the right of peoples and nations to self-determination as a fundamental human right" (p. 946). Roman (1998) argues how progression of the self-determination from a principle to a fundamental right "led to adoption, in 1960, of the Declaration of the Granting of Independence to Colonial Countries and peoples" (Roman, 1998, p. 946). This declaration proclaimed that it was

necessary to bring colonialism to an end in all its forms and manifestations (Roman, 1998). However, although the 1960s declaration called for the end of colonialism still the Declaration was very clear in stating that any attempt "aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations" (Kirgis, 1994, p. 306). Also, in 1966 the norm of self-determination was "espoused in two additional treaties: The United Nations Covenant on Economic, Social, and Cultural Rights and the United Nations Covenant on Civil and Political Rights" (Sterio, 2013, p. 11). Sterio (2013) notes how under the Covenants the right to self-determination attained new meaning "the right became a continuing one, an obligation on behalf of the Covenants' member states to respect a people's right to some form of democratic self-governance" (p. 11). The treaties made two different formats for the right of self-determination, one for non-colonized ethnic minorities and the other for colonized people. The treaties granted colonized people to freely decide their international status and political fate, they were free to form an independent state or associate with another state. However, the same rule did not apply to non-colonized peoples. They were entitled to establish a form of internal governance within mother state but not to seek independence. "Unlike non-colonized peoples, colonized ones could rely on the Covenants to exercise their right to self-determination and to seek a legal separation from their colonizer through remedial secession." (Sterio, 2013, p. 11). Kirgis (1994) notes how at first, the principle of self-determination was primarily understood and perceived as a freedom from colonial domination, "at least when domination is of people of colour in their homeland by other racial groups" (Kirgis, 1994, p. 305). Sterio (2013) explains how by 1970s the right to self-determination entailed the choice for colonized peoples to freely decide their future status. "If various ethnic groups lived in a single colony, their right to self-determination had to be exercised as a whole, with all ethnic groups uniting to a single "self" that corresponded to the entire territory of that colony" (Sterio, 2013, p. 11). Sterio (2013) explains how within the context of decolonization the self-determination norm gave right to colonized people to form independent states in the place of former colonies. However, whether the governance of the new founded state was repressive and nondemocratic was not relevant to the self-determination principle (Sterio, 2013). In addition to that, Kirgis (1994) confirms how The International Court of Justice endorsed the principle in anti-colonialist form in its 1971 Advisory Opinion on Namibia and in its 1975 Advisory Opinion on Western Sahara, "where it defined the principle as "the need to pay regard to the freely expressed will of peoples." (Kirgis, 1994, p. 305). "For many years, the majority of states in the UN General Assembly asserted that the expressed will of peoples to be free from colonial domination was

the only face self-determination had" (Kirgis, 1994, p. 305). However, as Koskenniemi (1994) explains limiting the norm of self-determination to decolonisation seems arbitrary because the original notion developed over time was meant for universal applicability. Kirgis (1994) agrees while noting how the General Assembly in 1970, pressured by the West, expanded the concept beyond anticolonialism. "In its Declaration on Principles of International Law concerning Friendly Relations, the General Assembly said among other things that emergence into any political status freely determined by a people constitutes a mode of implementing the right of self-determination" (Kirgis, 1994, p. 305). The 1970s declaration discouraged any attempt which would dismember territorial integrity of governments accordant with values of freedom and equality and representative of "the whole people belonging to the territory without distinction as to race, creed or colour" (Kirgis, 1994, p. 306). As mentioned in previous chapter, this declaration is very clear in disclaiming attempts to disrupt territorial integrities of the states which comply to democratic values of non-discriminatory representativeness, but it does not however make the same disclaims about the states which might be authoritative and have discriminatory policies. Also, Sterio (2013) confirms how the 1970s Declaration defines the self-determination norm outside the decolonization context by stating how states "enjoy the right to territorial integrity, except if a state's government does not represent "the whole people belonging to the territory without distinction as to race, creed or colour" (Sterio, 2013, p. 12). Interpretating the self-determination norm through the 1970s Declaration means that states consolidate and guard their integrity against any action of dismemberment by respecting and representing peoples as a whole without any distinctions whatsoever. This view can prompt other scholars to conclude how "political legitimacy conjoined with the standard interpretation of the principle of national self-determination implies that, if the laws… are unjust enough to the people, then the people… have a right to secede, but if they are not sufficiently unjust, they do not" (Wellman, 1995, p. 147). In addition to that, for this thesis it is important to acknowledge that governance based on just laws, non-discriminatory policies and political representativeness is required in order for the norm of self-determination to be respected. In this way the right to self-determination has a much broader role outside the decolonization context because it can put political legitimacy of a state to the test. Also, values linked with the self-determination comprise "a standard of legitimacy against which institutions of government can be measured" (Anaya, 2004, 137). Sterio (2013) notes how subsequent UN declarations adopted in the 1990s, affirmed the right to self-determination for groups outside colonial context, including linguistic, national, or cultural groups (p. 12.) In addition to that, the Vienna Declaration adopted at the World Conference on Human Rights held by UN in 1993 disclaimed

all actions to disrupt the integrity of any government which is "representing the whole people belonging to the territory without distinction" (Kirgis, 1994, p. 306). The 1960s declaration protected and legitimized the territorial integrity of states unconditionally but the declarations from 1970 and 1993 tied their claims of protection concerning the territorial integrity to the condition related to democratic capacity of governments to represent all peoples without distinctions. In addition to this, Kirgis (1994) concludes that "if a government is quite unrepresentative, the international community may recognize even a seriously destabilizing self-determination claim as a legitimate" (p. 310). The progression of the meaning of self-determination through the legal framework presented here underpins the commitment of international community to democracy under which protection of the people's rights is distribute equally. It seems that international law developed the applicability and content of self-determination by tying it to the government based on democratic principles. "Under this view, self-determination for non-colonized peoples entails a right to self-government within the larger mother state; inherent in such self-government is the idea of meaningful choice for any people to democratically elect its representatives" (Sterio, 2013, p. 13). Anaya (2004) argues how self-determination is extraordinary among human rights norms "in its concern with the essential character of government structures, a concern which may extend to the point of enjoying them to yield authority or territory" (p. 136). Anaya (2004) also notes how the meaning of self-determination extends from the core values of human freedom and equality "expressly associated with peoples instead of states and affirmed in a number of international human rights instruments" (p. 136). In regard to that, self-determination should be understood as being universal in scope benefiting, not sovereign entities as such, but all segments of humanity (Anaya, 2004). Roman (1998) explains how self-determination is fundamentally enshrined in human rights precepts which treats people as equally entitled to control their own destinies. Based on principles of human freedom and equality the self-determination norm is "at odds with colonial rule or similar forms of foreign domination" (Roman, 1998, p. 945). Koskenniemi (1994) notes that there are even some theorists who regard self-determination as a legal-constitutional principle "that claims to offer a principal (if not the only) basis on which political entities can be constituted…" (p. 246) "The centrality of the State to the political order becomes comprehensible only if we regard it as the formal, political shell for which nationhood provides the substance" (Koskenniemi, 1994, p. 246). However, despite the notion that self-determination norm entails a standard of governmental legitimacy based upon human freedom and equality (Anaya, 2004) still the idea of self-determination as a justification of statehood is not accepted by some scholars to be valid or even apparent (Koskenniemi, 1994). Koskenniemi

(2004) explains how classical positivist writings had only accepted States as the "factual foundation of international law" (p. 246). The meaning of self-determination as a democratic precept and measurement of political legitimacy of the statehood is it odds with the fact that international law does not recognize a right to live under a democratic regime, "many states today are not ruled by democratic governments" (Sterio, 2013, p. 15). During the formulation of 1970s Declaration many states were worried about broad articulation of the self-determination norm because of the negative impact it could have on existing state boarders (Sterio, 2013). Sterio (2013) writes about the negotiation record during the 1970s Declaration passing and how it "shows that numerous states apprehended the creation of a general right of self-determination. In addition, the text of the Declaration demonstrates the ambiguity with which states viewed the right of self-determination outside the decolonization context." (Sterio, 2013, p. 14). This view suggests how states do not recognize self-determination norm as a test to statehood nor a measurement of political legitimacy because international law does not recognize a right to live under democratic regimes as a requirement for legitimate statehood. Furthermore, Grant (1998) notes how the Montevideo convention is often the most cited "textual basis for statehood" (p. 413). The Montevideo convention on the Right and Duties of States is a treaty signed by nineteen states in 1933 at the Seventh International Conference of American States and since then it "has been a primary point of reference in efforts to define statehood." (Grant, 1998, p. 414). In order for a political entity to be regarded and defined as a state the Montevideo Convention espouses several requirements: 1) permanent population 2) clearly defined territory 3) effective governmental control over territory state possess and 4) the capacity to enter into relations with other States (Davids, 2020). "At the crux of the Montevideo criteria lay the concepts of effectiveness, population, and territoriality" (Grant, 1998, p. 416) However, Davids (2020) argues that Montevideo criteria is not enough to provide a sufficient basis for statehood. Because if Montevideo criteria is all that matters for statehood, any warlord or group with enough force could carve out a new State simply by controlling a territory and population (Davids, 2020). In addition to that, Grant (1998) gives the example of UN declining to recognize Rhodesia, despite fulfilling all the Montevideo requirements, because it had laws based on a racial ideology. Furthermore, Davids (2020) thinks how if Montevideo criteria were enough to explain what makes a state it would encourage any group that wants their own state to assert control over land and population. One of the requirements for statehood can be a recognition from other states (Davids, 2020), however adding this requirement would blur the distinction between "what it takes to be a state and what it takes to get other states to recognize a state as such" (Grant, 1998, p. 445). This distinction is important

because it implies how Montevideo criteria for statehood were agreed upon because they are basically descriptive concepts derived from the characteristics of already established states. However, if one political entity wants to gain recognition from other states it would not be enough for it just to resemble the physical and descriptive aspects of those states: territory, population, effective control, capacity to cooperate with other states. Although these physical and descriptive aspects do explain what it takes to be a state still they would not be enough for other states to decide whether to legitimize a statehood of some political entity or not. Hypothetically speaking, even if Spain and Catalonia agreed on Catalans independence, Catalonia fulfils the Montevideo criteria and secedes, still UN member states would have much difficulties to recognize Catalonia in case it was based on discriminatory, racial laws or totalitarian regime repressing the lives of its population. This is because many states will inquire a governments treatment of its people in their decision about whether to recognize a potential new state or not. "The will of the people shall be the basis of the authority of government" (UN General Assembly, 1948). However, as Grant (1998) points out it is rarity in international politics that statements/treaties/resolutions on sensitive matters such as the definition of a state are modified and changed after being passed. The Montevideo Convention defines state narrowly, drawing only on physical aspects of existing states without mentioning a governmental treatment of its population as a possible criterion. Milenkovic (2013) argues how Weberian definition of the state as a monopoly of the legitimate use of violence has progressed into a definition of a state as a human cooperation whose function is to serve the common good in interest of public welfare. This progression has been supported and triggered by the internationalization of human rights. Archibugi (2003) claims how as a result of that "in the course of the last half century, we have seen progressive erosion of the oligarchic power that states had acquired in international politics" (p. 491). Archibugi (2003) suggests how the notion of people's rights is in tension with sovereign states, especially if peoples seek secession under the banner of self-determination right, "but this does not necessarily imply that each self-proclaimed "people" should become a state" (p. 491). Even if states are not ideal political solution to serve the needs and rights of peoples (Archibugi, 2003) still the idea of redrawing the frontiers of states to make each state for each people is unthinkable. However, Archibugi (2003) argues how it should be "impossible to form a new state without preventively guaranteeing the rights of groups which, in the state to be, would constitute ethnic minorities" (p. 498). To the same extant, states which are not respecting the rights of different ethnicities inside their borders would lose the legitimacy for their statehood. In addition to that, Koskenniemi (1994) argues how the intention of UN law was to domesticate self-determination

limiting the secessionist/independence claims to colonial situations and otherwise "treating self-determination claims as claims for the advancement of human rights of the individual members of various national groups" (p. 257). As Archibugi (2003) argues the fight for territory might "become much less fierce if, before discussing the possible formation of new states or the modification of frontiers, the contending parties were to agree on guarantees designed to protect individual and collective rights." (Archibugi, 2003, p. 498). How each state addresses and treats different political demands under the banner of the self-determination right is a test to its statehood legitimacy. All the different ethnic groups that have different political demands (secession, autonomy…) under the banner of the self-determination norm are still citizens of their "mother" state and their state should treat their rights to self-determination as any other demands and claims, "evaluating their validity according to realistic, functional and humanitarian measures" (Cass, 1992, p. 31). Understanding the self-determination norm as a test for statehood legitimacy is necessary theoretical precondition for defining the norm in terms fairness behind the veil of ignorance. But why should we define the norm of self-determination at all?

4.2. CONFUSION, HAZINESS AND UNCERTAINTY AROUND THE SELF-DETERMINATION NORM

Some theorists think how supranational institutions based on cosmopolitan legal order need to be involved in resolving conflicts caused by different political demands under the norm of self-determination. "But even without a cosmopolitan legal order, the parties to self-determination claims ought to accept the principle that their claims have to be examined by impartial institutions" (Archibugi, 2003, p. 503). However, Cass (1992) argues how international law is in a state of uncertainty and confusion when it comes to the self-determination norm (p. 22) but according to Saul (2011) haziness and confusion around the meaning of the norm can actually explain why states are reluctant to "publicise their views on the scope and content of the norm" (Saul, 2011, p. 609). Cass (1992) thinks how the uncertainty and confusion about the norm of self-determination exist on two levels. First level embodies unanswered questions about whether the norm is a principle of politics, a tool for secessionist claims, or simply a norm of international law. Second level deals with questions about who can demand the right to self-determination, is the norm applicable to everyone or only to a certain category of people and, if so, what is the real scope of the self-determination norm (Cass, 1992). Saul (2011)

agrees how clarity on the meaning of self-determination as a legal norm “is perhaps hindered more than other norms by the controversial nature of the topic” (p. 611). The reason for this lies in the fact that states rarely share stances on the scope and content of the self-determination in their resolutions, reports, documents etc (Saul, 2011). Fox (1994) describes the self-determination norm as a concept “increasingly at war with itself” (p. 733). “One finds in respected legal authorities statements asserting both that achievement of self-determination is a crucial prerequisite to a peoples' enjoyment of all other human rights, and that the traditional understanding of the right as a vehicle for independent statehood has been rendered essentially meaningless” (Fox, 1994, p. 733). Drawing on the international law, Cass (1992) makes a distinction between the “conventional” and “controversial” version of self-determination. “Conventional” version places the norm only in the colonial context asserting how self-determination right is only applicable to people under the foreign rule. In the “controversial” version self-determination extends beyond the colonial context. Cass (1992) argues how there is a list of growing examples against “conventional” version where a right to self-determination has been recognized by other states in spite of not fitting the colonial context. “This list of examples includes the Baltic States, Croatia and Slovenia, and recent Israeli statements regarding a Palestinian right to limited self-government, to name a few.” (Cass, 1992, p. 38). Uncertainty in the international law regarding when the right of self-determination applies is rendering the norm “incapable of application to the wide variety of situations it is being called upon to mediate” (Cass, 1992, p. 38). Reducing the content, applicability, and scope of self-determination to “conventional” meaning should be deemed as inadequate practice because it does not “provide neither a description of, nor a prescription for, the behaviour of states in international relations” (Cass, 1992, p. 40). The contrast between the evidence of self-determination being recognized beyond colonial context and the conventional law on self-determination “has led to an unacceptable level of uncertainty in the application of the law.” (Cass, 1992, p. 40). However, Saul (2011) argues how it might be possible that states intentionally allow some confusion and vagueness to exist in the law of self-determination because in that way the law “permits a broad range of plausible interpretations and is therefore able to accommodate unforeseen circumstances.” (Saul, 2011, p. 621). It might be possible that many states intentionally deter from making the legal meaning of the self-determination right more determinate because if states behaved according to the legal right of self-determination as a peremptory norm, “any treaty that contravened an aspect of the right would be void” (Saul, 2011, p. 612). Moreover, Saul (2011) mentions the example of International Court of Justice (ICJ) receiving request from UN General Assembly to provide advisory opinion on the matter

of the self-determination right of Kosovo Albanians in the light of Kosovo secession in 2008. In order to prepare advisory opinion ICJ invited states to submit oral statements on the issue at stake. “State submissions are particularly important when the question asked of the Court relates to an aspect of law that attracts a divergent range of views on doctrine.” (Saul, 2011, p. 616). Saul (2011) argues how the choice a certain state makes when disclosing about its views on a particular aspect of international law could not only influence how the Court interprets the law, but “it might also influence whether the Court even addresses an aspect of law in the first place” (p. 617). In regard to Kosovo Albanians right to self-determination US adhered to reveal its views on “the scope and content of the law of self-determination in its submissions to the Court in relation to the Kosovo” (p. 617). Despite the fact that other states, for example Albania and Netherlands submitted their opinions on the issue arguing how Kosovo has a remedial right to self-determination, US did not clarify its views on the law of self-determination for that occasion. “This suggests that the US was aware that this policy of no direct expression of its views on the meaning of the right to self-determination strengthened the persuasiveness of its call to the Court not to consider the law of self-determination” (Saul, 2011, p. 617). Ker-Lindsey (2013) argues how, for the last sixty years international community sought to limit and regulate the right of self-determination. Instead of allowing people to secede from established states, except in limited cases associated with decolonisation, international community would rather that self-determination is defined in terms of autonomy and self-government withing existing states (Ker-Lindsey, 2013). However, Ker-Lindsey gives the example of the recognition of Kosovo independence by powerful western states to suggest how the West exempts itself from established rules concerning the self-determination norm but demands that everyone else continues to follow the established principles. (Ker-Lindsey, 2013). Ker-Lindsey (2013) argues how even if international community accepts that Kosovo “does represent a hitherto unseen coming together of various factors, these factors do not create a justification for setting aside the principles and norms of international relations in entirety. “(Ker-Lindsey, 2013, p. 854). Sterio (2013) claims how Kosovo case presents an insightful example of how the Western states remain unwilling to come forward with the new normative rules on self-determination, despite being willing to recognize Kosovo as a new sovereign partner. Recognition of Kosovo independence demonstrates how the West is putting aside established rules on secession and the self-determination in one case such is Kosovo but prevents other states from being able to apply the same rationale in their own cases (Ker-Lindsey, 2013). This notion can be supported by the argument Saul (2011) is making about how the states are actually allowing a high degree of uncertainty and unclarity in the law on self-determination

because this leaves the opportunity for them to accommodate their views differently on each case. Saul (2011) gives the example about the Yugoslavian crisis in the 90s when Croatia and Slovenia declared independence in 1991 and how many European states had to make their opinions known on the matter. However, European Commission opted for setting up an Arbitration Commission (known as the Badinter Commission) "to provide a forum for relevant authorities to submit their differences" (Saul, 2011, p. 622). But the commission was not created for states to publicly speak up about the issue and neither were the opinions expressed by the Badinter Commission legally binding. "The creation of the Badinter Commission reduced the need for interested states to publicise their own views on the meaning and relevance of the law of self-determination" (Saul, 2011, p. 622). Ten Opinions that the Commission issued during the breakup of Yugoslavia never had any direct reference to the law of self-determination, "in spite of the obvious centrality of consideration on self-determination to the situation" (p. 623). The Commission left an open question about whether the Republics "would have had a case for secession based on the law of self-determination" (p. 623). Saul (2011) concludes that uncertainty in the law of self-determination contributed to many "human tragedies the world has witnessed in the post-World War II period by giving false hope to minority groups that they have rights to autonomy or independence against the states in which they are found…" (Saul, 2011, p. 626). As shown here, states are not very forthcoming about their views on what the meaning of the self-determination right really is. When norm is kept ill-defined, "states retain a leeway to resist claims that they are acting in breach of their self-determination obligations" (Saul, 2011, p. 641). In addition to that, Roman (1998) claims how the self-determination norm has been unevenly and unfairly applied since its onset. When the norm turns out to be inconsistent with the Western powers' political agenda it has no effect whatsoever for people who make claims under the norm. (Roman, 1998). Even since the beginning when Woodrow Wilson publicly embraced self-determination, the norm was subordinated to other concern. "For instance, the Treaty of Versailles of 1919, which was signed between Germany and the Allies, conferred territories to the newly created states of Poland and Czechoslovakia without consulting with the populations that occupied the new countries. Likewise, the peace treaty of 1919 with Austria conferred Tyrol Alto Adige to Italy without consulting with the native inhabitants of that territory" (Roman, 1998, p. 952). In the aftermath of the World War I, League of Nation authorized a mandate for its members to govern former German and Turkish colonies. "Article 22 of the League of Nations Covenant called for advanced guardians over certain colonies and territories that were deemed to be incapable of self-rule" (Roman, 1998, p. 953). In addition to that, Roman (1998) argues how

the self-determination norm was under the Eurocentric paternalistic framework and therefore the norm was not applicable to the people of the "third world" who were "entrusted to the tutelage of 'Advanced Nations" (p. 953). "As a result of World War I, German and Turkish possessions were transferred to Australia, Belgium, Britain, France, Japan, New Zealand, and South Africa under the Mandate System's sacred trust principle." (Roman, 1998, p. 953) Proclaimed at first as the principle by which to re-draw national boundaries, self-determination instead "confirmed the sovereignty of the previously-dominated states, with very few changes in their boundaries" (Iorns, 1992, p. 242) The self-determination norm for colonial peoples received the same paternalistic treatment after the Word War II. Roman (1998) explains how in the same year that the Atlantic Charter was drafted, Winston Churchill informed the House of Commons that the principle proclaimed in the Charter "did not apply to colonial peoples, especially those who reside in India, Burma, and other parts of the British Empire" (p. 954). UN Charter retained the paternalistic mandate through implementation of Trusteeship System. The former colonies and conquered territories of defeated Axis powers were put under the supervision of Allied forces. "Chapters XI of the U.N. and XII established that self-determination for nonself-governing and trust territories was to "proceed at a pace dictated by the colonial administrators". (Roman, 1998, p. 954). In other words, self-government depended on particular circumstances in which the varying stages of advancements were followed and supervised under the tutelage of 'Advanced Nations". Nonetheless, the self-determination norm did have a remarkable impact on the re-mapping of the world in the post-Second World War environment despite being under supervision of European powers. "The principle led to the dismantling of much of Britain's empire and lead to the independence of nearly one billion persons" (Roman, 1998, p. 955). However, the notion how the right of self-determination is equally distributed and universal has not been proven true in reality. For example, freed from the British rule independent India used its military resources and conquered Kashmir denying the right to self-determination of Kashmiris. "Other examples of the disregard of the right of self-determination include Indonesia's absorption of West Irian, the annexation of the Western Sahara by Morocco, and Indonesia's forceful incorporation of East Timor as part of its territory." (Roman, 1998, p 956). This is a clear example of unequal and unjust treatment of self-determination norm. The disintegration of Yugoslavia also shows the same logic of unequal distribution of the self-determination rights. While Croatia and Bosnia were recognized as independent countries in the 90s under the right of self-determination, the same rule did not apply to Croatian and Bosnian Serbs who were demanding to stay within Yugoslavia. The confusion around the self-determination remains because of the unwillingness

of the states to provide the law of self-determination with precise meaning in terms of not only the content but also the scope, and applicability. Concerning the scope and applicability, scholars differ in opinions about who is the "self" in the term self-determination. "At its narrowest and most positivist, the argument is that self-determination entered international law only as a rule of decolonization, and its formulation and application in international law preclude any definition of 'peoples' broader than colonies" (Knop, 2002, p. 54). Iorns (1992) explains how this concept of self-determination illustrates its connection to territory and not to "participatory forms of government chosen by the people" (p. 243). "It was considered to apply only to nationalities - to whole (potential) nations - and not to minorities within "nations"" (Iorns, 1992, p. 243). This narrow conception of the norm is incomplete because it does not acknowledge "the larger context of multiple patterns of human association and interdependency" (Anaya, 2004, p. 143). If the norm of self-determination should stay relevant in today's world it must be treated as generally applicable human right accounting for "the multiple and overlapping spheres of human association and political ordering that actually exist" (p. 143). However, as Buchanan (2007) notes the self-determination norm is a term "loaded with dynamite" because of its potential to provide justification for secession and autonomy demands. "Most large-scale violent conflicts now occur within states rather than between them, and in many cases of large-scale intrastate conflict, self-determination is an issue – sometimes - the issue." (Buchanan, 2007, p. 332). One of those intra state conflicts has occurred in Spain between the Spanish unionists and Catalan separatists. Guinjoan & Rodon (2016) argue how peoples support for Catalan secessionist claims came gradually as a reaction on Spain's rejection to allow Catalonia to expand its self-governing rights. During the nineties and early 2000s Catalan population supported demands for greater autonomy but "after 2008, however, Catalan's preferences radically veered. The secessionist option became the first territorial preference" (Guinjoan, & Rodon 2016, p.54) In 2003, the Catalan government was working to reform the Statue of Autonomy, which is the law regulating Catalan self-government. Support for the reform came not only from the main Catalan political parties but also from the majority of Catalan citizen. "… the reform pursued an increase in the scope of influence of Catalan institutions and a new fiscal system that would eventually grant more resources to the regional government" (Guinjoan, & Rodon 2016, p.55). Spanish federal parliament vote in favour of the bill on the reform, although with many cutbacks concerning expansion of the self-governing right. However, "several Spanish actors brought the Statute of Autonomy to the Constitutional Court, which also turned down many other key passages" (Guinjoan, & Rodon 2016, p.55). After these events, the demands on self-government were

eventually replaced by the preferences for secessionism as Guinjoan & Rodon (2016) claim. It can be argued how Spain does not represent its people "as whole without distinction" because it had denied the right to greater autonomy for Catalans. Therefore, it opened the opportunity for Catalans to demand secession having no other alternative. However, as this chapter has shown, it is impossible to argue either for or against secession or even greater autonomy under the self-determination norm because of obvious presence of confusion, uncertainty, and haziness in the law of the norm. Moreover, states themselves are reluctant to take initiative in effort to make the self-determination norm more determinate and clearer in the context of international law. Despite of that, this thesis relies on the Anaya's (2004) constitutive and ongoing aspects of the self-determination; the core values of these aspects on the norm are freedom and equality translated into a "requirement that individuals and groups be accorded meaningful participation, commensurate with their interests, in procedures leading to the creation of or change in the institutions of government under which they live" (Anaya, 2004. p. 145). Having that in mind, how would we define the self-determination norm in terms of fairness behind the veil of ignorance?

4.3. THE SELF-DETERMINATION NORM BEHIND THE VEIL OF IGNORANCE

Rawls (1971) starts the opening chapter of his "A Theory of Justice" in the following manner: "Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust." (p. 3). Using Rawls' inquiry on justice, we can formulate a slightly different argument placing a state in relation to justice. If we are to firmly believe how justice is the first virtue of social institutions than we can argue how a state, despite being capable in controlling its land, imposing authority over its population, and cooperating with other states, must be reformed, and delegitimized if it does not have just laws and institutions. Why should a state have just laws and institutions if not to regulate its organizational and administrative affairs justly in order to ensure equal distribution of wide range of human rights to its citizens in compliance with fair rules. In turn citizens provide the basis for the states' authority through universal and equal suffrage. The Universal Declaration of Human Rights (UDHR) defined the will of the people as the "basis of the authority of government; this will shall be expressed in

periodic and genuine elections which shall be by universal and equal suffrage… (General Assembly, 1948, Article 21). UDHR has been characterized as one of the most important documents of the 20th century representing an effort to "create an international political morality with legal and institutional backing". (Nickel, 1987, p. 3). Along with the UDHR document, UN charter represents a commitment of all UN member states to incorporate shared values in their own legal frameworks. Fassbender (2009) notes that defining the UN charter just as an international treaty "would not do justice to its outstanding importance in post-war international law" (p. 2). "In accordance with that view, the first commentary on the UN Charter considered the possibility of the Charter being 'a constituent act of the peoples of the United Nations … rather [than] an agreement freely entered into between governments" (Fassbender, 2009, p. 3). Furthermore, the UN charters' impact on the global politics lies in the process of the internationalization of human rights. Welch (1991) argues how for more than three hundred years the dominant paradigm in international law regarded states, not their citizens, as its subjects. However, Welch (1991) notes that "the incredible excess of state power manifested through the aggression of World War II started to transform the paradigm" (p. 536) and resulted in emergence of supranational awareness of the safety and well-being of citizens (Welch, 1991). "It is an essential part of the core program of the Charter 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". (Fassbender, 2009, p. 102). One of the shared values embedded in the core program of the Charter is the principle of self-determination. "According to Article 1, paragraph 1, it is one of the purposes of the UN '[t]o develops friendly relations *among nations* based on respect for the principle of equal rights and self-determination of peoples" (Fassbender, 2009, p. 102). UN was established as the formal successor of the League of Nations in an effort to prevent future wars by generating consent on the basic human rights. In addition to that, one can even argue how the prevention of future wars depends on the protection of human rights. However, the agreement on protection of human rights based on some supranational treaty seemed to challenge the sovereignty of states. "In fact, to help justify the radical penetration of the State monolith [in the name of protecting human rights], the Charter in effect justifies human rights as a State value by linking it to peace [among states] and security" (Henkin, 1990, p. 214). Nonetheless, the principle of self-determination seems to be one of the norms which is at odds with states' sovereignty. Example of this divergence are the particular formulations of the 1970 Declaration on Principles of International Law concerning Friendly Relations and of the 1993 Vienna Declaration where the protection of states' sovereignty was tied to the proposition of democratic government representing all

people belonging to the territory without any distinction (Kirgis, 1994). The stances of these declarations are compatible with the constitutive and ongoing aspects of self-determination (Anaya, 2004). "The norm of self-determination…promotes an ongoing condition of freedom and equality among and within peoples in relation to the institutions of government under which they live, a condition today substantially defined by precepts of democracy and cultural pluralism" (Anaya, 2004, p. 156). Consequently, in order to be recognized and respected, constitutive, and ongoing aspects of the norm require a government based on just laws, non-discriminatory policies, and political representativeness. "… since the atrocities and suffering of the two world wars, international law does not much uphold sovereignty principles when they would serve as an accomplice to the subjugation of human rights" (Anaya, 2004, p. 161). However, in reality, there are many examples of human rights violations concerning ethnic minorities in certain states and yet sovereignty of those states is not disputed by the international recognition of the rights to self-determination. The most recent examples being Rohingya Muslim minority in Myanmar, Kurds in Turkey, Armenians in Azerbaijan, Palestinians in Israel. Anaya (2004) gives the example of indigenous Miskito, Sumo, and Rama Indians of the Atlantic Coast who lived at the margins of Nicaraguan society in terms of basic social welfare conditions and "have suffered the imposition of government structures that have inhibited their capacity to exist and develop freely as distinct cultural communities" (Anaya, 2004, p. 159). Nonetheless, the Indians brought their case to the Human Rights Commission of the Organization of American States, "asserting violations of their human rights including the right to self-determination" (p. 160). In accordance with Commission's decision, the Nicaraguan government entered into negotiations with Indian leaders "and eventually developed a constitutional and legislative regime of political and administrative autonomy for the Indian-populated Atlantic Coast region of the country". Although the autonomy of regime was deemed faulty, nonetheless it presents a step in the right direction (Anaya, 2004) because it demonstrated the possibility of peaceful and democratic negotiation between a government and an ethnic group demanding rights under the self-determination norm. Also, this example indicates how the involvement of an international body (Human Rights Commission) in the name of protection of human rights did not jeopardize sovereignty of a state but only assisted in states' negotiation with an ethnic group to preserve peace and stability within its borders. As mentioned above, the UN charter justified its meddling with states' sovereignty by recognizing the international value of human rights as a states' value linked to peace and security. In addition to that, the self-determination right is a human right and therefore demands the same treatment as other rights/claims/needs within states' political and judicial system. In spite of

that, many states choose to deal with the self-determination demands as if the ones claiming them are antagonistic foreign bodies acting disruptively to states sovereignty and stability. By resorting to exceptional and securitizing measures in order to deal with ethnic groups demanding their self-determination rights, states risk to have their authority delegitimized as well as to increase conflicts and instability within their territory and beyond. In addition to that, the way in which self-determination demands are dealt with has an impact on the states' legitimacy because it demonstrates how states treat their citizens. Self-determination includes the right of ethnic and cultural groupings in "the political institutions necessary to allow them to exist and develop freely according to their distinctive characteristics" (Anaya, 2004, p. 161). However, to support the validity of these claims with stronger intuitive moral justification, the meaning of self-determination can be re-defined in terms of fairness by employing the veil of ignorance experiment. Rawls defined the primary subject of his theory of justice as the basic structure of society which he equated with "the major social institutions distributing fundamental rights and duties and determining the division of advantages from social cooperation." (1971, p. 6.) He developed his theory of justice as fairness by arguing about what principles would people chose to underpin the basic structure if they were making their choices behind the veil of ignorance. Rawls argued how the basic structure of society would result in distributive justice if defined by the principles chosen behind his veil of ignorance. In reality the basic structure of society exists in every states' domain of regulation appropriating the rights embedded and affirmed in the international treaties/agreements/documents. Since the self-determination norm is one of those rights affirmed in the international treaties what would this norm mean if it were to be incorporated in the basic structure of society by people who were to agree on its definition behind the veil of ignorance? The reason for defining the self-determination norm using Rawls' normative method and philosophical vocabulary lies in the acknowledgement of impact that self-determination right has on the distribution of rights and duties by the major social institutions. Defined by Anaya (2004), the self-determination norm entitles people to equally participate "in the constitution and development of the governing institutional order under which they live and, further, to live continuously within a governing order in which freedom abounds" (p. 161). Relying on these constitutive and ongoing aspects of the norm one can argue how defining the norm of self-determination is actually a precondition behind just distribution of human rights and duties. Having that in mind, what would people agree to in terms of content of self-determination if they are positioned behind the veil of ignorance and within the original position? The original position should be understood as "purely hypothetical situation" (Rawls, 1971, p. 11) characterized to lead to a

certain conception of self-determination. However, it is important to note that the participants behind this version of veil of ignorance would have a sense of belonging to a certain ethnicity, but they would remain ignorant about whether they have a state and constitute a majority in it or live on territories of other states (as ethnic minority, indigenous groups) without their own state. The reason behind this slight modification of the veil of ignorance lies in the argument how participants would still agree on impartial and objective meaning of the self-determination even if their ethnic identities are known to them. Furthermore, the meaning of the self-determination norm settled upon in this highly abstract situation would encompass the following content:

1) the broad range of human rights; including the individual and collective minority rights

2) the right to political autonomy

3) the right to demand secession as a means to necessitate and enforce immediate negotiation about the advancement of the rights above.

The reason why the agreement about these rights is named "fair preconditional agreement" lies in the fact that participating ethnicities agree within initial situation that is fair – the original position (Rawls, 1971). Therefore, without the knowledge about whether they would constitute a majority or minority in a state, ethnicities make choices impartially, while acting rationally and in self-interest. By acting in this way, participants agree on the given content of the self-determination to protect themselves regardless of the status (majority or minority) they might have and a position they may find themselves within a state. As a result of the agreement, a state acquires legitimacy by acting as a subject for the distribution and protection of wide range of rights agreed upon by different ethnicities in the original position. In addition to that, the self-determination norm encompasses all these mentioned rights which in turn constitute states' legitimacy. This is the reason for basing the normative meaning of the self-determination on a fair preconditional agreement behind states' distribution of rights and duties. But why would participating ethnicities choose the mentioned content to define the self-determination norm? Self-interest of the participants behind the veil of ignorance is to preserve a state from dissolving as much as it is to protect the rights of minorities and other stateless nationalities. To protect themselves, participating ethnicities would agree on the following logic: as long as the ethnicity constituting the majority in a state protects the rights of minority (and other stateless nationalities) the state will be consolidated and secured from dismemberment. In other words, all the rights embedded in the meaning of self-determination guarantee that state will

be protected and consolidated by, in turn, protecting the well-being and safety of minorities as well as other stateless ethnicities. Also, the right to demand secession is phrased carefully not to indicate how this right allows secession. The right to demand secession is a last resort option which serves to alarm a state about the upsetting situation caused by the lack of recognition and protection of previously mentioned rights. The right to demand secession would be used only to enforce a state into negotiation of maximizing the protection of (collective and individual) minority/indigenous rights as well as widening the rights of autonomy to the highest levels possible. In this way, the right to demand secession is defined to contribute to the consolidation of state by pointing out to the problems in need of immediate attention. Using the veil of ignorance is crucial because it demonstrates what rights would be agreed upon to constitute the meaning of self-determination if people could forget for a moment whether they belong to a nation-state majority or a stateless ethnic minority. Behind the veil of ignorance the self-determination norm upholds the rights of peoples to "freely determine their political status and freely pursue their economic, social and cultural development. (General assembly, 1960, resolution 1514). However by defining the self-determination norm using the veil of ignorance this thesis argues that being born into a stateless ethnic minority or an indigenous group or a nation-state should be morally irrelevant for determining what rights must the norm entail to be just and fair. At first glance, this normative meaning may seem to be at odds with the decolonisation context of self-determination norm if we have in mind the development of the norm as a freedom from subjugation for colonial people. However, it is precisely the notion of equalling the colonial people with the rest of the humanity that made the norm universal and immune to biased applicability. The normative meaning of self-determination presented here has a purpose of reconciling its broad content including the right to demand secessionism with states' authority and sovereignty. By arguing how states are not some self-evident political entities existing independently from their peoples the thesis offers the norm of self-determination as a reconciling norm between a broad range of rights of peoples and the preservation of states' authority and stability. This is the reason why the thesis mentions how new normative meaning of the self-determination will justify the reason why the norm should be comprehensive and broad in reality just as it is in its normative definition presented here. To conclude, by respecting the self-determination norm while distributing rights and duties states consolidate their statehood legitimacy and protect their authority among people.

SECOND PART

5. SECURITIZING SELF-DETERMINATION IN CATALONIA

Second part of the thesis should be interpreted as an empirical case supporting the notion how uncertainty and haziness around the self-determination norm are producing dangerous consequences for people demanding their rights under that norm. However, this part also includes chapter about the historical aspect on the Catalans relation to Spain which serves to establish a clear pattern and the source of Catalans resentment towards authority of Spain. In addition to that, this part also includes the chapter about the reason for a change in Catalans preferences concerning political status. Namely, the preferential change towards secessionism instead of a greater degree of political autonomy which was a status they were initially interested in. Finally, this part explains how and why did Spanish government securitize Catalonian 2017 referendum. Finally, with the combination of arguments from all the chapters the thesis explains the fundamental misunderstanding of the self-determination norm behind Spanish governments' securitization of the 2017 Catalan referendum. The theoretical aim underlying this part of the thesis argues how Spain wrongly assumes that consolidation of a state is preserved through insistence on one national unit (Spanish). Thesis supports this argument by explaining how the progression of Catalan preferences for autonomy rights to secession was influenced by the rejection of Spanish government to deal with Catalan autonomy demands in the first place. This argument, in turn, supports the normative meaning of self-determination proposed by this thesis because it demonstrates how a state experiences legitimacy issues if it does not take the self-determination norm to be one of the important elements consolidating its legitimacy.

5.1. HISTORY OF CATALANS RELATION WITH SPAIN UNTIL THE 1978 CONSTITUTION

The land belonging to Catalonia today was part of a "Roman province (Tarraconensis), one of the five which formed Roman Hispania (the others were Carthaginensis, Baetica, Lusitania, and Gallaecia); it later became a part of the Visigoth kingdom and after the demise of the Goths and the Muslim invasion, it was part of the Caliphate in 711" (Tortella, 2017, p.5). After a long

period of Reconquista (about 780 years) during which Christian kingdoms expanded throughout Hispania ending Islamic rule on the Iberian Peninsula, Catalonia became a part of the crown of Aragon. Subsequently, the kingdom of Aragon merged with Castile to form Spain when marriage between King Ferdinand of Aragon and Queen Isabella of Castile united their realms in 1469. Tortella (2017) explains that Spanish nation was formed by the process of gradual accretion of former smaller political units. This process was not unique phenomena concerning just the formation of Spain; it also occurred among other nations, in France and England for example. Before uniting with Aragon Catalonia was just a conglomerate of counties led by Barcelona (Tortella, 2017) "… during all this formative medieval period, the history of Catalonia conforms in its broad contours to that of the kingdoms of the rest of Spain" (Tortella, 2017, p.5). In addition to that, arguing about the existence of "medieval nation" in terms of Catalans has no solid base because "the modern concept of 'nation' is a product of the revolutions of the early Modern Era, the English revolution of 1688 in the first place" (Pincus, 2009, p. 348). History of Spain exemplifies how a large number of counties and principalities were integrated through "complex process of re-conquest and absorption" (Tortella, 2017, p. 27). Relying on the historical aspect to disregard the notion of Catalan nationhood being rooted in pre-modern history Tortella (2017) traces the causes behind the Catalan secessionism not in nationality but in economy, more precisely in the gap between Catalan and Spanish per capita income. Tortella (2017) argues how this gap grew during the nineteenth century with Catalan economic development led by the textile industry and reached its maximum around 1930. In turn, economic development gave way to Catalan bourgeoisie that viewed Spain only as a source of market and political value and not in terms of culture and unity. "As a consequence of this economic and cultural mismatch, there was a sort of irritation and sneer toward the rest of Spain, whence Catalonia depended politically and economically" (Tortella, 2017, p. 287) Also, Hargreaves (2000) remarks how Catalonia was politically and culturally different than the rest of Spain. "At the hub of the most advanced part of Europe in the Middle Ages, Catalonia functioned as a conduit for economic, political and cultural exchange between Europe and the Iberian Peninsula." (Hargreaves, 2000, p. 18). Catalonia was distinct by having "one of the earliest parliaments in Europe, the Corts, and a written constitution the Usatges" (Hargreaves, 2000, p.18). Hargreaves (2000) notes that a king in Catalonia could not uphold legitimacy if not sworn to defend the laws of the land by respecting the customs and practices of parliament. There was a committee of the parliament which had a task to "defend the laws, to negotiate grants of money to the king and to manage taxation" (Hargreaves, 2000, p.18) In contrary, Castilian parliament only had an advisory role for a king. Lynch (1964) claims that

Aragon and Catalonia enjoyed a certain degree of autonomy secured from absolute government until Castile was succumbed to poverty. "…It was not until the seventeenth century, precisely when Castile had reached the end of its resources that the central government attempted to break the immunities of the eastern kingdoms in order to tap their manpower and money" (Lynch, 1964, p. 10) In addition to that, in 1640 during the war between France and Spain (1635-1659), Catalonia allied with France and declared independence due to revolt of Catalan peasantry. Catalonia was eventually defeated and although its system of self-government was not dismantled by the Spanish king "it was whittled away and weakened." (Hargreaves, 2000, p. 19). Nonetheless, Catalonia lost its autonomy completely when it sided with Britain during the War of Spanish Succession (1701–14). As a result, Catalans lost their political institutions to Castilian laws, absolutism and centralism. Also, Catalan language was forbidden and there were a lot of heavy taxes imposed on the region (Hargreaves, 2000). Due to the historical importance of this event, Catalan national day (La Diada) commemorates the date when Barcelona surrendered to Spanish and French soldiers on the eleventh of September 1714. Hargreaves (2000) claims that celebrating that particular date is "an effective way of preserving the memory of Catalonia's subjugation and of rekindling the desire to recover her lost autonomy…" (p. 19). Despite the lack of autonomy, Catalans managed to preserve their culture and historical uniqueness throughout the 19th century (Petrovic, 2018). During that period, the Catalan language was advanced, a large number of literary books were published, and many cultural monuments built (Petrovic, 2018). Petrovic (2018) claims how all these factors secured and enhanced the strong emancipatory desires for the years to come. In addition to that, Petrovic (2018) notes how Catalan secessionism reached its peak in the first half of the 20th century when the leader of secessionists Francesc Macià won the elections in Catalonia in 1931 and proclaimed the Republic of Catalonia. However, this "independence" ended quickly when Spanish ministers persuaded Macià to settle for the Statute of Autonomy that was approved by the Spanish Parliament in 1932. Also, in 1934 the right-wing coalition won the elections causing the leader of the Catalan left, Lluis Companys, to proclaim the state of Catalonia within the Spanish Federal Republic in the same year. However, the central government reacted quickly and revoked its autonomy arresting Companys. Two years later, the Spanish Civil War (1936-1939) broke out and ended in triumph for Nationalists who combated the Republicans. Catalans independent establishments were obliterated and language just as culture were repressed (Guibernau I Berdún, 2012). During the fascism of Francisco Franco, general and head of Nationalist powers that were triumphant, the strategy of social annihilation was utilized against Catalans (Hargreaves, 2000) "The Catalan language and key symbols of Catalan

independent identity and nationhood, such as the flag (the senyera), the national hymn ('Els Segadors') and the national dance (the sardana), were proscribed" (Hargreaves, 2000, p. 28). Therefore, Hargreaves (2000) notes how Catalan nation and its political as well as cultural identity were threatened with extinction. During the Franco's dictatorship every aspect of federalization or self-rule was seen as expression of separatism. Guibernau (2004) remarks how Francoist regime attempted to eliminate completely the cultural and linguistic differences of people. However, this repressive policy only aggravated the nationalist feelings of the ethnic minorities "in particular Catalans, Basques and Galicians" (Guibernau, 2004, p. 36). "The especially harsh treatment received by the Basques and the Catalans encouraged the formation of a firm feeling of belonging in these communities – as a result the dichotomy between 'us' and 'them' was accentuated even further" (Guibernau, 2004, p. 36). "After the period of Franco's dictatorship, which had been trying to exterminate cultural and historical particularities among Spanish nations, decentralization demands have become stronger resulting with the new constitution adopted in 1978" (Perovic, 2010, p. 489). The new constitution acknowledged that Spain is comprised of different ethnic communities that have preserved their language and culture through history. "In the northwest of the country, most of the inhabitants of Galicia speak their own language, similar to the Portuguese, with which it shared a common history for a while. Several languages and dialects originated from medieval Occitan - Catalan, Valensian and Majorian in Catalonia, Valencia and Balearic Islands. The Basque language, Euskera, which is not part of the Indo-European language, is quite specific, and its exact origin are unknown" (Perovic, 2010, p. 491,492). To address these different identities Spanish Constitution from 1978 based its governmental system on the political ideology of regionalism. Regionalism started after the World War II first in Italy 1948 and then in 1978 in Spain (Perovic, 2010). The aim of regionalization was to give autonomy to "historic regions" of Spain which were Catalonia, Basque and Galicia and to prevent the dismemberment of the state by securing rights of different ethnic identities, languages, cultures, and histories within it. The 1978 constitution "has set the corner-stone of modern Spanish democracy based on Autonomous Communities as specific forms of decentralized state and territorial autonomy." (Perovic, 2010, p. 489). In attempt to homogenize the population Francoist regime managed to produce quite the opposite effect. It can be argued that Franco's program of diminishing autonomy, cultural and linguistic differences had the same opposite effect as the act of Constitutional Court that turned down many key passages of the proposed Statute of Autonomy many years later. In both cases that are widely different, similar effect is produced to make Catalans even more alienated from the Spanish central government. Perovic (2010)

seems to agree by acknowledging how repression of culture as well as language only strengthened the will for regional autonomy. Understandably, waves of demands for autonomy came after Franco's death in 1975. The policy of regionalism came to appease the nationalist sentiment of Catalans and other ethnicities that constitute Spain. The new constitution in 1978 recognized Catalan autonomy and restored its government that was abolished since the end of Civil War. Under the new constitution Spain was organized as a state of autonomous communities with political, economic and cultural autonomy (Petrovic, 2018). The constitution recognized only the Spanish nation; however, it also underlined that Spain is constituted by "nationalities". This "contradictory" statement could be seen as the only way for Spain to deal with its territorial complexities and different regional communities. In addition to that, López (2019) explains how some agents of the political and military establishment strongly disagreed with the first draft of the constitution which recognized the right of political autonomy of "nationalities and regions". They were particularly opposed to the inclusion of the term 'nationalities', "even though it was outlined in contrast with the term 'nation' which was attached to Spain" (López, 2019, p. 952). As a compromise, "the right to political autonomy for "nationalities and regions" was admitted but only under the condition of stressing "the indissoluble unity of the Spanish Nation" with the subject of sovereignty placed solely in the Spanish people as a whole" (López, 2019, p. 952). "Estado de las Autonomias" (State of Autonomies) was the new name for decentralized state. Under the new constitution Spain was consolidated to be "a country for different peoples, historical nationalities and regions that rest upon the highest principles of freedom, justice, equality and political pluralism" (Perovic, 2010, p. 499). Drawing on this brief historical overview one might conclude that whenever Spanish central government used measures against recognizing the greater level of autonomy it produced even a stronger sentiment against its authority.

5.2. FROM AUTONOMY DEMANDS TO SUPPORT FOR SECESSION

Wæver (1993) argues how "a society that loses its identity fears that it will no longer be able to live as itself"(p. 15). "The state defends itself against threats to sovereignty and society defends itself against threats to identity" (Wæver, 1993, p. 16). However, Spain is comprised of different historical nationalities (Perovic, 2010) and to speak in the name of the Spanish nation with intention to defend its diverse society from threats would mean addressing all these

different ethnicities. In spite of that, Buzan & Wæver & Wilde (1998) note how certain nations "sometimes closely correspond to a state, and in such cases references to the nation and its identity are often made by persons in positions of state power" (p. 123). Additionally, the logic of state security will "tend to privilege the power holders as the natural interpreters of what should be done to secure the state" (p. 123). As mentioned above, Francoist regime decided to consolidate and secure the state by homogenizing the population and repress its ethnic diversity. Therefore, once Catalans found themselves free from Francoist rule they decided to secure their own identity by pursuing autonomy. With Franco's death the democratic transition began, and in that new environment Catalan political parties and civil organizations combined their strengths in effort to succeed in achieving autonomy. During that period social conflicts increased in the face of economic stagnation and climaxed in the clash between those who wanted reform (within the regime) and those who wanted disruption and change. Workers' movements and union activity across Spain spread geographically from historic centres of Barcelona, Madrid, Asturias, and the Basque Country to previously docile areas such as Aragon, Valencia, and Andalucia (Molinero and Ysàs 1998). Greer (2012) mentions Assemblea de Catalunya as an important subject of social mobilization for pursuit of autonomy. Assemblea de Catalunya was a gathering of "clandestine leaders headed by filmmaker Pere Portabella; it included representatives of clandestine parties and unions as well as professional, academic, cultural, and media leaders" (Greer, 2012, 99) They established a set of minimal demands for central government: "that it grant democratic liberties, that it release political prisoners in an amnesty, and that it grant at least the equivalent of the 1932 Statute of Autonomy for Catalonia" (Greer, 2012, p. 99). However, 111 members of Assemblea de Catalunya got arrested and eventually massive demonstrations broke against Spanish new government. (Greer, 2012) Ten thousand people were on the street during the Catalan national day on 11 September 1976 waving Catalan flags. (Greer, 2012). These demonstrations illustrated the Catalan strength and desire for autonomy and most importantly the Spanish regime acknowledged that it had to negotiate Catalonia autonomy for democratic transition to continue, "…since there were clearly well-organized and popular Catalonian forces organizing such displays" (Greer, 2012, p. 100). Under the new Spanish constitution, the Catalan Statue of Autonomy was finally declared in 1979, and it allowed Catalonia to attain greater autonomy. Catalonian government (Generalitat) was given a jurisdiction in areas such as environment, transportation, commerce, public safety (Civil.udg.es, 2018). The Generalitat acquired "exclusive power over the regulation and administration of the Catalan institutions of self-government" (Edwards, 1999, p. 671) Catalan parliament could legislate in areas such as:

"Catalan civil law, heritage (historic, artistic, scientific), libraries and museums that are not part of the responsibility of the state, research, tourism, welfare, transport, agriculture and fishery, culture and sport" (Edwards, 1999, p. 671). Furthermore, in areas such as "labour law, social security, the media, public safety, culture and education" (p. 671) powers were shared while the state kept exclusive powers in areas such as "defence and the armed forces, international relations, immigration, monetary system, and the administration of justice" (p. 671). Regarding the justice system, it was administered by the national judicial institutions, with the exception of "civil law" which was administered separately within Catalonia (Civil.udg.es, 2018). Most importantly, under the Statue, Catalonia was defined as autonomous community of Spain however its definition was constituted to "work within the framework of the Spanish Constitution which affirms the 'indissoluble unity of the Spanish Nation, the common fatherland of all Spaniards', but also accepts the plurinational nature of the 'nations and regions' in article 2." (Edwards, 1999, p. 672). It is also worth mentioning how the Statute granted the political status of Catalans to all Spanish citizens who were legal residents in any of the municipalities of Catalonia (Preliminary Section, Article 6.1) (Guibernau, 2004). "This provision rejects racial or ethnic elements and restates the declaration that appears in the preamble of the Statute, according to which the 'Catalan people' is identified with 'all those who live and work in Catalonia" (Guibernau, 2004, p. 79). Catalan success in achieving autonomy was a result of the collaborative political unions, civil organizations and massive strikes underpinned by the centuries old struggle in protecting the identity from centralism and Spanish nationalism. In spite of that, Guinjoan, & Rodon (2016) claim how the level of popular support for secession in Catalonia was very low during Spain's transition from dictatorship to democracy. "The pro-independence movement was mainly structured around minority extreme left-wing political parties with no representation in legislative chambers" (Guinjoan & Rodon, 2016, p. 26). Lecours & Dupré (2020) also argue how calls for Catalonia's independence "were rare for most of the 20th century, even in the context of the Franco dictatorship" (Lecours & Dupre, 2020, p. 14). Lecours & Dupre, (2020) remark how Catalan politics remained dominated until the early 2010, "by the autonomist nationalism of Convergence and Union (CiU, an alliance between Democratic Convergence of Catalonia and Democratic Convergence of Catalonia) and its long-time leader Jordi Pujol, who always rejected the notion of Catalan independence" (p. 14). Petrovic (2018) also remarks how the support of Catalan citizens for secession was below 20% until 2010. Moreover, Jordi Pujol was the president of Catalonian government for 23 years, from 1980 to 2003. "The tension between the acceptance of Catalonia as a constituent part of Spain and the desire for greater autonomy lie at the core of Pujol's

nationalist discourse" (Guibernau & Berdun, 2012, p. 152). Under Pujol, Catalan elections "mainly revolved around the idea that Catalonia needed a stronger and less dependent government" (Guinjoan & Rodon, 2016, p. 26). In addition to that, Catalans' preferences for self-government were increasing over time. Guinjoan & Rodon (2016) remark how 38% of Catalans were in favour of increasing the regional self-government in 1984 (Guinjoan & Rodon, 2016). "A few years later, between 1992 and 1998, the percentage of Catalan people supporting a higher level of self-government fluctuated around 50% and increased up to 62% in 2002." (Guinjoan & Rodon, 2016, p. 28). Furthermore, with the reform of the Statute of Autonomy of Catalonia in 2006 the support for self-government decreased to 55%, only to increase again in 2012 reaching 69%. (Guinjoan & Rodon, 2016). Guinjoan & Rodon (2016) remark how the reason for the increasing support cannot be explained by the lack of autonomy rights since the regional government assumed new and larger attributions over time. "However, demands for higher levels of self-government did not imply explicit support for secession" (Guinjoan & Rodon, 2016, p. 28). "Opinion polls from the Institut de Ciències Polítiques i Socials (ICPS) ‑ the only institute that asked the question of secession over a significant period of time ‑ show that support for independence was kept considerably stable (around 30 per cent) from the early nineties until 2007" (Guinjoan & Rodon, 2016, p. 28). However, the series of events between 2006 to 2012 changed Catalans' preferences, "so that support for higher quotas of self-government within Spain gradually evolved to demands for independence" (Guinjoan & Rodon, 2016, p. 29). Hamid & Pretus (2017) also note how the support for the independence began to rise in 2010, from 25% to 57% in 2012. In addition to that, Guibernau (2014) identifies several contributing factors to this preferential change towards secession. The first one was José María Aznar's governments'(2000-2004) lack of response to demands for a greater autonomy for Catalonia. The second was, "the legal challenging of the 2006 Statute of Autonomy and its subsequent trimming after it had already been sanctioned by the Catalan Parliament, and both the Spanish Congress and the Senate, as well as by the Catalan people in a referendum." (Guibernau, 2014, p. 15). When José María Aznar's conservative Popular Party (PP) won the election in 2000 "sympathy and understanding towards Catalans' demands for further autonomy and recognition were replaced by hostility embedded in neo-centralist, conservative and neo-liberal political discourse" (Guibernau, 2014, p. 15). The claims for greater autonomy for historical nationalities (Catalonia, Galicia and Basque Country) were dismissed by PP. (Guibernau, 2014). On the other hand, "growing dissatisfaction with the Aznar government guaranteed strong support for J.L. Rodriguez Zapatero, the leader of the

Socialists Workers Party (PSOE) in the 2004 election" (Guibernau, 2014, p. 15). But Zapatero failed to stand up by his promise and support the new Statute of Autonomy that was emerging from the Catalan Parliament. The Catalan Parliament legislated the 2006 Statue of Autonomy with 90% of MPs in favour. "The Statute was subsequently revised and modified by the Spanish Parliament in Madrid to fully comply with the Constitution and it was finally sanctioned in a referendum (18th June 2006) by the Catalan people" (Guibernau, 2014, p. 16). However, in a course of one month the conservative Popular Party brought the approved Statute of Autonomy to the Constitutional Court (Guinjoan & Rodon, 2016). The Constitutional court argued how some of the passages in the Statute were not in compliance with the Spanish Constitution. "This generated a sense of outrage among Catalans who could not understand how the newly approved Statute—after following all the procedures and modifications as requested by Spanish political institutions and the Constitution—could still be challenged" (Guibernau, 2014, p. 16). The Constitutional Court issued its verdict after four years in 2010 and declared 14 passages of the Statute non-constitutional. The key passages in Statute that were to be removed and rewritten are the ones revolving around the usage of the term's 'nation', language, local taxation. For example, the Spanish Constitution recognizes only the existence of a single Spanish nation within Spain and the term nation when applied to Catalans must be "strictly employed in an ideological, historical or cultural context" (Guibernau, 2014, p. 16t). Also, Catalan 'national symbols' must be interpreted only as 'symbols of a nationality' so that there is no clash with "the symbols of the Spanish nation, the only ones to be properly considered as 'national' " (Guibernau, 2014, p. 16). Furthermore, the Constitutional Court declared how to be competent in Catalan is not meant to have the same legal importance and status as the duty to be competent in Castilian. Finally, the 2006 Statute opened the possibility for Catalan Government to set up its own taxes at the local level, however this was also declared unconstitutional (Guibernau, 2014). Guinjoan & Rodon (2016) claim how Catalan secessionist movements became more active during this period when Constitutional Court was yet to decide about the status of the Catalan Stature. "An important part of the population started to defend Catalonia's right to decide its own future, as well as the option to become an independent state" (Guinjoan & Rodon, 2016, p. 32). Support for the idea how Catalans should be the ones deciding about their future gained quite a popularity with polls showing between "60% and 80% of the population in favour of organising a referendum on independence" (Guinjoan & Rodon, 2016, p. 32). Additionally, the massive demonstrations from 2006 and 2007 illustrated the potential of civil society to organize a non-binding referendums' which occurred soon as well. Moreover, Catalan municipality of 8000 inhabitants near Barcelona decided in 2009 to

"hold an unofficial non-binding referendum about the independence of Catalonia among its residents, and the fierce reaction of the Spanish government and the judiciary against it, portrayed a turning point in the recent history of the secessionist movement in Catalonia." (Guinjoan & Rodon, 2016, p. 32). In addition to that, Serrano (2013) notes how non-binding referenda on independence were organized in more than 500 municipalities "between 2009 and 2011, with more than 800 000 participants" (Serrano, 2013, p. 524). These non-binding referenda were envisioned to be the processes of civil participation on the future of Catalonia within Spain. Obviously, they were formed in such a way not to provoke further intervention of the Spanish central government. In that context, the Spanish Government tolerated the symbolic vote on independence of the non-binding referendum in 2014 which was the last non-binding referendum before the one in 2017 occurred to which the central government responded differently with a goal to prevent it. This chapter illustrates how Catalan autonomy demands changed into demands for secession. The reason for this change lies in the Spanish government rejection to allow a greater degree of autonomy to Catalans under which, among other things, they would be legally recognized as a nation separate from Spanish. The thesis argues how this rejection follows the logic of securitization under which the Catalan political demands are proclaimed as a threat to the sovereignty. Next chapter will go further into investigating that statement.

5.3. SECURITIZING CATALANS' SELF-DETERMINATION

Buzan & Wæver & Wilde (1998) claim how the ideas holding a state together are "typically nationalism (especially civic nationalism but sometimes ethnonationalism) and political ideology" (p. 150). "By threatening these ideas, one can threaten the stability of the political order" (Buzan & Wæver & Wilde, 1998, p. 150) Threats may be directed towards the structure of the government (by undermining the ideology that legitimates it), or "to the territorial integrity of the state (by encouraging defections from the state identity) or to the existence of the state itself" (p. 150). In addition to that, Buzan (2008) also argues how secession movements rarely occur without prompting "some level of national security into domestic arena" (Buzan, 2008, p. 63) "Existential threats to a state are those that ultimately involve sovereignty… Threats to state survival are therefore threats to sovereignty." (Buzan & Wæver & Wilde, 1998, p. 151). Aradau (2004) notes how security involves "the emergency actions undertaken by institutions and various security actors" (p. 4). Moreover, as a speech act,

securitization implies defining a certain action as crucial for the survival of a state ('if the issue is not handled now it will be too late…'), therefore it can limit some otherwise inviolable rights (Aradau, 2004). One of those rights limited in the name of state survival could be a right to self-determination and Spanish governments' reaction to the Catalonian self-determination referendum in 2017 exemplifies that. In September 2017, the Catalan Parliament legislated the Law on the Referendum on Self-determination as a supportive legal framework for organizing the referendum on independence due to 1st October (López, 2019). "The bill was passed with the vote of the seventy-two MPs belonging to the unilateral pro-independence groups (*Junts pel Sí* and *CUP*), the abstention of the eleven votes belonging to the left-wing coalition *Catalunya Sí Que Es Pot*, *CSQP* and no votes against the bill since the fifty-two unionist MPs withdrew from Parliament when the bill was to be voted on." (López, 2019, p. 964). Since the Law on Self-Determination was passed in one day the Spanish central government did not have time to stop the parliamentary session and impede the bills adoption. (López, 2019). Nonetheless, the central government accused the lawmakers of committing atrocity against constitution and requested the Constitutional Court to suspend the law (Poblet, 2018). As expected, the Constitutional Court ruled a temporary suspension. The main constitutional argument against the referendum was that the Catalan nation does not exist in constitutional terms and therefore cannot decide its own constitutional future. (Cetrà & Casanas-Adam & Tàrrega, 2018). "This is based on Articles 1 and 2 of the Constitution, which provide that 'National sovereignty belongs to the Spanish people' and that 'The Constitution is based on the indissoluble unity of the Spanish Nation'." (Cetrà & Casanas-Adam & Tàrrega, 2018). The Spanish authorities proclaimed how the condition for organizing the referendum on the self-determination requires the "consultation of the entire Spanish people" (Cetrà & Casanas-Adam & Tàrrega, 2018, p .131) and the reform of the Spanish Constitution as well (p. 131). In addition to that López (2019) argues how the Constitution itself is conceived in a way so that any constitutional amendment processes questioning the "unity and sovereignty of the Spanish nation need to face the almost insurmountable barriers of the article 168 of the Spanish Constitution" (López, 2019, 955). "The approval of an amendment under article 168 of the Spanish Constitution would require a two-thirds majority of the members of the Spanish Congress and the Spanish Senate, the dissolution of the *Cortes Generales* (both Houses of the Spanish Parliament), the call for elections to constitute a new Congress and a new Senate, the ratification of the decision passed by the previous Houses by a two-thirds majority of the members of each House, and, finally, the submission of the amendment to ratification by a referendum held by the Spanish people." (López, 2019, 955). According to López (2019), the

way in which the constitution was written to address the constitutional amendments processes demonstrates that Spain was preoccupied to create a permanent defence for nationalistic status quo making it incompatible with the idea of national pluralism. In contrast to that, Catalan authorities have a plurinational understanding of the Constitution equalling 'the indissoluble unity of the Spanish nation' with the constitutional provision for the right to autonomy of historical nationalities in Catalonia, Basque Country, and Galicia regions. Therefore, from the perspective of Catalans "the insistence of the Spanish authorities in maintaining this very restrictive unitary constitutional interpretation has resulted in a clear breach of the 1978 agreement and entitled them to proceed unilaterally with the referendum." (Cetrà & Casanas-Adam & Tàrrega, 2018, p. 132). Consequently, Catalan authorities proceeded with organizing the referendum on 1st of October and "despite the combined efforts of courts and law enforcement agencies to halt the poll, nearly 2.3 million people (43 percent of the electoral roll) turned up to cast their votes" (Poblet, 2018, p. 3). However, The Spanish Government decided to stop the vote through police intervention, "with the Spanish police smashing their way into some polling locations and beating voters with batons. As a result, 1,066 people were treated by the Catalan health services and 400 polling stations (of a total of 2,315) were shut down." (Cetrà & Casanas-Adam & Tàrrega, 2018, p. 129). In addition to that, there are many videos witnessing the police violence against unarmed citizens and it is clear how the police units used police baton, unnecessary thrusting as well as pellet rifles against citizens (RT UK, 2017). Also, the video recording caught the brutality of the Spanish police against the people in polls station, where they dragged and kicked demonstrators and fought with Catalan firefighters. (BBC, 2017) Even before the day that referendum occurred police "arrested twelve officials in a bid to stop the vote" (The Economist, 2017, 00:00:54). Reyes (2020) explains how the Spanish government as well as certain media agents carried out "the justification and normalization of extreme violent actions" (p. 498) by relating the necessity of employing police force with legal action of strengthening and preserving democracy and unity of the state. The Catalan independence referendum was perceived as a threat and according to Reyes (2020) Catalans were described as coup plotters by the central government in conducting serious aggression against democracy. In that context, the Spanish prime minister Mariano Rajoy held a speech in the evening of the 1st October in which he described the referendum as "a strategy attacking democratic harmony and legality" ("Speech by Rajoy, October 1, 2017", 2020). To interpret the Catalan self-determination referendum through the lenses of securitization theory it will be required to employ the Copenhagen schools' units of analysis. According to Balzacq (2005) Copenhagen school distinguishes three units of analysis "— (i) the *referent object* — what is

the object of securitization? (ii) The *securitizing actor* — who speaks 'security'? (iii) *Functional actors* — i.e. those whose activities have significant effects on security making" (p. 178). In the context of securitizing Catalonian referendum, functional and securitizing actors are Spanish government and its prime minister Rajoy while the referent object is the referendum itself as well as Catalans who support it. In his speech act, Rajoy (2017) marked the referendum as an attack on the rule of law and democratic model. "… They decided to go ahead, and to promote a veritable attack on the rule of law and our democratic model. A conscious, premeditated attack, to which the State has reacted firmly and calmly: the referendum that aimed to wipe out the Spanish Constitution has not existed" (Speech by Rajoy, October 1, 2017", 2020) Rajoy proceeded to explain how referendum was actually stopped with "determination of the courts, and with the actions of the State security forces" (Speech by Rajoy, October 1, 2017", 2020). Designating the self-determination referendum as a referendum aiming to wipe out the Spanish Constitution demonstrates the objective of the central government to gain public support in defence against a "handful of people blackmailing an entire nation" (Speech by Rajoy, October 1, 2017", 2020). "Political officials… cloak security arguments in the semantic repertoire of the national audience in order to win support" (Balzacq, 2005, p. 185). Rajoy justifies the employment of the security forces to stop Catalans from expressing the right to self-determination by tying it to the condition of preserving democracy for all "Spaniards—and therefore for all Catalans—… to continue united on the path of freedom, justice, progress, and living together in democracy." (Speech by Rajoy, October 1, 2017", 2020). In that context, Wævers' (1993) explanation that something becomes security "when elites declare it to be so" (p. 54) is in accordance with the Spanish government designation of the Catalan referendum as an existential threat to constitution requiring the emergency measures embodied in security forces and the support of the population (Reyes, 2020). In addition to that, Reyes (2020) remarks about the inconsistency in logic while mentioning how certain media supportive of the government tried to produce the 'normalization of violence' in relating the strength of democracy with the police force defending it against unarmed citizens. Also, Cetrà (2018) thinks how it was actually the "police violence on the day of the vote which turned what was going to be another failed attempt by the pro-independence movement to obtain a clear mandate for independence into a symbol of collective resistance against state repression" (p. 129). In a criticism against the excessive use of police force, López (2019) addresses the problem of the Spanish constitutional system for not leaving any room for the practice of referendum as a device for solving political conflict in a democratic way" (p .964). " The problem of the Spanish constitutional system was the

continuous appeal to criminal law to handle such political conflict" (p. 964). For example, in the self-determination referendum bill passed in the Catalonian parliament it is highlighted how the people of Catalonia have a right to decide their political condition freely and democratically. Without further ado, the Spanish court suspended those remarks, issued a warning toward Catalan legislative and executive branch and declared how any "act related to the holding of the referendum could imply criminal liability" (López, 2019, p. 965) In that context, it is clear how the acts conducted by the Spanish authorities against the self-determination right produce a dangerous consequences against those who claim it. As mentioned in the previous chapter (part I, chapter II) international community is reluctant in defining the norm of self-determination more precisely and clearly, therefore, as a consequence, countries are left with a possibility to treat the norm and those who claim certain rights under it arbitrary on their own terms. The Spanish governments' act of securitizing the Catalan right to self-determination should be understood in the context of haziness and uncertainty (Saul, 2011) surrounding the norm. In this way it could be explained how international community criticized the police brutality and excessive use of force while simultaneously supporting the Spanish stance against the Catalans proclaimed rights to self-determination. "UN experts have called on the Spanish authorities to ensure that measures taken ahead of the Catalan referendum on 1 October do not interfere with the fundamental rights to freedom of expression, assembly and association, and public participation" ("OHCHR | Spain must respect fundamental rights in response to Catalan referendum, UN rights experts", 2020). It could be argued how international community misunderstood the importance Spain has ascribed to stopping the referendum in the same way Spain misunderstood the need for democratic measures in addressing the self-determination rights. "The government's muscular response to Catalans' desire for self-determination could increase the number of independentists and heighten their passion, which, in the long run, may further erode the stability and reputation of Spain's central government" (Hamid & Pretus, 2017, p. 2). Hamid & Pretus (2017) explain how instead of cooling the tension the strategy of denying the referendum had an opposite effect of backfiring and inflaming "the passions of Catalans and further maligning the undemocratic image of the central government in the eyes of other Spaniard. " (p. 4). This remark fits well within an argument about the actions of the Spanish government generating an opposite effect than planned in handling the Catalan political demands throughout history. Instead of perceiving the Catalans rights to self-determination as an opportunity to consolidate its statehood legitimacy by using democratic measures in dealing with political demands, the Spanish government chooses to securitize the referendum and

employ security measures against it. The securitization of Catalans' referendum is a result of misunderstanding the importance of the self-determination norm in providing the legitimacy for states' authority. Additionally, this misunderstanding is a consequence of uncertainty and haziness around the self-determination which is caused by the reluctancy of the international community to clarify the meaning and the law of self-determination. Overall outcome of these combined remarks is a diminished intrinsic value and meaning of the self-determination norm under the logic of securitization. In that context, the self-determination norm seems to be without intrinsic meaning whatsoever and therefore dangerous for those who demand rights under it, because those demands can be met with securitizing measures just like in case of Spain. "Spanish reaction was brutal and included serious violations of human rights" (López, 2019, p. 966). Despite the "violence, the closing of 14% of the polling stations, the confiscation of thousands of votes and the cyber-attacks" (p. 966) caused by the Spanish forces, Catalan people managed to vote. Out of 2.3 million people casting their votes, 90% of votes were in favour of independence (Reyes, 2020). After the Catalan referendum Catalonian Parliament unilaterally declared independence from Spain on 27 October 2017. Fifty-five members of parliament did not vote and were absent, seventy voted positively and ten against. Shortly thereafter, Spanish senate approved invoking of the Article 155 of constitution which allowed Spanish government to assume direct control of Catalonia autonomy. "The subsequent repression of the Spanish authorities also continued in order to impede the effectiveness of the independence declaration through actions such as the seizure of Catalan autonomy through the application of article 155" (López, 2019, p. 967). Additionally, López (2019) also mentions how the Spanish governments' "obstinate defence of the "the indissoluble unity of the Spanish nation" through the Spanish central institutions… has brought about the parliamentarian majority support for Catalan secession" (López, 2019, p. 968). The opposite effect than the one planed by the Spanish government is the outcome of misunderstanding the significance of the self-determination norm for consolidating or in this case delegitimizing state's authority.

6. THE NEW NORMATIVE MEANING – RE-EVALUATION?

As mentioned before, the proposed new normative meaning of the self-determination norm embodies the reconciliation between broad content of rights (including the right to demand secessionism) with states' authority and sovereignty. However, through the example of the securitization act employed by the Spanish government to address the Catalan 2017 referendum

it becomes obvious how self-determination norm is perceived as a disruptive rather than a cohesive norm. The Spanish government created violent environment in which many Catalans were injured and hospitalized, however by focusing the criticism on violence international community failed to comprehend the real problem causing the violence. “The top United Nations human rights official urged today the authorities in Spain to ensure thorough, independent and impartial investigations into all acts of violence that took place Sunday during a referendum on the independence of Catalonia.” ("UN human rights chief urges probe into violence during referendum in Catalonia", 2020) The real problem not addressed by the international community is the self-determination norm, more precisely the absence of clarity of law on how to deal with the groups that demand rights under the self-determination norm. The uncertainty and haziness around the norm not being addressed is the real problem producing dangerous consequences for groups, leaving them unprotected in the face of violent security measures as an answer to their demands. “The European Commission has confirmed that the Catalan independence referendum was “not legal” under Spanish law. It described the vote, which saw police beat protesters and shut down polling stations, as an “internal matter” and suggested it would not heed calls to intervene.” (The Independent, 2020). In the statement of the European Commission it becomes clear what is really the focus of international community: sovereignty and not human rights. In addition to that, defining the self-determination norm behind the veil of ignorance was a normative attempt to make states’ authority and human rights more intuitively dependable. In other words, the self-determination norm behind the veil of ignorance is consolidating factor for governments legitimacy and authority. In addition to that, if history could be a reliable indicator of the future than it is clear to see how the harsh reaction of the Spanish government against Catalan secession preferences is not enough to stop their demands, on the contrary it only generates the opposite effect than planned ones. “The Spanish Government’s strategy proved both repressive and ineffective, and the Catalan Government gained significant political capital and control of the narrative.” (Cetrà, 2018) Cetrà (2018) claims how the use of violence deepened the constitutional crisis in Spain, “damaged Spain’s international image, and fed into the increasingly prominent argument within the Catalan independence camp that secession is a remedial solution against Spain’s disrespect for democracy and basic rights” (Cetrà, 2018, p. 190). However, as mentioned before, the practical implications of the normative meaning of the self-determination proposed in this thesis do not advocate secession, rather a right to demand secession should be understood as a last resort option to alarm and force the state to improve certain human rights of the political group in question. The right to secession seemingly poses

an unsolvable problem because the right of one group to secede can automatically "entail a denial of the same right to another group" (Klabbers 2006). "The Åland Islands dispute of the 1920s made clear that allowing the Swedish-speaking Finns to separate from Finland would undermine the self-determination of the Finns, who had themselves just barely become independent from Russia" (Klabbers, 2006, p. 190). Same logic applies to Serbs in Kosovo. The Kosovo's unilateral secession from Serbia in 2008 denied the same right to Serbs to secede from Kosovo and join Serbia. The same goes for Catalans, Spaniards and minorities in Catalonia that do not want to secede from Spain. In addition to that, the right to secessionism is an adequate example of the tyranny of majority. While analysing the ICJ advisory opinions on Namibia and Western Sahara, Klabbers (2006) noted how the courts turned self-determination into a procedural guarantee. "Because even democracy, however valuable, can lapse into tyranny of the majority, a procedural right to be heard is invaluable" (p. 62) Klabbers (2006) defines the self-determination in terms of a procedural right meaning how groups on which state decisions have a political affect should be consulted about those decisions and therefore taken seriously. Despite of that, Klabbers denies any binding attributes to opinions of the people 'taken seriously'. Nonetheless, the normative meaning for self-determination proposed by this thesis would encompass the procedural aspects of the self-determination as a practical embodiment of exercising the right to self-determination. However, the procedural consultation should be taken more seriously than in Klabbers (2006) version, as it will be both an exercise of the human right and a consolidation of statehood legitimacy. In addition to that, the international community has to re-evaluate and take the norm of self-determination seriously because, as exemplified in the case study, human rights can continue to be violated if the law of self-determination is not freed from the uncertainty and ambiguousness. Moreover, the failure in recognizing the norm of self-determination as the consolidating element of the governmental legitimacy leads to a dangerous possibility to antagonize and securitize certain political groups in the absence of clarity on the law of self-determination which can lead to serious violations of human rights as shown in the case study. By utilizing the Rawlsian vocabulary in tradition of political philosophy this thesis offers a meaning of self-determination that could help in balancing the power of authority and inviolability of human rights. Practical implications of the proposed meaning are calling for the re-evaluation of self-determination as an attempt to make international political morality more attentive to significance the norm 'ought' to have for reconciling the state authority with human rights.

7. CONCLUSION

Despite being confusing and bearing inconsistent meanings in the current state of international law, the self-determination norm has a significant normative potential to reconcile states' authority with human rights. Defining and proposing a new normative meaning of the norm with the help of veil of ignorance this thesis suggests how the norm should be understood to have more cohesive than disruptive role in a relation between human rights and states' authority. This notion is supported throughout the thesis by arguing how the self-determination norm is a test to statehood legitimacy and how the confusion and haziness around the norm are producing dangerous consequences and political misuses, therefore leading to a requirement for a re-definition of the norm that would reconcile the two main subjects in conflict within it: state and human rights. In that context, the thesis also argues how the securitization logic behind the Spanish governments' measures against Catalonian 2017 referendum is a consequence of unwillingness among the international community to address the confusing meaning of self-determination let alone the core conflict embedded in the norm: conflict between state and peoples' rights. Consequently, not addressed by the international community haziness and confusion produce dangerous consequences (securitization) for political groups demanding their rights under the norm of self-determination. This securitization logic is also a result of the insistency of the Spanish government to be a "privileged power holder" (Buzan & Wæver & Wilde) in interpreting the "indissoluble unity of Spanish Nation" (Cetrà, 2018). In doing so, the Spanish government fails to recognize how the self-determination norm can be a helpful element in consolidation of the state if addressed in the right way. Acting as if Catalans' self-determination rights are disruptive for the state, Spain continues to produce opposite effect than the ones planed. "The government's muscular response to Catalans' desire for self-determination could increase the number of independentists and heighten their passion, which, in the long run, may further erode the stability and reputation of Spain's central government" (Hamid & Pretus, 2017, p. 2). In addition to that, the thesis argues how instead of perceiving the self-determination as a disruptive factor for their legitimacy, states should address the norm as a cohesive element in consolidating the authority. A new normative meaning of the norm conceived behind the veil of ignorance corresponds to that notion by having a purpose of reconciling its broad content including the right to demand secession with states' authority and sovereignty.

8. BIBLIOGRAPHY

Anaya, J., & Anaya, S. J. (2004). Indigenous peoples in international law. Oxford University Press, USA.

Aradau, C. (2004). Security and the democratic scene: Desecuritization and emancipation. Journal of International Relations and Development, 7(4), 388-413.

Archibugi, D. (2003). A Critical Analysis of the Self-determination of Peoples: A Cosmopolitan Perspective. Constellations, 10(4), 488-505.

Arneson, R. J. (2006). Justice after Rawls. The Oxford Handbook of Political Theory, 1, 45.

Assembly, U. G. (1948). Universal declaration of human rights. UN General Assembly, 302(2).

Baglione, L. A. (2018). Writing a research paper in political science: A practical guide to inquiry, structure, and methods. Cq Press.

Balzacq, T. (2005). The three faces of securitization: Political agency, audience and context. European journal of international relations, 11(2), 171-201.

Bauböck, R. (2008). Normative political theory and empirical research. Approaches and Methodologies in the Social Sciences, 40-60.

BBC, 2017. Catalonia referendum: Violence as police block voting- BBC News [online video] Available at: https://www.youtube.com/watch?v=-kESpxWLk-8 [Accessed 17 November 2018].

Brahms, E. (2020). Self-Determination Procedures. Beyond Intractability. Retrieved 10 November 2020, from https://www.beyondintractability.org/essay/self-determination#:~:text=Since%20the%20end%20of%20the,autonomy%20within%20another%20nation%20state

Bryman, A. (2016). Social research methods. Oxford university press.

Buchanan, A. E. (2007). Justice, legitimacy, and self-determination: Moral foundations for international law. Oxford University Press on Demand.

Buzan, B. (1987). An introduction to strategic studies: military technology and international relations. Springer.

Buzan, B. (2008). People, States & Fear: An agenda for international security studies in the post-cold war era. Ecpr Press.

Buzan, B., Wæver, O., Wæver, O., & De Wilde, J. (1998). Security: A new framework for analysis. Lynne Rienner Publishers.

Cass, D. Z. (1992). Re-Thinking Self-Determination: A Critical Analysis of Current International Law Theories. Syracuse J. Int'l L. & Com., 18, 21.

Cetrà, D., Casanas-Adam, E., & Tàrrega, M. (2018). The 2017 Catalan independence referendum: A symposium. Scottish affairs, 27(1), 126-143.

Civil.udg.es. (2018). Legislació civil catalana. [online] Available at: http://civil.udg.es/normacivil/catalunya.htm [Accessed 17 Nov. 2018].

Creswell, J. W., & Poth, C. N. (2016). Qualitative inquiry and research design: Choosing among five approaches. Sage publications.

Davids, J. (2020). What Makes a State? The {New} International Law. Retrieved 20 November 2020, from https://thenewinternationallaw.wordpress.com/2012/05/02/what-makes-a-state/.

Deleuze, G., & Guattari, F. (1991). 1994. What is philosophy.

Dworkin, R. (1973). The original position. The University of Chicago Law Review, 40(3), 500-533.

Edwards, S. (1999). 'Reconstructing the nation': the process of establishing Catalan autonomy. Parliamentary Affairs, 52(4), 666-676.

Ejdus, F. (2009). Dangerous liaisons: securitization theory and Schmittian legacy. Western Balkans Security Observer-English Edition, (13), 9-16.

Facing History and Ourselves. (2017). Holocaust and human behavior. Facing History and Ourselves.

Fassbender, B. (2009). The United Nations Charter as the constitution of the international community (Vol. 51). Brill.

Fisch, J. (2015). The right of self-determination of peoples: The domestication of an illusion. Cambridge University Press.

Fox, G. H. (1994). Self-Determination in the Post-Cold War Era: A New Internal Focus.

Freeman, S. (Ed.). (2002). The Cambridge Companion to Rawls (Cambridge Companions to Philosophy). Cambridge: Cambridge University Press. doi:10.1017/CCOL0521651670

Grant, T. D. (1998). Defining statehood: The Montevideo Convention and its discontents. Colum. J. Transnat'l L., 37, 403.

Greer, S. L. (2012). Nationalism and self-government: the politics of autonomy in Scotland and Catalonia. Suny Press.Guibernau i Berdún, M. (2012). Catalan nationalism. London: Routledge.

Guibernau, M. (2004). Catalan nationalism: Francoism, transition and democracy. Routledge.

Guibernau, M. (2014). Prospects for an independent Catalonia. International Journal of Politics, Culture, and Society, 27(1), 5-23.

Guinjoan, M., & Rodon, T. (2016). Catalonia at the crossroads: Analysis of the increasing support for secession. In Catalonia: A new independent state in Europe? (pp. 20-61). Routledge.

Hamid, N., & Pretus, C. (2017). How Spain misunderstood the Catalan Independence Movement. The Atlantic, 1.

Hansen, L. (2012). Reconstructing desecuritisation: the normative-political in the Copenhagen School and directions for how to apply it. Review of international studies, 38(3), 525-546.

Hargreaves, J., 2000. Freedom for Catalonia? Catalan Nationalism, Spanish Identity and the Barcelona Olympic Games. Cambridge University Press.

Henkin, Louis, ‘International Law: Politics, Values and Functions’, Collected Courses of the Hague Academy of International Law 1989 (Martinus Nijhoff Publishers, Dordrecht, 1990), iv. 214–15.

Hill, M. A. (1995). What the principle of self-determination means today. ILSA J. Int'l & Comp. L., 1, 119.

Iorns, C. J. (1992). Indigenous peoples and self-determination: Challenging state sovereignty. Case W. Res. J. Int'l L., 24, 199.

Jabareen, Y. (2009). Building a conceptual framework: philosophy, definitions, and procedure. International journal of qualitative methods, 8(4), 49-62.

Ker-Lindsay, J. (2013). Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo 'Unique Case'Argument. Europe-Asia Studies, 65(5), 837-856.

Kirgis, F. L. (1994). The degrees of self-determination in the United Nations era. The American Journal of International Law, 88(2), 304-310.

Klabbers, J. (2006). The right to be taken seriously: Self-determination in international law. Human Rights Quarterly, 186-206.

Knop, K. (2002). Diversity and self-determination in international law (Vol. 20). Cambridge University Press.

Koskenniemi, M. (1994). National self-determination today: Problems of legal theory and practice. The International and Comparative Law Quarterly, 43(2), 241-269.

Leander, A. (2008). Thinking tools. In Qualitative methods in international relations (pp. 11-27). Palgrave Macmillan, London.

Lecours, A., & Dupré, J. F. (2020). The emergence and transformation of self-determination claims in Hong Kong and Catalonia: A historical institutionalist perspective. Ethnicities, 20(1), 3-23.

Lynch, A. (2002). Woodrow Wilson and the principle of'national self-determination': a reconsideration. Review of International Studies, 419-436.

Lynch, John (1964), Spain under the Habsburgs. Volume One. Empire and Absolutism, 1516–1598. Oxford: Basil Blackwell

López Bofill, H. (2019). Hubris, constitutionalism, and "the indissoluble unity of the Spanish nation": The repression of Catalan secessionist referenda in Spanish constitutional law. International Journal of Constitutional Law, 17(3), 943-969.

Maxwell, J. A. (2012). Qualitative research design: An interactive approach (Vol. 41). Sage publications.

Mayall, J. (1999). Sovereignty, nationalism, and self-determination. Political Studies, 47(3), 474-502.

McDonald, M. (2008). Securitization and the Construction of Security. European journal of international relations, 14(4), 563-587.

Milenković, D. (2013). Javna uprava-odabrane teme. Belgrade, Faculty of Political Sciences: Čigoja štampa, 200.

Molinero, C., & Ysàs, P. (1998). La historia social de la época franquista. Una aproximación. Historia Social, 133-154.

Nawaz, M. K. (1965). The meaning and range of the principle of self-determination. Duke LJ, 82.

Nickel, J. W. (1987). Making sense of human rights: Philosophical reflections on the universal declaration of human rights. Univ of California Press.

Nyman, J. (2014). 'Red Storm Ahead': Securitisation of Energy in US–China Relations. Millennium, 43(1), 43-65.

Nyman, J. (2018) 'Securitization' in Williams, Paul D. and McDonald, Matt (eds) Security Studies: An Introduction, 3rd Edition, London and New York: Routledge.

OHCHR | Spain must respect fundamental rights in response to Catalan referendum, UN rights experts. Ohchr.org. (2020). Retrieved 5 December 2020, from https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22176.

Our Documents - President Woodrow Wilson's 14 Points (1918). Ourdocuments.gov. (2020). Retrieved 10 November 2020, from https://www.ourdocuments.gov/doc.php?flash=false&doc=62.

Petrović, B. (2010). Ustavno ustrojstvo regionalne države u Španiji. Biblid 0025-8555, MP, 62 Vol. LXII, br. 3.

Petrović, R. (2018). Ekonomski aspekti katalonskog separatizma. Oditor-časopis za Menadžment, finansije i pravo, 4, 6-16.

Philpott, D. (1995). In defense of self-determination. Ethics, 105(2), 352-385.

Pincus, S.C., 2009. 1688: The first modern revolution. Yale University Press.

Poblet, M. (2018). Distributed, privacy-enhancing technologies in the 2017 Catalan referendum on independence: New tactics and models of participatory democracy. First Monday.

Pogge, T. W., & Pogge, T. (2007). John Rawls: his life and theory of justice. Oxford University Press on Demand.

Queirós, A., Faria, D., & Almeida, F. (2017). Strengths and limitations of qualitative and quantitative research methods. European Journal of Education Studies.

Reisman, W. M. (1990). Sovereignty and human rights in contemporary international law. The American Journal of International Law, 84(4), 866-876.

Reyes, A. (2020). Spain vs. Catalonia: normalizing democracy through police intervention. Social Semiotics, 1-18.

Richardson, H. S., & Weithman, P. J. (1999). The philosophy of Rawls: A collection of essays (Vol. 4). Garland.

Rodon, T. & Guinjoan, M., 2016. Catalonia at the crossroads: Analysis of the increasing support for secession. In Catalonia: A New Independent State in Europe? (pp. 20-61). Routledge.

Roe, P. (2012). Is securitization a 'negative'concept? Revisiting the normative debate over normal versus extraordinary politics. Security Dialogue, 43(3), 249-266.

Roman, E. (1998). Reconstructing Self-Determination: The Role of Critical Theory in the Positivist International Law Paradigm. U. Miami L. Rev., 53, 943.

RT UK, 2017. Catalonia holds general strike in protest over referendum violence. [online video] Available at: https://www.youtube.com/watch?v=ayza_-zq0wU[Accessed 19 November 2018]

Saul, M. (2011). The normative status of self-determination in international law: a formula for uncertainty in the scope and content of the Right?. Human Rights Law Review, 11(4), 609-644.

Schwartz-Shea, P., & Yanow, D. (2013). Interpretive research design: Concepts and processes. Routledge.

Serrano, I. (2013). Just a matter of identity? Support for independence in Catalonia. Regional & federal studies, 23(5), 523-545.

Speech by Mariano Rajoy, President of the Government of Spain, October 1, 2017. Exteriores.gob.es. (2020). Retrieved 1 December 2020, from

http://www.exteriores.gob.es/Embajadas/HELSINKI/EN/Noticias/Pages/Articulos/20171002_NOT1.aspx.

Sterio, M. (2013). The Right to Self-determination Under International Law:" selfistans", Secession and the Rule of the Great Powers. Routledge.

The Economist (2017). Catalonia's independence referendum explained. [online video] Available at: https://www.youtube.com/watch?v=NaQ4_v0fz6k&t=198s Accessed 19 November 2018]

The EU Commission just said the Catalan referendum was illegal. The Independent. (2020). Retrieved 5 December 2020, from https://www.independent.co.uk/news/world/europe/catalan-independence-referendum-not-legal-spanish-constitution-european-commission-juncker-spain-law-a7978386.html.

Tortella, G. (2017). Catalonia in Spain. New York: Palgrave Macmillan.

UN human rights chief urges probe into violence during referendum in Catalonia. UN News. (2020). Retrieved 5 December 2020, from https://news.un.org/en/story/2017/10/567542.

United Nations. General Assembly, & United Nations. Office of Public Information. (1974). Declaration on the granting of independence to colonial countries and peoples. United Nations Office of Public Information.

Universal Declaration of Human Rights, GA Res. 217A (III), UN Doc. A/810, at 71 (1948).

Welch, C. E. (1991). The Organisation of African Unity and the promotion of human rights. The Journal of Modern African Studies, 29(4), 535-555.

Wellman, C. H. (1995). A defense of secession and political self-determination. Philosophy & public affairs, 142-171.

Williams, M. C. (2015). Securitization as political theory: The politics of the extraordinary. International Relations, 29(1), 114-120.

Williams, P., & McDonald, M. (2018). An Introduction to Security Studies'. Security Studies: An Introduction, 1-13.

Wolf, S., & Dron, C. (2020). The effect of an experimental veil of ignorance on intergenerational resource sharing: empirical evidence from a sequential multi-person dictator game. Ecological Economics, 175, 106662.

Woodrow Wilson, War Messages, 65th Cong., 1st Sess. Senate Doc. No. 5, Serial No. 7264, Washington, D.C., 1917; pp. 3-8, passim.

Wæver, O. (1993). Securitization and desecuritization (p. 48). Copenhagen: Centre for Peace and Conflict Research

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