

SPEAKING OF SECESSION: A THEORY OF LINGUISTIC SECESSION

*Sami M. Dudar**

TABLE OF CONTENTS

I.	INTRODUCTION	556
II.	SECESSION IN INTERNATIONAL LAW	560
	A. <i>The Minimalist Position: Limited to No Right to Self-Determination</i>	560
	B. <i>The Maximalist Position: Self-Determination as an Evolving Right</i>	563
	C. <i>The Middle Position: Reconciling the Extremes of Self-Determination</i>	565
III.	LANGUAGE PROTECTION UNDER INTERNATIONAL LAW.....	567
	A. <i>Moral Argument for Language as a Human Right</i>	567
	B. <i>Legal Argument for Language as a Human Right</i>	569
	C. <i>Scope of Protection of Minority Language Rights as Human Rights</i>	572
	D. <i>How a People May Be Protected by Linguistic Minority Rights</i>	573
IV.	KURDISH OPPRESSION IN TURKEY AS ARCHETYPAL LINGUISTIC SECESSION.....	575
V.	CONCLUSION.....	581

* J.D., University of Georgia, 2012; B.A., University of Georgia, 2009.

I. INTRODUCTION

–“No language, no nation.”

Welsh proverb¹

Defining a nation by its language is as old as Western civilization.² For the ancient Greeks, speaking Greek was the only definitive factor to being Greek.³ In writing for his badly fragmented country,⁴ the German philosopher, Johann Gottlieb Fichte, placed language at the heart of nationhood. “[N]atural frontiers of states,” Fichte observed, are determined foremost by their “inner frontiers,” or, more specifically, language.⁵ “Those who speak the same language,” Fichte argued, “are already . . . joined together by mere nature with a multitude of invisible ties . . . they belong together and are naturally one, an indivisible whole.”⁶ Out of a distinct language, a distinct state is born.⁷ It is no surprise that linguistic unity remains a common basis of nation-building and national unity.⁸ However, if language plays so great a role as the germ of a nation, then with over 6,000 living languages,⁹ the international political landscape is rife with potential nation candidates.

The disproportion between the number of extant languages and nations reveals a telling linguistic phenomenon: languages, like nations, war with one another for dominance and, in the process, result in language death.¹⁰ Currently, 90% of the world’s population uses the 100 most-used languages.¹¹ Based on this statistic of language demand, it is not surprising that, of the total number of existing languages, more than half will fall into disuse and become extinct in the twenty-first century.¹²

¹ DANIEL NETTLE & SUZANNE ROMAINE, VANISHING VOICES: THE EXTINCTION OF THE WORLD’S LANGUAGES 23 (2000).

² ANDREW DALBY, LANGUAGE IN DANGER 128 (2003).

³ *Id.*

⁴ By 1808, forty-one separate territories made up “Germany.” J.G. FICHTE, ADDRESSES TO THE GERMAN NATION, at xii (Gregory Moore ed., Cambridge Univ. Press 2008) (1808).

⁵ *Id.* at 166.

⁶ *Id.*

⁷ DALBY, *supra* note 2, at 129 (speaking of Fichte’s philosophy of language and state creation).

⁸ See CLAUDE HAGÈGE, ON THE DEATH AND LIFE OF LANGUAGES 118 (Jody Gladding trans., 2009) (noting that France’s policy of marginalizing regional languages to enhance national unity “is hardly an isolated case”).

⁹ NETTLE & ROMAINE, *supra* note 1, at 8.

¹⁰ HAGÈGE, *supra* note 8, at 80.

¹¹ NETTLE & ROMAINE, *supra* note 1, at 8.

¹² *Id.* at 7.

With language as the main means by which one engages politically,¹³ the key to a people's national and cultural identity¹⁴ and knowledge,¹⁵ how language death occurs is a moral and legal question. If language death is "natural," as is the case when speakers die naturally or there occurs a change in the marketable demand for a language,¹⁶ linguistic evolution is the incidental cause and cannot be held morally or legally responsible. But an intentional political strategy to eliminate a people's language can hardly be called natural, moral, or even legal under international law. A state giving a particular language "official" status is a common political method of language favoritism.¹⁷ An official language provides a legal guarantee that a language will survive in the public sphere¹⁸ and effectively marginalizes nonofficial languages, particularly linguistic minorities.¹⁹ While international law does not directly protect a group by declaring that a right to an official language exists,²⁰ there is a significant body of international law that explicitly recognizes that minority languages must be protected in the

¹³ Lynn Zimmerman, *The English-Only Movement: The Power to Silence*, in LANGUAGE OF THE LAND 115, 117 (Katherine Schuster & David Witkosky eds., 2007); see also Ruth Rubio-Marín, *Exploring the Boundaries of Language Rights: Insiders, Newcomers, and Natives*, in SECESSION AND SELF-DETERMINATION 136, 136 (Stephen Macedo & Allen Buchanan eds., 2003) (arguing that unlike religion, a government cannot be passive on the issue of language because government must be conducted in some language); Michael Blake, *Language Death and Liberal Politics*, in LANGUAGE RIGHTS AND POLITICAL THEORY 210, 224 (Will Kymlicka & Alan Patten eds., 2003) (noting Will Kymlicka's argument that there is no such thing as "benign neglect" when it comes to language).

¹⁴ Zimmerman, *supra* note 13, at 116–17 ("National identity is an attempt to unify a population legally, linguistically, culturally, and ideologically. . . . Cultural identity. . . is made up of a variety of related patterns of behavior, beliefs, practices, and values that generally exist in a historical context."); see *id.* at 118 (observing that national and cultural identities create individual identity through interaction with others in the state).

¹⁵ Blake, *supra* note 13, at 212.

¹⁶ See *id.* at 213 (noting that language death can be an inevitable corollary of the goods of free agency).

¹⁷ Alan Patten, *Can the Immigrant/National Minority Dichotomy Be Defended? Comment on Ruth Rubio-Marín*, in SECESSION AND SELF-DETERMINATION, *supra* note 13, at 174, 174–75.

¹⁸ See *id.* at 175 ("[A]ny piece of public business can be transacted in any of the official languages; laws, judgments, and records are kept in all the official languages . . .").

¹⁹ A clear example of the effects of establishing an official language is former French President Jacques Chirac's 1996 declaration that France's imposition of the French language over regional dialects was over, for they no longer posed a threat to French national identity. Thierry Brehier, *En Bretagne, Jacques Chirac défend les langues régionales [In Brittany, Jacques Chirac Defends Regional Languages]*, LE MONDE, May 31, 1996, translated in Alain Fenet, *Difference Rights and Language in France*, in LANGUAGE, NATION, AND STATE 19, 28 n.46 (Tony Judt & Denis Lacorne eds., 2004).

²⁰ Alan Patten & Will Kymlicka, *Language Rights and Political Theory: Context, Issues, and Approaches*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 13, at 1, 5.

same way as any other guaranteed human right,²¹ such as rights to life, expression, and freedom of association.²²

From the rate of language death and extent of state-sanctioned linguistic protectionism,²³ it is evident that nations do not protect languages to the putative degree that international law demands. This failure to represent and preserve nonofficial languages, from the minority perspective, is seen as the suppression of identity and individuality and an attempt at assimilation, or “state linguicide.”²⁴ The suppression of identity puts minorities on the defensive. Perceiving they are shut out of the political process, minorities have used the neglect of a state to recognize minority languages as a *casus*

²¹ See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 2, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (prohibiting discrimination on the basis of language); Convention for the Protection of Human Rights and Fundamental Freedoms art. 14, Nov. 4, 1950, 213 U.N.T.S. 222 (prohibiting discrimination based on language); International Covenant on Civil and Political Rights arts. 2, 4, 19, 24, 26–27, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (prohibiting discrimination based on language) (for those countries bound to the ICCPR, see *International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited Feb. 16, 2012)); International Covenant on Economic, Social and Cultural Rights art. 2, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (prohibiting discrimination based on language) (for those countries bound to the ICESCR, see *International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (last visited Feb. 16, 2012)); Convention on the Rights of the Child art. 29, Nov. 20, 1989, 1577 U.N.T.S. 3 (directing “development of respect for the child’s parents, his or her own cultural identity, language and values”); International Convention on the Elimination of All Forms of Racial Discrimination pmbl., Dec. 21, 1965, 660 U.N.T.S. 195, 212 (promoting human rights “without distinction . . . as to . . . language”).

²² See, e.g., ICCPR, *supra* note 21, art. 6 (right to life is inherent); *id.* art. 9 (right to liberty and security of person); *id.* art. 14 (right to fair and public hearing); *id.* art. 16 (right to be a person before the law); *id.* art. 18 (right to freedom of thought, conscience, and religion); *id.* art. 19 (right to hold an opinion); *id.* art. 21 (right to peaceful assembly); *id.* art. 22 (right to freedom to associate); *id.* art. 23 (right to marry); *id.* art. 24 (right to protection of children); *id.* art. 25 (voting rights); *id.* art. 26 (equality before law).

²³ NETTLE & ROMAINE, *supra* note 1, at 7.

²⁴ See Patten & Kymlicka, *supra* note 20, at 5–6 (arguing that part of the recognition of language is a symbol of recognition of nationhood, and failure to do the former results in the inevitable conflict for the latter); HAGÈGE, *supra* note 8, at 119 (defining state linguicide as “the concerted elimination of one or many languages through explicit political measures”); Rubio-Marín, *supra* note 13, at 137 (stating that “the rallying point of divergent identity has been language”) (quoting PIERRE A. COULOMBE, LANGUAGE RIGHTS IN FRENCH CANADA 71 (1996)).

belli (cause of war) for nationhood.²⁵ Of these conflicts, the forty-year, ongoing struggle for Kurdish independence is illustrative.²⁶

Should language prove to be inextricable from human rights and nationhood, at what point does the infringement of language rights give cause for the creation of a separate state for the preservation of a linguistic people? The situation of the Kurds in Turkey exemplifies this question because Turkey's attempts at national unification are carried out through the deliberate and creative imposition of the Turkish language with the intent to suppress minority languages, specifically Kurdish.²⁷ This Note explores this question in four parts. Part II focuses on determining the requirements necessary to state a claim of secession under international law. Part III presents the existing protection of language under international law and the extent to which a right to language exists and how it may support a secessionist claim. Using the Kurds in Turkey as an archetype, Part IV evaluates the secessionist claim of the Kurds in light of Turkey's enforcement of its official language provision. Finally, Part V distills principles from the Kurds to determine the limits of state language imposition before a people may resort to secession as a matter of linguistic survival.

²⁵ NETTLE & ROMAINE, *supra* note 1, at 21–22 (arguing that “the boundaries of modern nation-states have been arbitrarily drawn,” resulting in indigenous people who are living in “nations they had no say in creating and are controlled by groups who do not represent their interests,” and suggesting that this difference foments the conflicts between nation-states and minority peoples which comprises more than 80% of the world's conflicts); PATTEN & KYMLICKA, *supra* note 20, at 6 (“Language conflicts are inextricably related to nationalist conflicts . . .”).

²⁶ Although Kurdish uprisings against Turkish oppression have existed since 1938, two parties have defended Kurdish identity and demanded the creation of a Kurdish state since the 1970s: the Workers' Party of Turkey (TIP) and the Kurdistan Workers' Party (PKK). Mary Lou O'Neil, *Linguistic Human Rights and the Rights of Kurds*, in HUMAN RIGHTS IN TURKEY 72, 76–77 (Zehra F. Kabasakal Arat ed., 2007); see also *Row Erupts After Nine Die in South-East Turkish Bomb*, BBC NEWS (Sept. 16, 2010), <http://www.bbc.co.uk/news/world-europe-11325677> (noting continued terrorist violence after the PKK declared a ceasefire); *Turkey Reports Heavy PKK Losses After Week of Bombing*, BBC NEWS (Aug. 23, 2011), <http://www.bbc.co.uk/news/world-europe-14629046> (“The Turkish army says it has killed up to 100 Kurdish rebels in a week of air and artillery strikes on suspected PKK bases in northern Iraq.”); Sebnem Arsu, *Turkey Pursues Kurdish Rebels After 24 Soldiers Are Killed Near Iraq*, N.Y. TIMES, Oct. 20, 2011, at A12 (“Kurdish militants killed at least 24 Turkish soldiers in an attack near the Iraq border . . . and Turkey's military responded by sending hundreds of troops into northern Iraq in a counterattack on Kurdish insurgent hide-outs.”).

²⁷ O'Neil, *supra* note 26, at 74 (citing Turkey's attempt to suppress the Kurdish language by prohibiting its use in private or public).

II. SECESSION IN INTERNATIONAL LAW

While it is a well-established tenet of international law that all peoples have the right to self-determination,²⁸ the conditions that prompt a “people”²⁹ to self-determine and to what extent it may exercise this right are both subject to dispute. These disputes fall into three main perspectives: minimalist, maximalist, and middle.³⁰

A. *The Minimalist Position: Limited to No Right to Self-Determination*

The minimalists’ beliefs on secession,³¹ and, for that matter, self-determination, range from complete rejection to permitting its existence only in the hands of entire state populations, but not minorities.³² The minimalist position is grounded in another well-recognized and rival facet of international law, *uti possidetis*, or “territorial integrity.”³³ Through this doctrine, minimalists substantiate their position by pointing to two main arguments. Principally, if secession were easy to accomplish, it would result in an undesirably high degree of factionalism in the world,³⁴ creating tenuous and possibly destructive political states.³⁵ For this reason, the stability of world peace is better maintained through the sanctity of borders.³⁶ Second, minimalists argue that the body of international law that recognizes the principle of self-determination deliberately limits the power to extreme cases.³⁷ While the United Nations (UN) General Assembly created the

²⁸ See, e.g., ICCPR, *supra* note 21, art. 1, para. 1; ICESCR, *supra* note 21, art. 1, para. 1.

²⁹ As with the disputes over the other components of self-determination, there is no definition or consensus over what a “people” is. C.M. Brölmann & M.Y.A. Zieck, *Indigenous Peoples*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 187, 190 (Catherine Brölmann et al. eds., 1993).

³⁰ Alexandra Xanthaki, *The Right to Self-Determination: Meaning and Scope*, in MINORITIES, PEOPLES AND SELF-DETERMINATION 15, 20 (Nazila Ghanea & Alexandra Xanthaki eds., 2005); see also T.M. Franck, *Postmodern Tribalism and the Right to Secession*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW, *supra* note 29, at 3, 4 (noting three approaches to secessionism: no recognition, embrace the theory, and “not embrace secession, but assert adherence to human rights and conflict resolution”).

³¹ Secession, specifically known as “external self-determination,” is one of the powers that inheres in the right to self-determination. Xanthaki, *supra* note 30, at 25.

³² *Id.* at 20.

³³ Franck, *supra* note 30, at 4; see also Christian Tomuschat, *Secession and Self-Determination*, in SECESSION 23, 38 (Marcelo G. Kohen ed., 2006) (arguing *uti possidetis* obstructs secessionist claims).

³⁴ See Tomuschat, *supra* note 33, at 29 (arguing that should secession be a right to every ethnic group, the result would be “infinite fragmentation”).

³⁵ Adeno Addis, *Cultural Integrity and Political Unity: The Politics of Language in Multilingual States*, 33 ARIZ. ST. L.J. 719, 734 (2001).

³⁶ Tomuschat, *supra* note 33, at 29.

³⁷ Xanthaki, *supra* note 30, at 24.

doctrine of self-determination, it has emphasized, rather, the principle of national unity to state severance.³⁸ The UN has not accepted the secession of any of its member states since its creation.³⁹

Unmistakably, secession is extreme, but minimalists are factually incorrect to deny the existence of self-determination as a principle of international law.⁴⁰ The central international human rights covenants currently in force, namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both expressly recognize self-determination as a right.⁴¹ Additionally, the principle has been recognized in practice, both at the International Court of Justice (ICJ)⁴² and at the domestic level.⁴³ While the principle's history of application may reveal somewhat inconsistent successes with respect to secession,⁴⁴ its positive imprint on international law has not been effaced.⁴⁵

³⁸ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625 (XXV), princ. 1, U.N. Doc. A/8082 (Oct. 24, 1970). Resolution was reaffirmed in the Declaration of the UN World Conference on Human Rights in June 1993, World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, para. 2, U.N. Doc. A/CONF.157/23 (July 12, 1993), and GA Declaration of the Occasion of the Fiftieth Anniversary of the UN, G.A. Res. 50/6, U.N. GAOR, 50th Sess., Supp. No. 49, U.N. Doc. A/RES/50/49, at 13 (Nov. 9, 1995). See also G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., U.N. Doc. A/Res/1514, at 67 (Dec. 14, 1968) (“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.”).

³⁹ Tomuschat *supra* note 33, at 29; cf. Patrick Dumberry, *Lessons Learned from the Quebec Secession Reference Before the Supreme Court of Canada*, in SECESSION, *supra* note 33, at 416, 441 (observing that “no entity attempting to secede unilaterally has been admitted to the United Nations since 1945 against the wishes of the government of the State from which it was trying to secede”).

⁴⁰ Xanthaki, *supra* note 30, at 21.

⁴¹ ICCPR, *supra* note 21, art. 1, para. 1; ICESCR, *supra* note 21, art. 1, para. 1.

⁴² Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 141, paras. 79, 82 (July 22) [hereinafter *Secession of Kosovo*].

⁴³ Reference re Secession of Quebec, [1998], 2 S.C.R. 217, para. 122 (Can.) [hereinafter *Secession of Quebec*]. However, international mediators have a significant role in resolving secessionist disputes. Diane F. Orentlicher, *International Responses to Separatist Claims: Are Democratic Principles Relevant?*, in SECESSION AND SELF-DETERMINATION, *supra* note 13, at 19, 34.

⁴⁴ DOMINIC MCGOLDRICK, THE HUMAN RIGHTS COMMITTEE: ITS ROLE IN THE DEVELOPMENT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 257 (1991).

⁴⁵ See *Secession of Quebec*, *supra* note 43, para. 114 (“The existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond ‘convention’ and is considered a general principle of international law.”). Recognizing that self-determination may not always be successfully achieved within the territorial confines of a state, “a right of secession may arise” under exceptional circumstances. *Id.* para. 122.

Moreover, while territorial integrity is undoubtedly necessary to maintain the international community, the arguments of *uti possidetis* are misplaced for two primary reasons. While *uti possidetis* seems relevant, secession normally occurs within the boundaries of an existing state,⁴⁶ and so, absent the involvement of frontiers of another state, the territorial integrity of international boundaries are retained and *uti possidetis* poses no issue. Thus the minimalists' argument is, in reality, only borrowed from *uti possidetis*: just as interstate boundaries are to be respected, so should international law give deference to internal state cohesion. This was the view of the court in the landmark Secession of Quebec case, in which the Quebecois attempted to democratically secede from the Canadian federal system.⁴⁷ There, the Supreme Court of Canada stated that "international law places great importance on the territorial integrity of nation states and . . . leaves the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity forms a part."⁴⁸ To the dissatisfaction of separatists, the required deference to domestic law made it unlikely that a self-interested state would permit a people to secede from its territory.⁴⁹

However, one of the purposes of secession is to provide oversight for international law's presumption of or favoritism toward state unity.⁵⁰ Foremost included in the right to self-determination is the right of a people to determine its own "political status and freely pursue [its] economic, social and cultural development."⁵¹ For this right to be controlled at the *discretion* of nations—that is, by the very parties *at times responsible for oppression*—is to have no right at all. The Secession of Quebec court contemplated this scenario and stated that one of the extreme situations in which a people may have the right to external self-determination, i.e., secession, is when a people are "denied the ability to exert internally their right to self-determination."⁵² Moreover, the right of self-determination is a tool designed to protect the rights of individuals, not nations.⁵³ An argument for the preservation of

⁴⁶ See Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia, 31 I.L.M. 1488, 1498 (1992) ("[I]t is well established that . . . the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise.").

⁴⁷ Secession of Quebec, *supra* note 43, para. 112.

⁴⁸ *Id.*

⁴⁹ See Dietrich Murswiek, *The Issue of a Right of Secession – Reconsidered*, in MODERN LAW OF SELF-DETERMINATION 21, 36 (Christian Tomuschat ed., 1993) (noting that the reason states never accepted the principle of self-determination as including secession is that "[a] State-based international legal order cannot contain a rule that leads to the destruction of most of the states").

⁵⁰ See Tomuschat, *supra* note 33, at 39 (arguing that state deprivation of internal self-determination to a people puts territorial integrity secondary to the right to self-determination).

⁵¹ ICCPR, *supra* note 21, art. 1, para. 1.

⁵² Secession of Quebec, *supra* note 43, para. 138.

⁵³ See Tomuschat, *supra* note 33, at 41 ("[I]nternational law is designed to preserve

borders and a state's internal structure that is based on the goal of preserving international peace must recognize that international peace also hinges on the welfare of the people within those states.⁵⁴ If international law has created a presumption in favor of a state's internal structure, then a state may lose that presumption when the well-being of its people is assailed by a state-sanctioned, "consistent pattern of gross and reliably attested violations of human rights."⁵⁵ In the case of oppression, a people's secessionist argument is predicated on the failure of either the state to prevent human rights violations or the international community to intervene.⁵⁶ Where thwarting state oppression is the secessionist "just cause," secession is said to be remedial, and has been notably successful in the past.⁵⁷

B. The Maximalist Position: Self-Determination as an Evolving Right

Maximalists view international law's broad language concerning the right to self-determination as an evolving tool that serves the needs of the international community by righting global wrongs.⁵⁸ The maximalist position accepts at face value that a people may secede not only in the extreme situations of human rights violations, but for arguably weaker, economic and cultural reasons.⁵⁹ Maximalists justify their position by pointing to the ICCPR and the ICESCR, which both define the right of self-determination in terms of "economic, social and cultural development" in their first articles,⁶⁰ and argue from their legislative history that these articles were meant to be broadly interpreted. For example, a proposed amendment aiming to further refine these terms was rejected on the basis that "any numeration of the components of the right of self-determination was likely to be incomplete."⁶¹ The maximalist views this history of rejecting

international peace and security and the well-being of individual human beings.").

⁵⁴ *Id.*

⁵⁵ *Id.* (quoting E.S.C. Res. 1503 (XLVIII), E/4832/Add.1 (May 27, 1970)); see also *id.* at 41 ("[I]f a State strays from [promoting and encouraging human rights], not just by negligence but on account of a deliberate policy, it may forfeit the protection it enjoys by virtue of international law.").

⁵⁶ See Wayne Norman, *Domesticating Secession*, in SECESSION AND SELF-DETERMINATION, *supra* note 13, at 193, 198 (describing how oppression and exploitation further a "just cause" theory of secession).

⁵⁷ See Tomuschat, *supra* note 33, at 42 (noting the independence of Bangladesh and rise of Kosovo as examples of remedial session).

⁵⁸ Xanthaki, *supra* note 30, at 28.

⁵⁹ *Id.* at 26.

⁶⁰ ICCPR, *supra* note 21, art. 1, para. 1; ICESCR, *supra* note 21, art. 1, para. 1.

⁶¹ MARC J. BOSSUYT, GUIDE TO THE "TRAVAUX PRÉPARATOIRES" OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 34 (1987); Tomuschat, *supra* note 33, at 26.

enumerations of the right of self-determination as sanctioning the broad availability of the right.

The greatest weakness of the maximalist position is that, as it disregards concrete boundaries, it is unrestrained and therefore unworkable in practice. First, even if self-determination should be considered broadly, there are alternative and less drastic means available to attempt to remedy perceived wrongs.⁶² By encouraging individuals to ignore the domestic political process or resort to international tribunals, rights normally enforced by other bodies are shrouded beneath the “umbrella-right” of self-determination and therefore dilute its use.⁶³ Second, there are settled internal restraints imposed upon the right to self-determination. The right to self-determination is only available to “peoples” under the ICCPR, and not to minorities, whose groups could be legion and are given a different set of rights in Article 27.⁶⁴ Thus, minorities are held to be an example of those who must seek the enforcement of their rights elsewhere. Additionally, in practice, the right of self-determination is often not executed through the judicial process, but instead by force through the greater powers theory⁶⁵ and the effectivity doctrine, both of which propose that secession is based on political reality and force, not legality.⁶⁶

The independence of Bangladesh is one of the few examples of secession in recent history⁶⁷ and one of several examples of the effectivity doctrine. In the 1970s, Pakistan initiated a brutal policy of repression against the East Pakistanis that were calling for independence.⁶⁸ While the UN did not take a stance on the secessionist claim, India delivered massive support to the East Pakistanis, causing Pakistan to withdraw from the eastern part of the country.⁶⁹ In 1974, it was uncontested among the international community

⁶² See Xanthaki, *supra* note 30, at 28 (arguing that separate international channels, such as UNESCO, are available for the enforcement of cultural rights).

⁶³ *Id.* (construing Gudmundur Alfredsson, *Different Forms of and Claims to the Right of Self-Determination*, in SELF-DETERMINATION: INTERNATIONAL PERSPECTIVES 58 (Donald Clark & Robert Williamson eds., 1996)) (describing the use of self-determination as an umbrella under which a broad range of rights are enforced).

⁶⁴ Article 27 states in its entirety: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” ICCPR, *supra* note 21, art. 27.

⁶⁵ See generally Milena Sterio, *On the Right to External Self-Determination: “Selfistans,” Secession, and the Great Powers’ Rule*, 19 MINN. J. INT’L L. 137 (2010) (articulating the great powers theory, whereby a secessionist claim is often achieved through international recognition from great powers, rather than through legal recognition).

⁶⁶ Dumberry, *supra* note 39, at 436–37. The doctrine represents secession through a political act not based on any precondition, such as oppression, or legal principle. *Id.*

⁶⁷ Tomuschat, *supra* note 33, at 30.

⁶⁸ *Id.* at 29–30.

⁶⁹ *Id.* at 30.

that Bangladesh was a new state.⁷⁰ A maximalist might interpret the tacit conduct of the UN as concluding that the creation of Bangladesh was a valid execution of the principle of self-determination under the broad terms of “right” in an evolving international context. However, without constraint, a secessionist claim brought through the effectivity doctrine may reduce the legitimacy of a claim to no more than “might makes right.”

C. The Middle Position: Reconciling the Extremes of Self-Determination

The middle position is aimed at using the minimalist’s interests in territorial integrity to restrain the maximalist’s unlimited exercise of self-determination.⁷¹ Self-determination is recognized, but a people must first resort to domestic political means before exercising this right.⁷² Only after domestic means have failed to remedy the injury, and a people’s civil and political rights are continually denied—depending on the gravity of the interest at stake—does a claim to self-determination accrue to the injured people.⁷³ Due to the emphasis on state sovereignty in international law, a

⁷⁰ *Id.*

⁷¹ See Franck, *supra* note 30, at 4 (describing the middle position by combining the extremes of embracing a secessionist cause and rejecting it entirely in favor of static borders); Xanthaki, *supra* note 30, at 29 (noting an alternative approach as one that balances the advantages of the minimalist and maximalist approaches); Murswiek, *supra* note 49, at 24 (describing the small minority of maximalists that endorse “unlimited *jus secedendi*” for all peoples).

⁷² See Murswiek, *supra* note 49, at 39 (“Only if a State deprives a people of its right to internal self-determination (which . . . does not absolve the people from its duty of allegiance to the State as a whole), must territorial integrity stand behind the right of self-determination.”); cf. Franck, *supra* note 30, at 15 (discussing that, as a matter of course, secessionist movements first are “being managed by a process of conflict resolution without recourse to the language and procedures of international law”).

⁷³ C. Lloyd Brown-John, *Self-Determination, Autonomy and State Secession in Federal Constitutional and International Law*, 40 S. TEX. L. REV. 567, 586 (1999) (“[I]t is clear that a minority who are ‘geographically separate’ and who are ‘distinct ethnically and culturally’ and who have been placed in a position of subordination may have a right to secede. That right, however, could only be exercised if there is a clear constitutional denial of political, linguistic, cultural and religious rights.”); Michael P. Scharf, *Earned Sovereignty: Juridical Underpinnings*, 31 DENV. J. INT’L L. & POL’Y 373, 381 (2003); see also Murswiek, *supra* note 49, at 25 (“The right of secession unquestionably exists, however, in a special, but very important case: that of peoples, territories and entities subjugated in violation of international law.” (quoting Special Rapporteur, *The Right to Self-Determination, Historical and Current Development on the Basis of United Nations Instruments*, Sub-Comm’n on Prevention of Discrimination & Prot. of Minorities, U.N. Doc. E/CN.4/Sub.2/404/Rev.1, para. 183 (1981) (by Aureliu Cristescu))). Additionally, the fact that a claim to self-determination requires certain conditions before it is exercised leads one commentator to consider self-determination a principle, rather than a right. Xanthaki, *supra* note 30, at 21.

just claim to secession must rely on state action that violates a people's "fundamental human rights, evidently and severely."⁷⁴

The purpose of the middle position is to strike a balance between the "vicious circle" of state sovereignty and self-determination.⁷⁵ Though this compromise gives great weight to a state's territorial integrity and sovereignty, this emphasis is not unimpeachable. If a people present a clear case that a state has failed to represent the people's interests in the political process and has continually denied the people's basic human rights, territorial deference is forfeited.⁷⁶ When an affirmative case for external self-determination is demonstrated, under the principle of *uti possidetis*, the new state is limited to the boundaries of the state the people currently occupy.⁷⁷

This middle position is a form of remedial secession and is by no means simply espoused in theory by many scholars,⁷⁸ but has been inferred as possible grounds for a secessionist claim in practice. Two recent international law cases regarding secession stand out: *In re Secession of Quebec*⁷⁹ and, most recently, the Kosovo advisory opinion on "whether the declaration of [Kosovo's] independence is in accordance with international law."⁸⁰ First, in the Secession of Quebec case, the Canadian Supreme Court held that the Quebecois did not state a secessionist claim because they were not denied access to the political process nor were their human rights oppressed in any way.⁸¹ This holding implies that if a denial to the political process and disregard for human rights were found, Quebec would have been able to unilaterally secede from Canada.⁸² Second, in the Kosovo secession opinion, while the ICJ was careful not to address the issue of whether remedial secession justified Kosovo's right to independence,⁸³ the ICJ's decision to hold valid Kosovo's independence doubly impacts the issue of secession: (1) declaration of independence is not exclusively an act of domestic constitutional law, but one of public international law;⁸⁴ and (2) as

⁷⁴ Murswiek, *supra* note 49, at 26. Murswiek also notes that there might be an argument that severe discrimination constitutes an unjustifiable use of "aggression" according to the General Assembly of the United Nations. *Id.*; G.A. Res. 3314 (XXIX), U.N. Doc. A/RES/3314 (Dec. 14, 1974).

⁷⁵ Murswiek, *supra* note 49, at 24.

⁷⁶ Scharf, *supra* note 73, at 382, 384.

⁷⁷ *Id.* at 384.

⁷⁸ For a list of scholars that endorse this view of remedial secession, see *id.* at 381 n.58.

⁷⁹ Secession of Quebec, *supra* note 43.

⁸⁰ Secession of Kosovo, *supra* note 42, pt. IV.

⁸¹ Secession of Quebec, *supra* note 43, para. 154.

⁸² Scharf, *supra* note 73, at 383.

⁸³ Secession of Kosovo, *supra* note 42, para. 83.

⁸⁴ Robert Muharremi, *A Note on the ICJ Advisory Opinion on Kosovo*, 11 GERMAN L.J. 867, 873 (2010).

a declaration of independence is the culmination of a secessionist claim, it is possible for a people that have suffered grave human rights violations to state a secessionist claim.⁸⁵

III. LANGUAGE PROTECTION UNDER INTERNATIONAL LAW

It must be noted that there is no absolute international legal right to a minority language.⁸⁶ Thus, when one speaks of a topic as sensitive as language rights, one must be aware that the critical difference between a moral and legal right is enforceability. Moral rights may be common fare in the philosophical world, but they are more foreign in international law.⁸⁷ The moral argument for linguistic protection, combined with the modern trend in international law to protect language rights and the heightened protection of linguistic minorities under ICCPR Article 27,⁸⁸ all give a strong basis for language rights to be considered protected human rights.

A. *Moral Argument for Language as a Human Right*

There are three moral justifications for language preservation: language is inextricably related to a people's identity; language is required to participate in the political process; and language adds diversity to the world as knowledge itself.⁸⁹

First, language as integral to identity arguably provides the strongest reason for language preservation as a moral and human right. Language is a critical part of self-understanding and social self-description.⁹⁰ Through language, people have a cultural link to their past, present, and future.⁹¹ A person's identity is created as a result of dynamic interaction with others in the public sphere.⁹² National and cultural identities are significantly determined by the collective identity of language.⁹³ More specifically,

⁸⁵ Thomas Burri, *The Kosovo Opinion and Secession: The Sounds of Silence and Missing Links*, 11 GERMAN L.J. 881, 885–86 (2010).

⁸⁶ Patten & Kymlicka, *supra* note 20, at 5.

⁸⁷ Fernand de Varennes, *The Existing Rights of Minorities in International Law*, in LANGUAGE: A RIGHT AND A RESOURCE 117, 117 (Miklós Kontra et al. eds., 1999).

⁸⁸ ICCPR, *supra* note 21, art. 27.

⁸⁹ See Blake, *supra* note 13, at 212 (“[T]hree distinct forms of cost [of language extinction] might be identified: costs understood in terms of identity and self-description; costs deriving from communicative interests; and costs to the world as a whole deriving from the loss of diversity and knowledge.”).

⁹⁰ *Id.* at 213.

⁹¹ Zimmerman, *supra* note 13, at 117.

⁹² *Id.* at 117–18.

⁹³ See *id.* at 116–17 (“National identity is an attempt to unify a population legally, linguistically, culturally, and ideologically. . . . The dominant culture in a country is often

national identity unifies a people legally, linguistically, culturally, and ideologically.⁹⁴ Thus the elimination of language can entail the elimination of one's human identity,⁹⁵ and comes with it a price: In areas that emphasize cultural assimilation, studies of immigrant families indicate that lack of identity results in feelings of inferiority, post-traumatic stress,⁹⁶ and fearfulness, and causes marginalization from the community.⁹⁷

Second, as a practical matter, language preservation is a political necessity. Unlike religion, to which government may remain neutral, political discourse must be undertaken in some language.⁹⁸ For this reason, government cannot simply tolerate language in the same way as religion.⁹⁹ In effect, the destruction of language means the elimination of a political voice in elections,¹⁰⁰ an uneducated electorate, and an inability to understand the law.¹⁰¹

Finally, as an aesthetic and scholarly matter, language has value as a "unique human achievement."¹⁰² Each language captures and presents the world through the eyes of a people.¹⁰³ From language springs culture, technology, and the arts.¹⁰⁴ With the death of any language, injustice is done to the past and the future is robbed of intellectual and aesthetic diversity.

There are three serious objections to these moral arguments. The first addresses the argument on the basis of aesthetic appeal: that the value ascribed to language as a source of beauty and as a repository of knowledge is simply too difficult to quantify into political and legal understanding.¹⁰⁵ Language preservation, it is argued, should instead be founded on more concrete terms, such as political necessity. The second objection is that there is no such thing as a pure language,¹⁰⁶ and that the type of language that is in

considered to be synonymous with national identity This [cultural and political] socialization is usually accomplished through the use of language.").

⁹⁴ *Id.*

⁹⁵ Blake, *supra* note 13, at 213.

⁹⁶ Zimmerman, *supra* note 13, at 118, 126.

⁹⁷ Judy Smith-Davis, *The New Immigrant Students Need More than ESL*, EDUC. DIGEST, Apr. 2004, at 21, 24.

⁹⁸ Rubio-Marín, *supra* note 13, at 136.

⁹⁹ *Id.*

¹⁰⁰ Blake, *supra* note 13, at 214; Rubio-Marín, *supra* note 13, at 136.

¹⁰¹ See Rubio-Marín, *supra* note 13, at 136 (noting the need for language to educate, create laws, adjudicate, and have elections).

¹⁰² Blake, *supra* note 13, at 216.

¹⁰³ See NETTLE & ROMAINE, *supra* note 1, at 14 ("Each language has its own window on the world. . . . It is a loss to every one of us if a fraction of that diversity disappears when there is something that can have been done to prevent it.").

¹⁰⁴ *Id.*

¹⁰⁵ Blake, *supra* note 13, at 217.

¹⁰⁶ *Id.* at 216.

need of preservation is a living language.¹⁰⁷ Living languages develop alongside other cultures, undergo constant change, and must survive the threat of substitution, or else, by definition, are dead.¹⁰⁸ Ironically, if it follows that languages are mutable by nature, the preservation of languages can also hinder their natural development. A third objection focus on the question that if governments protect languages, how should they determine which languages to protect? Arguably, not all situations demand the same level of linguistic protection. For example, preserving the language of an indigenous people might be more justified than that of an immigrant people; a state could argue that the price of emigration is the requirement that immigrants forsake their native language to embrace a new culture.¹⁰⁹

These objections, however, fail to take into account that the true moral gravity of language death lies in the cause of death.¹¹⁰ Cultural, economic, and linguistic shifts may be part of the natural order and are thus unobjectionable, but only when they result from free choices.¹¹¹ However, a state policy to legally ban or suppress minority languages is coercion, not the speaker's free choice, and thus a matter of moral concern.¹¹²

B. Legal Argument for Language as a Human Right

Although there is no guaranteed right to the use of one's language, linguistic minorities receive unique language protection under international law. Under general international law, individuals as a whole are guaranteed

¹⁰⁷ See HAGÈGE, *supra* note 8, at 76 (“[A] living language would be defined as one of a community that renews its native speakers by itself. And a dead language . . . would be one of a community in which native competence has totally disappeared, to the extent that the native speakers had only imperfectly transmitted their knowledge, and their descendants in turn do not transmit an ability to speak and to understand the idiom of the group.”).

¹⁰⁸ *Id.* at 76–77.

¹⁰⁹ Rubio-Marín, *supra* note 13, at 139; see *infra* text accompanying note 209 (noting that forsaking one's culture is a requirement for French citizenship).

¹¹⁰ Blake, *supra* note 13, at 211 (arguing that language assimilation is a matter of moral gravity).

¹¹¹ Rubio-Marín, *supra* note 13, at 159. Two counter-perspectives on this subject are immigrant transnationalism—“the tendency of immigrants to maintain regular connections back to their country of origin”—and immigrant multiculturalism—a movement that declares that immigrants should not have to pay the price of their ethnic identity in order to integrate. Patten & Kymlicka, *supra* note 20, at 8; see also Stella Burch Elias, *Regional Minorities, Immigrants, and Migrants: The Reframing of Minority Language Rights in Europe*, 28 BERKELEY J. INT'L L. 261, 311 (arguing for the retention of language rights protection for immigrants).

¹¹² See Nazila Ghanea, *Repressing Minorities and Getting Away with It? A Consideration of Economic, Social and Cultural Rights*, in MINORITIES, PEOPLES AND SELF-DETERMINATION, *supra* note 30, at 193, 209 (“[T]he slow silencing of a minority group . . . is no less discriminatory or cruel than sudden and bloody episodes against them.”).

the right to be free of discrimination on the basis of language.¹¹³ In this sense, languages are protected universally to some degree. However, this protection does not ensure that language itself will be protected; it only ensures that one will not be discriminated against on the basis of language.

It is only under Article 27 of the ICCPR that minority language and cultural rights specifically are protected: "In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."¹¹⁴ This minority right exists separate from all other rights guaranteed under the ICCPR.¹¹⁵

However, critics have argued two reasons that Article 27 is not the broad aegis that minorities claim. First, the phrasing of the right is notably distinct from other affirmative guarantees in the ICCPR, namely, that "shall not be denied the right" is in the negative.¹¹⁶ From this deviation, critics have argued that the level of protection is unclear, with one critic noting that "it represents 'a classic example of restrictive toleration of minorities.'"¹¹⁷ A second criticism against a broad interpretation of Article 27 is that language protection applies to individuals, not groups.¹¹⁸ If Article 27 does not impose an affirmative duty on states to advance or protect the use of minority

¹¹³ See, e.g., U.N. Charter art. 1, para. 3 ("To achieve international cooperation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to . . . language . . ."); *id.* art. 55 ("United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to . . . language . . ."); Universal Declaration of Human Rights, *supra* note 21, art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . language . . ."); Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 21, art. 14 ("The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as . . . language . . ."); ICCPR, *supra* note 21, art. 2, para. 1 ("[E]nsure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . language . . ."); ICESCR, *supra* note 21, art. 2, para. 2 ("[G]uarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to . . . language . . .").

¹¹⁴ ICCPR, *supra* note 21, art. 27.

¹¹⁵ See Office of the High Comm'r for Human Rights, U.N. Human Rights Comm., General Comment No. 23: The Rights of Minorities (Art. 27), para. 1, CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994) [hereinafter General Comment No. 23] ("[T]his article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.").

¹¹⁶ *Id.*

¹¹⁷ PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES 178 (1991) (quoting JACOB ROBINSON, INTERNATIONAL PROTECTION OF MINORITIES 89 (1971)).

¹¹⁸ These critics point to General Comment 23 to ICCPR Article 27, which states, "The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups . . ." General Comment No. 23, para. 1.

languages, states may satisfy the requirement by simply not harming an individual linguistic minority.¹¹⁹ The *travaux préparatoires*¹²⁰ also illustrate the delegate of Mexico's insistence that Article 27 be written in an affirmative way, so as to give linguistic minorities special protection.¹²¹ By implication, critics argue that the drafters intended the negative interpretation.¹²²

Based on investigations of minority human rights violations, the Special Rapporteur on Minorities¹²³ statutorily interprets a positive reading.¹²⁴ Minorities rarely possess the human and financial resources to advance their cultural development.¹²⁵ Furthermore, minorities are unlikely to be in a position to assert universal rights under other articles, such as the freedom of expression and association.¹²⁶ Thus, for Article 27 to play the protective role, which minorities cannot be politically expected to assume, it must be given independent force through a positive reading.¹²⁷

The Human Rights Committee (HRC) has also weighed in. First, in the HRC's commentary to Article 27, General Comment 23 supports both the idea that linguistic rights are treated collectively and need to be positively enforced.¹²⁸ Second, recent cases handled before the HRC appear to have taken the more forceful, positive reading of Article 27, imposing upon states an obligation to remedy disadvantages arising out of linguistic minority status and secure minority language rights.¹²⁹ In the end, the HRC seems to have endorsed a positive view.

¹¹⁹ THORNBERRY, *supra* note 117, at 178.

¹²⁰ "Materials used in preparing the ultimate form of an agreement or statute, and esp. of an international treaty; the draft or legislative history of a treaty." BLACK'S LAW DICTIONARY 1638 (9th ed. 2009).

¹²¹ THORNBERRY, *supra* note 117, at 179.

¹²² *Id.*

¹²³ The United Nations appoints special rapporteurs for certain divisions "to monitor and report how people's human rights are protected or violated." *The Special Rapporteurs*, BBC, http://news.bbc.co.uk/2/hi/programmes/documentary_archive/5295942.stm (last updated Aug. 29, 2006).

¹²⁴ THORNBERRY, *supra* note 117, at 180.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ General Comment No. 23, *supra* note 115, para. 6.1 ("Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a 'right' and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required . . ."); *id.* para. 6.2 ("Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.").

¹²⁹ *See, e.g.*, U.N. Human Rights Comm., Concluding Observations of the Human Rights Committee: Sudan, para. 20, U.N. Doc. CCPR/C/79/Add.85 (Nov. 19, 1997) (finding that where there was "no recognition in law of the right to use local languages in official communications or administrative or court proceedings, . . . [e]mphasis should be given to the

C. *Scope of Protection of Minority Language Rights as Human Rights*

Through Article 27, linguistic minorities are assured some manner of protection to the point at which they might have, according to the HRC and its commentary, a certain right to their language. Despite this protection, a state is free to designate its own separate official language.¹³⁰ The creation of an official language has its functional advantages, but it also discriminates on the basis of language and can deprive nonnative speakers of the use of their native tongue.¹³¹ With minority language rights in tension with official language laws, it is important to know specific instances in which Article 27 will protect linguistic minorities.

These instances can be separated into two areas: the private and public spheres. In the private sphere, the following linguistic rights are protected under Article 27, though this list is not exhaustive: the right to speak or write a language among family members;¹³² the right of individuals to use their own names, as well as their own script;¹³³ the right to media broadcasting in one's own language (though a state is not obligated to provide funding for such broadcasting);¹³⁴ the right to create and operate educational facilities in a minority language;¹³⁵ and the right to use one's preferred language in their business relationships.¹³⁶

need of ethnic and religious minorities . . . to pursue and develop their traditions, culture and language, as required by article 27 of the Covenant"); U.N. Human Rights Comm., Concluding Observations of the Human Rights Committee: Algeria, para. 15, U.N. Doc. CCPR/C/79/Add.95 (Aug. 18, 1998) (recommending that the Arabic Language Decree, which imposed "compulsory, immediate and exclusive use of [Arabic] in all areas of public activity[,] . . . be urgently reviewed so as to remove the negative consequences it produces" on Berber and French populations).

¹³⁰ Fernand de Varennes, *Linguistic Identity and Language Rights*, in *UNIVERSAL MINORITY RIGHTS: A COMMENTARY ON THE JURISPRUDENCE OF INTERNATIONAL COURTS AND TREATY BODIES* 283 (Marc Weller ed., 2007).

¹³¹ *Cf. id.* ("No treaty provision anywhere in the world places an official language above basic rights such as freedom of expression or non-discrimination."). There are alternative methods for dealing with the problem of managing an official language in the midst of a multi-lingual society. A type of federalism is one such approach, but is beyond the scope of this Note. See generally Sujit Choudhry, *Managing Linguistic Nationalism Through Constitutional Design: Lessons from South Asia*, 7 *INT'L J. CONST. L.* 577 (2009) (managing multi-lingual societies through constitutional design); Addis, *supra* note 35 (addressing the compatibility issue of language in a pluralist society).

¹³² de Varennes, *supra* note 87, at 118 (citing U.N. Human Rights Comm., *Ballantyne v. Canada*, U.N. Doc. CCPR/C/47/D/359/1989, 385/1989/Rev.1 (1993); U.N. Human Rights Comm., *Lovelace v. Canada*, U.N. Doc. A/36/40, at 166 (1977)).

¹³³ *Id.* at 120–22.

¹³⁴ *Id.* at 122–23.

¹³⁵ *Id.* at 124 (citing *Minority Schools in Albania (Greece v. Alb.)*, Advisory Opinion No. 26, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6)).

¹³⁶ *Id.* at 125.

It is not surprising to find similar linguistic rights protected in the public sphere. Where there is a concentration of linguistic minorities, “an appropriate level” of public services must be provided in the minority languages.¹³⁷ The state must provide educational services in minority languages where, given the size of the linguistic minority, it would be reasonable for the state to do so.¹³⁸ In judicial proceedings, linguistic minorities have the right to an interpreter and to be informed of the proceedings in a language they understand.¹³⁹ In the case of meetings of elected bodies, a politician must be permitted to use a minority language during meetings or sessions “to the extent to which it is appropriate given the number of speakers and the particular type of state function concerned.”¹⁴⁰

In sum, the general protection of linguistic minority rights found in Article 27 includes the same basic human rights identified by the morality-based arguments.¹⁴¹ The protection of language in the family and public sphere promotes the development of a person’s cultural identity in and out of the home. Permitting minority language to be a tool of commerce and method of discourse with government preserves the functionality of language. Finally, ensuring the use of language in the field of education furthers language itself as a repository of knowledge that can enhance the diversity of the world. Therefore, one may say with confidence that minority language rights are both moral and legally enforceable human rights.

D. How a People May Be Protected by Linguistic Minority Rights

A secessionist claim based on severe state-sanctioned, infringement of linguistic rights without a democratic remedy will be strongest in the hands of a linguistic minority, since, as shown above, linguistic minorities are protected to a degree rivaling a fundamental human right under Article 27.¹⁴² Without such protection, there exists only minimal state duty to preserve language—namely, the duties of nondiscrimination under the prior articles. However, only a “people” retains the right to self-determination under Article 1.¹⁴³ Consequently, minorities are denied the exercise of any right to external self-determination.¹⁴⁴

¹³⁷ *Id.* at 128–29.

¹³⁸ *Id.* at 130.

¹³⁹ *Id.* at 132–33.

¹⁴⁰ *Id.* at 136–37.

¹⁴¹ See *supra* Part III.A (laying out the arguments relating language to people’s identity, political participation, and diversity of knowledge).

¹⁴² See *supra* Part III.B (evidencing positive interpretation of Article 27’s protection of linguistic minorities).

¹⁴³ ICCPR, *supra* note 21, art. 1, para. 1.

¹⁴⁴ Xanthaki, *supra* note 30, at 17.

Nevertheless, it is still possible for a “people” to retain Article 27 linguistic protection by being classified as a “minority” under a certain, frequently used definition of “minority.” Neither within nor without the ICCPR is there a universally accepted definition or set of criteria that define what a “people” is.¹⁴⁵ A people “may include only a portion of the population of an existing state.”¹⁴⁶ Accepted characteristics of a “people” include: “common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, common economic life, and consisting of a certain minimum number.”¹⁴⁷

“Minority,” too, is not defined in the ICCPR.¹⁴⁸ The General Comment indicates, however, that a minority is composed of “those who belong to a group and who share a common culture, a religion, and/or a language.”¹⁴⁹ A traditional and well-cited definition of a “minority” is the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities Francesco Capotorti’s formulation:

[A minority is a] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.¹⁵⁰

Comparing these definitions of “minority” with those generally accepted descriptions of a “people,” the one difference between the two is the size of the population of a designated area. The HRC case *Ballantyne et al. v. Canada* addressed this issue of how a group is to be determined as a “minority” on the basis of population area. There, the court held that “minorities referred to in article 27 are minorities within such a State, and

¹⁴⁵ SARAH JOSEPH ET AL., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 100–01 (2000); General Comment No. 23, *supra* note 115; *see also* Secession of Quebec, *supra* note 43, para. 123 (noting that there has been “little formal elaboration of the definition of ‘peoples,’ ” leaving the precise meaning uncertain).

¹⁴⁶ Secession of Quebec, *supra* note 43, para. 124.

¹⁴⁷ JOSEPH ET AL., *supra* note 145, at 100.

¹⁴⁸ ICCPR, *supra* note 21.

¹⁴⁹ General Comment No. 23, *supra* note 115, para. 5.1.

¹⁵⁰ ATHANASIA SPILIOPOULOU ÅKERMARK, JUSTIFICATIONS OF MINORITY PROTECTION IN INTERNATIONAL LAW 89 (1997) (citing Special Rapporteur, *Study on the Rights of Persons belonging to Ethnic, Religious, and Linguistic Minorities*, Sub-Comm’n on Prevention of Discrimination & Prot. of Minorities, para. 568, U.N. Doc. E/CN.4/Sub.3/384/Add.1-7 (1977) (by Francesco Capotorti)).

not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27.”¹⁵¹ Thus, Canadian English speakers could not be considered a linguistic minority in a given province in Canada for purposes of Article 27 because English is the majority language of the entire nation.¹⁵²

In sum, a group of individuals, sharing only a common history of traditions and language, sufficiently large and concentrated enough to be an identifiable “people,” yet numerically smaller than the rest of the state’s population, may be considered a “people” and still reap the heightened linguistic protections of Article 27. As the following part indicates, this minority-people duality serves an important purpose: to protect a people with independent minority rights when it is too weak politically to pursue its interests against an overpowering democratic majority.

IV. KURDISH OPPRESSION IN TURKEY AS ARCHETYPAL LINGUISTIC SECESSION

The Kurds in Turkey have a legitimate claim to secession solely on the basis of generations of linguistic oppression. To begin, the Kurds in Turkey enjoy the dual statuses of a people and a linguistic minority under the ICCPR. Regarding the former, historically, Kurds have been a nomadic, tribal people, located in the border areas of Turkey, Syria, Iraq, and Iran.¹⁵³ For around two thousand years, they have lived together in the Middle East as an recognizable group.¹⁵⁴ With about 75% of Kurds as followers of Sunni Islam,¹⁵⁵ the Kurds share a common religion. Most importantly, the common language of the Kurds is Kurdish.¹⁵⁶

In terms of demographics, southeast Turkey is home to the majority of Kurds in the world. There, almost 14 million Kurds are concentrated, accounting for approximately 18% of Turkey’s total population.¹⁵⁷ With respect to the entire country of Turkey, however, they are a demographic minority. Combined with their common language, the Kurds are classified as a linguistic minority; this gives them heightened linguistic rights

¹⁵¹ U.N. Human Rights Comm., *Ballantyne v. Canada*, U.N. Doc. CCPR/C/47/D/359/1989, 385/1989/Rev.1, para. 11.2 (1993).

¹⁵² *Id.*

¹⁵³ O’Neil, *supra* note 26, at 73.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 74. However, there exist two major dialects: Kurmanji (most common in Turkey), and Surani (most common among Iraqi Kurds). *Id.*

¹⁵⁷ *The World Factbook*, U.S. Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html> (last visited Feb. 17, 2012) (expand the “People” tab for demographic information).

protection under ICCPR Article 27. Even under the critical view of Article 27, these linguistic rights include a state's obligation not to harm the language.

To the contrary, since the ratification of the Turkish Constitution in 1924, the Turkish government has executed a policy of "Turkification"¹⁵⁸—a policy to solve what critics have called the "Kurdish question."¹⁵⁹ A key provision in the 1924 Turkish Constitution that set into motion decades of linguistic oppression was the declaration that Turkish was the official language of the nation.¹⁶⁰ Even since more liberal versions of the Turkish Constitution have been passed, this provision still stands, strengthened by the introductory clause that "[t]he Turkish state, with its territory and nation, is an indivisible entity."¹⁶¹ Throughout Turkey's history, the Turkish government has used this provision to impose the use of the Turkish language and ban minority language use as a separatist act.

Since the establishment of Turkish as the official language of Turkey, the Turkish government has implemented policies to assimilate any other language, particularly Kurdish. The constitution made it illegal to speak Kurdish in public places.¹⁶² The word "Kurdistan" was no longer listed in educational books.¹⁶³ Except for certain non-Muslim groups—which did not include the Kurds—Turkish was the exclusive language of education.¹⁶⁴ With the passage of the Settlement Law of 1934, the government mandated that those who did not use Turkish as their first language relocate to mainly Turkish speaking areas.¹⁶⁵

¹⁵⁸ Jonathan Eric Lewis, *Freedom of Speech—In Any Language*, MIDDLE E.Q., Summer 2004, at 37, 42.

¹⁵⁹ See Mohammed M. A. Ahmed, *The Origin of the Kurdish Question*, in THE KURDISH QUESTION AND INTERNATIONAL LAW 13 (Mohammed M.A. Ahmed & Michael M. Gunter eds., 1999) (describing the Turkish perspective of Kurdish society in Turkey as the "Kurdish question"); see generally H. AKIN ÜNVER, TURKEY'S 'KURDISH INITIATIVE' (2010), available at <http://www.akinunver.com/scholar/?p=225> (discussing the difficulty for Turks to conceptualize exactly what the "Kurdish question" is).

¹⁶⁰ TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION], Apr. 20, 1924, sec. 1, art. 2 (Turk.), translated in Edward Meade Earle, *The New Constitution of Turkey*, 40 POL. SCI. Q. 73, 89 (1925).

¹⁶¹ TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION], Nov. 7, 1982, pt. 1, ch. III, art. 1 (Turk.) [hereinafter 1982 Constitution], available at http://www.anayasa.gov.tr/images/loaded/pdf_dosyalar/ri/THE_Constitution_OF_THE_REPUBLIC_OF_TURKEY.pdf (English translation by the Office of the Turkish Prime Minister).

¹⁶² Bülent Gökay, *The Kurdish Question in Turkey: Historical Roots, Domestic Concerns and International Law*, in MINORITIES, PEOPLES AND SELF-DETERMINATION, *supra* note 30, at 315, 321.

¹⁶³ *Id.*

¹⁶⁴ O'Neil, *supra* note 26, at 75.

¹⁶⁵ *Id.* at 76.

Even though the Turkish Constitution of 1960 was considered more liberal than the 1924 Constitution,¹⁶⁶ the Turkish agenda of assimilating the Kurds remained the same.¹⁶⁷ While Kurdish publications increased in number, Turkish law required them to be translated and frequently banned separatist publications for discussing Kurdish issues.¹⁶⁸ In 1961, Turkish parliament mandated that Kurdish children attend boarding schools where they were required to learn Turkish.¹⁶⁹ Law No. 1587 permitted the Turkish government to alter the names of Kurdish geographic locations to Turkish ones on the grounds of preserving Turkish “‘national culture, moral values, traditions and customs.’”¹⁷⁰ The 1967 Turkish parliament forbade “the importation and distribution of Kurdish language materials” for the same reasons.¹⁷¹

The Kurds revolted violently to the assimilatory laws.¹⁷² In response, Turkish regulation of language became harsher. Law No. 2932 made it illegal “‘to express, diffuse or publish opinions in any language other than the main official language of states recognized by the Turkish state,’” which did not include Kurdish.¹⁷³ The denial of Kurdish existence persisted¹⁷⁴ and emergency gubernatorial power suppressed news publications regarding the Kurdish situation.¹⁷⁵ In 1991, the Turkish government legalized the private use of Kurdish, but, in the same breath, passed a new Antiterrorism Law that considered any protest against the character of the Turkish state an illegal, separatist act.¹⁷⁶ Under this law, even the simple promotional use of Kurdish, as an unofficial language, could be considered a separatist act against the character of the Turkish state.

When Turkey’s constitutional reforms came in 2002, their impetus was the desire to accede to the European Union.¹⁷⁷ However, as in the past, these reforms were significantly qualified. Previously, Article 26 of the Turkish Constitution banned the use of Kurdish with the provision, “no language prohibited by law shall be used in the expression and dissemination of

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ DAVID MCDOWALL, A MODERN HISTORY OF THE KURDS 404 (1996) (citation omitted).

¹⁷¹ O’Neil, *supra* note 26, at 76.

¹⁷² *See id.* at 77 (noting Kurdish military uprisings from the 1980s to 1990s).

¹⁷³ *Id.* (citation omitted).

¹⁷⁴ In 1987, a government minister remarked, “‘[I]s there such a thing as a Kurd? . . . The only people prepared to call themselves Kurds are militants, tools of foreign ideologies.’” Gökay, *supra* note 162, at 323 (citation omitted).

¹⁷⁵ O’Neil, *supra* note 26, at 77.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 78–79.

thought”); this clause no longer exists after the 2002 reforms.¹⁷⁸ Its removal allows for the use of Kurdish on radio and television broadcasts, subject to daily and weekly time restraints and translation requirements.¹⁷⁹ Additionally, the new reforms permit education to be delivered in different languages and dialects of the people, but this amenity is only available to private language courses.¹⁸⁰ However, there remains a restriction on all broadcasts and educational courses that they must not “ ‘contradict the fundamental principles of the Turkish Republic and the indivisible integrity of the state.’ ”¹⁸¹ Finally, in 2003, the ban on Kurdish names was lifted, but names cannot contain the letters Q, W, and X, which are common in Kurdish, but nonexistent in Turkish.¹⁸²

The legal treatment of Kurdish has changed very little since the 2002 reforms, despite the attempt at reconciliation through the 2010 Democratic Initiative—a recent attempt at improving the Turkish government’s relationship with the Kurds.¹⁸³ After seeing some success by establishing a Kurdish only TV channel, this initiative purported to solve the Kurdish question and put an end to the Kurdistan Worker’s Party’s (PKK) militant operations to establish an independent Kurdistan with big promises:¹⁸⁴ the creation of a commission to combat discrimination; the renaming of areas by local residents; freedom for political parties to communicate in unofficial languages;¹⁸⁵ Kurdish as “an elective course in secondary schools and high schools”;¹⁸⁶ the extension of the all Kurdish TV channel to private channels with state funds; and Kurdish religious sermons in the southeast delivered in Kurdish.¹⁸⁷ Notably, the ban on the use of Q, W, and X would not be lifted,¹⁸⁸ nor would there be an amendment to the first three constitutional

¹⁷⁸ *Id.* at 78.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 79.

¹⁸¹ *Id.* at 78–79 (citation omitted).

¹⁸² *Id.* at 79.

¹⁸³ When it was first introduced in May 2009, President Abdullah Gül and Prime Minister Recep Tayyip Erdoğan referred to the Democratic Initiative as the Kurdish Initiative. Under political pressure for supporting an initiative that ostensibly challenged the unity of the Turkish state, the initiative’s name was changed. Ünver, *supra* note 159; Ayşe Karabat, *Blame Game over Kurdish Language Stirs Controversy*, TODAY’S ZAMAN (Dec. 19, 2010), http://www.sundayszaman.com/sunday/newsDetail_getNewsById.action?newsId=230047.

¹⁸⁴ Ünver, *supra* note 159.

¹⁸⁵ *Interior Minister Atalay Outlines Democratic Initiative*, HÜRRIYET DAILY NEWS (Nov. 13, 2009), <http://www.hurriyetdailynews.com/n.php?n=interior-minister-atalay-outlines-democratic-initiative-2009-11-13>.

¹⁸⁶ Ercan Yavuz, *Critical Week for Turkey as Kurdish Initiative Comes to Parliament*, TODAY’S ZAMAN (Nov. 9, 2009), <http://www.todayszaman.com/news-192410-100-critical-week-for-turkey-as-kurdish-initiative-comes-to-parliament.html>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

articles establishing, inter alia, a unitary state and official language.¹⁸⁹ None of these reforms have been legislatively passed,¹⁹⁰ and the PKK remain at large.¹⁹¹ Furthermore, should any reforms be passed, the fear is that the Turkish Constitutional Court will hold any legislation that violates the integrity of the Turkish state unconstitutional.¹⁹²

After nearly a century of linguistic oppression, Kurdish has adapted to its unwelcome presence in Turkey. Despite its survival, the linguistic effects are devastating. The deportation of Kurds and their literature and the prevention of Kurdish use has resulted in the creation of three different alphabets for the same language.¹⁹³ Many Kurds are likely considered to be illiterate in their own language, since few Kurds would even read what has been produced during the twentieth century.¹⁹⁴ Even after Turkey's 2002 reforms, the basic constitutional provisions that permitted Turkey to punish Kurdish language use as acts of separatism remain in force and are a considerable obstacle to any reforms that have been put forth, particularly the remaining language of Article 26.¹⁹⁵ This article gives everyone the right to individual expression,¹⁹⁶ but Kurds attempting to assert their individual identity are impaired by the fundamental tenets of the Turkish Constitution: the Turkish character of the Republic and the "indivisible integrity of the State."¹⁹⁷ Not only has the linguistic damage been done, Turkish reforms do not offer assurance that Kurdish will be protected in the face of immutable constitutional provisions. Even as Kurds are a linguistic minority, Turkish

¹⁸⁹ *Interior Minister Atalay Outlines Democratic Initiative*, *supra* note 185.

¹⁹⁰ Only two promised areas have had some local success: the renaming of one village to Kurdish and teaching Kurdish at one university. Importantly, the law on point has not changed in either of these areas, only that the executive officers have refused to enforce the law further in the spirit of the initiative. *Turkey Renames Village as Part of Kurdish Reforms*, REUTERS, Aug. 20, 2009, available at <http://www.reuters.com/article/idUSL427538>; *Kurdish Languages to be Offered at Tunceli University*, HÜRRIYET DAILY NEWS (Mar. 1, 2010), <http://www.hurriyetdailynews.com/n.php?n=kurdish-languages-to-be-opened-in-tunceli-university-2010-02-28>.

¹⁹¹ See *TIMELINE: Turkey's Kurdish Initiative Has Faced Rocky Road*, HÜRRIYET DAILY NEWS (June 23, 2010), <http://www.hurriyetdailynews.com/n.php?n=from-hope-to-misery-kurdish-h-move8217s-journey-2010-06-22> (identifying the PKK as an outlawed party that is still active and claims responsibility for attacks against the military).

¹⁹² Interview by Charles Recknagel with Henri Barkey, Professor of Int'l Relations, Lehigh Univ., in Washington, D.C. (Aug. 12, 2009) (transcript available at http://www.rferl.org/content/Interview_Will_Turkeys_Kurdish_Initiative_Succeed/1798312.html).

¹⁹³ Tove Skutnabb-Kangas & Sertaç Bucak, *Killing a Mother Tongue—How the Kurds are Deprived of Linguistic Human Rights*, in LINGUISTIC HUMAN RIGHTS 347, 351 (Tove Skutnabb-Kangas & Robert Phillipson eds., 1995).

¹⁹⁴ *Id.* at 351–52.

¹⁹⁵ See *id.* at 355 (outlining Turkish Law restricting Kurdish that was in force in 1995 and sources of punishment as terrorist acts for using Kurdish).

¹⁹⁶ 1982 Constitution, *supra* note 161, at pt. 2, ch.2, art. 26, para. 1 (amended Oct. 17, 2001).

¹⁹⁷ *Id.* para. 2.

fears of separatism prevent them from recognizing the Kurds as a legal minority.¹⁹⁸

The aggressive Kurdish responses to Turkish treatment belie the political and judicial means by which Kurds have asserted their cultural identity, but without success. The European Court of Human Rights (ECHR) has found many violations to the life, liberty, and property of the Kurds.¹⁹⁹ For example, in an effort to support minority rights and protect political parties, the ECHR overruled a Turkish Constitutional Court decision²⁰⁰ which upheld the dissolution of a Kurdish political party on the grounds that the party's assertion of the existence of "two nations" within Turkey, the Turks and the Kurds, violated the Turkish Constitution's provision that Turkey was unitary and indivisible.²⁰¹ This is one of many cases in which the ECHR finds violations to life, liberty, and property of Kurds.²⁰² Even so, Turkey remains politically steadfast against the use of Kurdish in the public setting.²⁰³ In another blow to Kurdish use of the political process, the same Constitutional Court disbanded a pro-Kurdish political party on the basis that its "actions and statements," such as speeches made at political rallies, "became a focal point for terrorism against the indivisible integrity of the state."²⁰⁴

Stepping back from the canvas of history, it is evident that for nearly a century, Turkey has failed to provide basic protections to the Kurds as a linguistic minority. Since its inception as a nation, Turkish policy has been one of cultural assimilation, invading both the public and private spheres of ICCPR Article 27 linguistic protection,²⁰⁵ from the basic use of language—script and name-giving (personal and geographic)—to publications and political recognition. In terms of domestic political resolutions, Turkish linguistic rights reforms have been of a shell game nature. For nearly every

¹⁹⁸ See Gökay, *supra* note 162, at 333–34 ("[M]any Turkish nationalists fear that allowing Kurdish in public settings could encourage separatists sentiments.").

¹⁹⁹ *Id.* at 326.

²⁰⁰ United Communist Party of Turkey and Others v. Turkey, Application No. 19392/92, Judgment of 30 Jan. 1998, available at <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/0/34e0674b5f3434c6c1256640004c3741>.

²⁰¹ Gökay, *supra* note 162, at 326; United Communist Party of Turkey and Others v. Turkey, 1998-1 Eur. Ct. H.R. 1.

²⁰² Gökay, *supra* note 162, at 326.

²⁰³ See *Kurdish Spoken in Challenge to Turkey: Politician Violates Law that Bars the Language in Official Places*, ASSOCIATED PRESS, Feb. 24, 2009, available at <http://www.msnbc.msn.com/id/29371366/#after> (noting that "[t]he prime minister has himself spoken a few words in Kurdish at a campaign rally, but fears of national division prevent any concerted effort to repeal the laws").

²⁰⁴ *Turkey's Constitutional Court Closes DTP*, HÜRRIYET DAILY NEWS (Dec. 11, 2009), <http://www.hurriyetdailynews.com/n.php?n=constitutional-court-votes-to-xx-turkey-pro-kurdish-part-009-12-11> (quoting Turkish Constitutional Court President, Haşim Kılıç).

²⁰⁵ See *supra* Part III.C (setting forth reasoning that contemplates Article 27 protection of language as basic human right).

advancement in the recognition of Kurdish language use, there is some qualification that makes the linguistic right gained equivocal in the shadow of constitutionally ordained Turkish linguistic dominance. It is this endemic failure of the domestic political process, combined with a prevalent history of language oppression, that gives rise to a well-supported claim of linguistic secession.

V. CONCLUSION

The “Kurdish question,” as it pertains to linguistic rights, is the archetypal question that was meant to be settled through remedial secession, or, in the case of linguistic oppression, linguistic secession. As exemplified by the Kurdish situation in Turkey, this claim of linguistic secession involves the following fact pattern:

First, there must be a linguistic group that constitutes both a “people” and a “minority.” That is, there must exist a people, large enough and sufficiently connected culturally and linguistically to be identifiable, while fewer in number than the total state population and linguistically distinct to be considered a linguistic minority. This satisfies the basic self-determination requirement that only a people may self-determine and also gives the heightened linguistic minority protections of Article 27 of the ICCPR.

Second, the linguistic group must be concentrated in a particular section of the state. This requirement gives deference to the doctrine of *uti possidetis* that a secessionist claim will not involve reaching past the boundaries of the host state in the event of secession.

Third, there must be a deliberate, historically pervasive, and unrelenting state practice of linguistic rights infringement that violates Article 27 of the ICCPR. Secession is not favorably looked upon in the international community, which places a great emphasis on domestic resolution of human rights issues. But this emphasis on state sovereignty is not absolute. Where there is a historic and unceasing state practice to oppress the language of the linguistic group, there is strong evidence that the presumption of state sovereignty should be forfeited and an international law claim of secession based on systematic human rights oppression should be placed in the hands of the linguistic group as a check on the politics of the host state.

The Kurds in Turkey are not the lone victims of a state’s use of official language provisions to undermine linguistic rights. Considering the vast linguistic diversity of North Africa, Anatolia, the Levant and Mesopotamia, and the Persian Gulf, it is shocking to find that only three languages dominate the public sphere: Arabic, Persian, and Turkish.²⁰⁶ In France, where the

²⁰⁶ Lewis, *supra* note 158, at 37.

Basque continue their secessionist movement, the Toubon law²⁰⁷ imposes the use of heavily regulated French in six areas of public life: consumer information; employment; education; demonstrations, colloquiums, and congregations; audiovisual media; and civil service.²⁰⁸ In addition to public imposition of French, French citizenship requires “societal and cultural assimilation,”²⁰⁹ appearing to mandate that one forsake one’s way of life, including one’s language. In the Xinjiang Uyghur Autonomous Region of China (XUAR), where there is an active secessionist movement, the Uyghur government has made Uyghur the official language of the XUAR since 1955.²¹⁰ However, the Chinese government continues to regulate the use of Uyghur, alternating between mandating and restricting the use of Uyghur’s native Arabic script in the areas covered by the ICCPR: media; education; business and trade; government access and the legal system; and culture and the arts.²¹¹ Finally, there is budding international support for the theory that language rights do not only apply to “certain indigenous, territorially anchored minority communities,” but extend to immigrant speakers of nonofficial languages.²¹² Such a theory of transnationalism may lead to sufficiently large immigrant communities otherwise satisfying the linguistic secession criteria outlined above to their own secessionist claim.

A theory of linguistic secession is far from being supported internationally. Arguably, the theory exacerbates all the minimalists’ reasons for not recognizing self-determination, let alone secession. The most glaring fear is creating a “land for every language,” namely that the theory would permit international fragmentation on a scale comparable to the thousands of minority languages that exist.

However, there are sufficient safeguards in the theory against giving every language its own country. First, a linguistic secessionist claim must belong to a people sufficiently populous and concentrated in a particular state to be identifiable as a potential country. Since 90% of the world’s population speaks the 100 most-used languages,²¹³ it is not likely that the other thousands of languages will be sufficiently concentrated and numerous

²⁰⁷ Loi 94-665 du 4 août 1994 relative à l’emploi de la langue française [Law No. 94-665 of August 4, 1994 on the Usage of the French language], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 5, 1994, p. 11392.

²⁰⁸ Elizabeth Manera Edelstein, Comment, *The Loi Toubon: Liberté, Egalité, Fraternité, But Only on France’s Terms*, 17 EMORY INT’L L. REV. 1127, 1135–36 (2003). For greater elaboration of the substance of the Toubon Law, see *id.* at 1136–39.

²⁰⁹ *Id.* at 1155.

²¹⁰ Aurora Elizabeth Bewicke, *Silencing the Silk Road: China’s Language Policy in the Xinjiang Uyghur Autonomous Region*, 11 SAN DIEGO INT’L L.J. 135, 143 (2009).

²¹¹ *Id.* at 144.

²¹² Elias, *supra* note 111, at 311.

²¹³ NETTLE & ROMAINE, *supra* note 1, at 8.

to meet the standard required of a linguistic secessionist claim. Second, unlike genocide, which is always a crime,²¹⁴ having an official language and exercising language regulation are permitted under international law.²¹⁵ This implies that for domestic means to be shut off to give rise to a secessionist alternative, there must be a systematic history of language oppression aimed at linguistic minority assimilation.

Though there are many politically practical realities that might give a linguistic minority strong reasons not to secede, a claim of linguistic secession puts a powerful bargaining chip in the hands of linguistic minorities to negotiate for greater protection of their linguistic rights, especially in the area of official language. As seen with the Kurds in Turkey, although the Democratic Initiative appears to have foundered, the initiative was a reaction to the active secessionist claim partly built on the infringement of Kurdish language rights. Thus the theory of linguistic secession empowers linguistic minorities with the right to turn to doctrines of international law when their host states fail to adhere to ICCPR Article 27 protection in the name of preserving majority, official languages.

²¹⁴ Convention on the Prevention and Punishment of the Crime of Genocide art. I, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

²¹⁵ de Varennes, *supra* note 130, at 283.