One of These Things is Not Like the Others? A Comparative Analysis of Secessionist Movements in Vermont, Quebec, Hawai'i and Kosovo

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QUEBEC, HAWAI‘I AND KOSOVO

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TABLE OF CONTENTS

INTRODUCTION ............................................................................................................................ 2
I. THE MODERN VERMONT SECESSIONISTS ........................................................................... 4
II. VERMONT’S TRADITION OF (RELUCTANT) INDEPENDENCE ........................................ 8
   A. Misconstrued Independence: The First Vermont Republic .............................................. 8
   B. The Hartford Convention and the Death of the Vermont Federalists ............................... 12
III. VERMONT AND THE INTERNATIONAL RIGHT TO SELF-DETERMINATION .................. 15
   A. Does Self-Determination Mean Secession? ................................................................... 15
   B. What “Peoples” Hold the Right to Self-Determination?.................................................. 17
   C. Pragmatic “Peoples”: Quebec and the Right to Self-Determination ............................... 19
   D. What Violates the Right to Self-Determination? ............................................................ 23
IV. POINTS OF REFERENCE: HAWAI‘I AND KOSOVO ....................................................... 27
   A. The Kingdom of Hawai‘i .................................................................................................. 27
   B. Kosovo and the International Secessionist Debate ........................................................ 33
CONCLUSION .............................................................................................................................. 37
INTRODUCTION

Despite a widespread belief that support for secession is limited to society’s radical fringe, modern secessionist movements remain surprisingly legitimate. In Vermont, several well-organized secessionist groups draw on the state’s history as an independent republic to justify the state’s withdrawal from the United States. Nationwide, popular support for secession is surprisingly strong. And internationally, the right of “peoples” to self-determination is well-entrenched but riddled with complexities. Secession remains a perennially controversial and divisive subject, but one that merits debate.

A 2008 poll revealed that one in five Americans believe “any state or region has the right to peaceably secede and become an independent republic.”¹ In the South and the East, a quarter of poll respondents believe states have a right to secede.² Furthermore, 18% of respondents said they would support a secessionist movement in their own state.³ Reactions to this poll range from the skeptical to the scathing. Law Professor Ann Althouse wrote on her blog that “all these people have the law wrong and don’t seem to know the basics of the history of the Civil War” and called the results “[f]ascinating(ly stupid).”⁴ George Mason Law Professor Ilya Somin responded that “superior military might doesn’t prove superior constitutional right” and that a belief in “a right of secession” does not “by itself demonstrates ignorance about either law or American history.”⁵ Education may play a part in any given American’s support for secession—

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² Id.
³ Id.
poll respondents with only a high school degree were almost four times more likely to support secession than those with a college degree—but education is not the only answer.

The blog responses mirror a deep divide in scholarly opinions on secession. According to Pulitzer Prize-winner Garry Wills, “[s]ecessionist efforts now resemble those of a crackpot group in Texas.” And yet Rick Perry, Governor of Texas, suggested that the state could secede “if Washington continues to thumb their nose at the American people.” In Vermont, the principal secessionist movement, the Second Vermont Republic, was founded by University of Vermont Professor Thomas Naylor. Naylor’s book *The Vermont Manifesto* prompted one legal scholar to suggest that confusion over the constitutionality of secession is caused by “intelligent laymen like Professor Naylor, who have not undergone our [legal] professional socialization” interpreting law and history “in unusual ways.” But Professor Somin is not the only legal scholar who believes legitimate secession remains an open question. John Remington Graham, a former law school professor, wrote a book tracing the history of secession from England’s Glorious Revolution through the American Revolution and Civil War to the secessionist movement of Quebec. Graham argues that “peaceable and lawful revolution is an

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6 One in Five Americans Believe States Have the Right to Secede, http://middleburyinstitute.org/zogbysecessionpoll2008.html (July 23, 2008) (showing that 38% of respondents with a high school degree support secession compared to 10% with a college degree).
indispensable principle of good government[.]”14 The writings of Professors Somin and Graham demonstrate that even some legal scholars believe that legitimate secession is an open question.15

This article describes the intersections between Vermont’s modern secessionists, its independent history, and the international right to self-determination. The article focuses on the potential international legitimacy of Vermont secession. Part I provides an overview of the development and claims of modern Vermont secessionist movements. Part II gives a short history of Vermont independence, focusing on how this history has been misinterpreted by modern secessionists. Part III outlines the international right of peoples to self-determination, demonstrates the nebulous and confusing nature of the right, and ultimately shows that Vermont secessionists cannot invoke it. Part IV describes the right of self-determination as applied to Hawai’i and Kosovo, and uses these points of reference to illuminate the relative weakness of Vermont secessionists’ claims and the complexities inherent in the right to self-determination. The article concludes by suggesting that Vermont’s independent tradition is best honored by offering modern secessionists respect and engaging them in serious debate.

I. THE MODERN VERMONT SECESSIONISTS

There are at least five organized secession movements based in Vermont, all with similar claims and a common goal: Vermont independence.16 Their claims focus on a federal system.

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14 Id. at 17.
that has become unresponsive to local needs, and unsustainable over the long-run. Secessionists argue that “the U.S. government has grown too big, too corrupt and too aggressive toward the world, toward its own citizens and toward local democratic institutions. It has abandoned the democratic vision of its founders and eroded Americans’ fundamental freedoms.”

They further claim that America is now “owned, operated, and controlled by corporate America.” The democratic system has devolved into “a single political party, the Republican Party . . . . The comatose Democratic Party is effectively brain dead, having had no new ideas since the 1960s.” Because of this political consolidation and corporate corruption, the American government has become “unresponsive to the needs of individual citizens and small communities.”

The election of Barack Obama has not tempered the zeal of Vermont secessionists. According to a declaration signed by attendees of the 2008 North American Secession Convention in Manchester, New Hampshire:

The recent election in the United States, far from signaling a change in the imperial system or a restructuring of the essential political order, unfortunately perpetuates the two-party system and its old familiar politicians that for decades have promoted the

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*Vermont Commons* at www.vtcommons.org is a quarterly newspaper and website exploring a broad definition of Vermont independence, with regard to a variety of vital issues—energy, food/agriculture, education, politics/town meeting, etc. *The Second Vermont Republic* (www.vermontrepublic.org) and *the Middlebury Institute* (www.middleburyinstitute.net) meanwhile, serve as organizational “think tanks” in contact with secession-minded groups around the world.


19 Id.

20 Id.

They argue that Barack Obama’s policies guarantee “government subsidies for the larger corporations and banks[,] . . . increased centralization of the government and its hold on the economy, continuation and expanse of warfare and the war machine[.]”\footnote{Kirkpatrick Sale, Danger Ahead! Obama’s Lincoln Thing, Feb. 3, 2009, http://www.counterpunch.org/sale02032009.html.} These policies do not represent change—they are “a continuation of the past” that provide “a recipe for continued collapse” and are “not sustainable[.]”\footnote{Id.} Therefore, the secessionists promise to continue with their radical campaign for Vermont independence.

In the last few years, Vermont secessionists have organized a variety of conventions and demonstrations. Each year since 2006, the Middlebury Institute, a think-tank “for the study of separatism, secession, and self-determination[,]” has sponsored a “North American Secession Convention[.]”\footnote{The Middlebury Institute, http://middleburyinstitute.org (last visited March 10, 2009).} In 2005, the Second Vermont Republic, Naylor’s secessionist group, organized a convention of around 300 secessionists at the Vermont State House in Montpelier.\footnote{SECESSION, supra note 17, at 76.} Delegates called for the Second Vermont Republic to seek membership in the Unrepresented Nations and Peoples Organization.\footnote{Id.} The Second Vermont Republic held another secession convention in the Vermont State House in 2008.\footnote{Highlights of the Vermont Independence Convention, http://www.vermontrepublic.org/news_events/highlights_of_the_vermont_independence_convention (last visited March 10, 2009).} This convention included music, puppetry, and speeches from secession activists from as far away as Alaska.\footnote{Sally Pollack, Vermont Wants Out, BURLINGTON FREE PRESS (Vermont), Nov. 16, 2008, at 1D.} On March 4, 2005, the Second Vermont Republic organized a symbolic “memorial service” for the first Vermont Republic: “a New
Orleans-style funeral band carried [a] flag-draped coffin containing the deceased First Vermont Republic to the State House where it was placed at the foot of the statue of [Vermont pioneer] Ethan Allen.”

This symbolic gesture illustrates the importance of Vermont’s history to the secessionist movement.

Secessionists argue that membership in the United States stifles Vermont’s unique history of “solidarity, sustainability, direct democracy, and political independence[.]” This “radical” history is evidenced by everything from Vermont’s unparalleled constitutional protections to its unusually stringent zoning laws to Montpelier’s status as the only state capitol without a McDonalds. This tradition is stifled by a government that is “too big, too centralized, too powerful, too intrusive, too materialistic, too impersonal, too grasping, too militarized, too imperialistic, too violent, too undemocratic, too corrupt, and too unresponsive to the needs of individual citizens and small communities.” Furthermore, there is historical precedent for an independent Vermont.

Secessionists hail the years 1777 to 1791—when the state was an independent republic—as the heyday of Vermont independence. According to Naylor, the First Vermont Republic was “the only American republic which truly invented itself” before being “seduced into the Union by the promise of Life, Liberty and the Pursuit of Happiness.” While independent,
Vermont issued its own currency, ran its own postal service, developed its own foreign relations, grew its own food, made its own roads and paid for its own militia. No other state, not even Texas, governed itself more thoroughly or longer before giving up its nationhood and joining the Union.\textsuperscript{35}

In short, secessionists argue that “[w]e’ve done it before, and we can do it again.”\textsuperscript{36} Therefore, analyzing the legitimacy of claims for a Second Vermont Republic requires a short history of the First Vermont Republic.

\textbf{II. Vermont’s Tradition of (Reluctant) Independence}

Modern Vermont secessionists glorify Vermont’s history of independence. In truth, Vermont was a Republic by necessity, and was not interested in long-term independence. Modern Vermont secessionists also suggest that the state’s participation in the Hartford Convention demonstrates its early leadership in secession movements.\textsuperscript{37} However, the Hartford Convention is frequently misconstrued as a secessionist meeting, and support for the Convention in Vermont was tepid and controversial.

\textit{A. Misconstrued Independence: The First Vermont Republic}

Vermont, known in the eighteenth century as the New Hampshire grants, declared its independence in 1777 from the Colony of New York.\textsuperscript{38} The rift between Vermont and New York had been growing since 1749, when “New Hampshire’s Royal Governor Benning

\textsuperscript{37} \textit{See Secession, supra} note 18, at 47–48 (calling the report from the Hartford Convention a “declaration of the right to secede”).

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Wentworth issued a charter establishing the town of Bennington, some forty miles west of the Connecticut River and just beyond New York’s undisputed boundary, twenty-miles east of the Hudson.”

Over the next fourteen years, Wentworth issued charters for 129 towns covering three million acres straddling the ancient Green Mountains. New York, believing that it owned all the territory west of the Connecticut River, opposed the land grants. In 1764, King George III officially declared that New York owned the territory. But the New Hampshire grants were already inhabited, and tensions escalated over the next thirteen years between those first settlers—mostly from other New England states—and the New York “landjobbers” attempting to eject them.

Despite these tensions with New York, Vermonters strongly identified with the revolutionary government of the American colonies. At a convention held four months before Vermont’s formal declaration of independence—and two months after the colonies’ Declaration of Independence—delegates described the reasons Vermont deserved independence from New York. They claimed that the “disingenuous” New York government had taken “illegal, unjustifiable, as well as unreasonable measures . . . to deprive, by fraud, violence and oppression” the early Vermont settlers “of their property.” The convention found it “necessary that every individual in the United States of America should exert themselves to their utmost abilities in the defence of the liberties thereof[.]” Vermonters considered themselves citizens of the United States, and believed that any independent state would be “constituted . . . by the

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39 FREEDOM AND UNITY, supra note 38, at 73.
40 Id.
41 Id. at 73–74.
42 Id. at 74.
43 Id. at 74–75.
44 CHITTENDEN PUBLIC PAPERS, supra note 38, at 21.
45 Id. at 22.
free voice of the Friends to American Liberties, that shall not be repugnant to the resolves of the honorable Continental Congress relative to the General Cause of America.”⁴⁶ Vermont declared its independence on January 15th, 1777, under the name “New Connecticut.”⁴⁷ Convention delegates sent a letter to the Continental Congress detailing the controversy with New York that culminated in the need for Vermont independence and begging that “New Connecticut” be “ranked by your honours among the free and independent American states, and delegates therefrom admitted to seats in the grand Continental Congress[..]”⁴⁸ At the moment it declared independence, Vermont sought admission to the Union.

Vermont was willing to cede control to half of their territory to gain admission to the United States. Sixteen New Hampshire towns in the Connecticut River Valley and fifteen New York towns in the Hudson River Valley wanted to join the First Vermont Republic, admission of which would double the early territory’s size.⁴⁹ However, George Washington offered Vermont statehood on the condition that it renounce any claim to this territory.⁵⁰ Vermont complied, but Washington reneged on his promise.⁵¹ The boundaries of “Greater Vermont” were never re-established, and Vermont continued to search for an escape from independence.

Vermont also negotiated with Great Britain during the Revolutionary War to rejoin that Empire.⁵² Perhaps Vermont’s leaders were seeking re-admission to Great Britain—and perhaps a union with Canada—to protect the state from the wrath of the United States.⁵³ Or, perhaps

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⁴⁶ Id.
⁴⁷ Id. at 33, 36.
⁴⁸ Id. at 40–43.
⁴⁹ FREEDOM AND UNITY, supra note 38, at 115.
⁵⁰ Id. at 116.
⁵¹ Id.
⁵² Id. at 115.
⁵³ Id.
Vermont’s leaders were trying to bluff the Continental Congress into admitting Vermont into the union. Either way, sustained independence was not Vermont’s goal.

By 1789, tensions between New York and Vermont had begun to ease, and New York agreed to drop claims to the state in exchange for $30,000. Kentucky, then a western region of Virginia, was also petitioning Congress for statehood and admitting Vermont as a free, northern state would maintain “sectional balance.” In January 1791, 109 delegates from Vermont towns met to debate the ratification of the United States Constitution. Daniel Buck, the delegate from Norwich, at first argued for continued Vermont independence. Buck argued that all governments demand a sacrifice by “each individual” of “such a part of his natural liberty, his interest, and privileges, as to coincide with the common interest of the whole.” According to Buck, “this sacrifice must be . . . proportionate to the diversity of the interest to be found in the several parts of the community” and “the sacrifice of the individuals of a small community must be less than those of a large one.” Therefore, citizens in the small community of Vermont enjoyed “an uniformity of interest . . . the laws, therefore, were simple and suited to the whole; the affairs of government were managed, as it were, under the eye of the people, and the machine was so small that every one could look and see how the wheels moved.” By joining the “extensive empire” of the United States, Vermonters would sacrifice control over their interests and would lose track of “the affairs of government.” Stephen Bradley, the delegate from Windham, retorted that he “could not think [Mr. Buck] serious when he talked of the sacrifices

54 Id.
55 Id. at 125.
56 Id. at 125–26.
57 CHITTENDEN PUBLIC PAPERS, supra note 38, at 729.
58 Id. at 730, 739–42.
59 Id. at 740.
60 Id.
61 Id.
62 Id.
that Vermont must make to join the union.”63 Daniel Buck admitted the next morning that the dangers of joining the union were “not so great as he had imagined”64 and later voted to ratify the U.S. Constitution—along with 105 of the 109 delegates.65

Daniel Buck’s concern that big government requires big sacrifice by small communities echoes in the claims of modern secessionists. Modern Vermont secessionists decry the federal government as “unresponsive to the needs of individual citizens and small communities. . . . Vermont is smaller, more rural, more democratic, less violent, less commercial, more egalitarian, more humane, more independent, and more radical than most states.”66 According to secessionists, the United States has forced Vermont to sacrifice its ideals to comport with the lowest national denominator. But, like Daniel Buck and the vast majority of the 1791 convention delegates, most Vermonters continue to consider statehood worth the sacrifice.67 Modern secessionists ascribe an attachment to independence in the First Vermont Republic that did not exist. Vermonters embraced statehood in the 18th century, and continued to embrace it in the 19th century.

B. The Hartford Convention and the Death of the Vermont Federalists

Like the goals of the First Vermont Republic, modern Vermont secessionists also misconstrue the significance of the Hartford Convention. Naylor hails the Hartford Convention as a strident “declaration of the right to secede[.]”68 Another modern secessionist argued that Vermont “is in a position to lead New England in recapturing its role as the home of American

63 Id. at 744.
64 Id. at 744
65 Id. at 751–52.
66 SECESSION, supra note 18, at 23–24.
68 SECESSION, supra note 18, at 47–48.
secession—just as it was . . . in 1814–15 in the Hartford Convention[.]” The Hartford Convention never recommended secession, and Vermont did not take a lead role.

The Hartford Convention was the culminating protest by the New England states to the War of 1812. The New England states, including Vermont, were particularly upset with an embargo against Great Britain that made trade with Canada illegal. In Vermont, the embargo was frequently disobeyed on the waters of Lake Champlain and in Green Mountain passes, giving “Smuggler’s Notch” its name. Federalist Governor Martin Chittenden recalled the Vermont militia from deployment in the war. The militia officers formally rejected Chittenden’s call, but ultimately returned early anyway; Chittenden was then called a traitor in Congress.

In 1814, the New England states called for a Convention to discuss their opposition to the War of 1812. Only one formal Vermont delegate, representing Windham County, attended the Convention in Hartford, Connecticut. The Hartford Convention’s official report did not recommend secession, but recognized it as a potential future option:

if the Union be destined to dissolution . . . it should, if possible, be the work of peaceable times and deliberate consent. . . . Events may prove that the causes of our calamities are deep and permanent . . . . Whenever it shall appear that these causes are radical and permanent, a separation by equitable arrangement, will be preferable to an alliance by constraint; . . . . But a severance of the Union by one or more States, against the will of the rest, and especially in a time of war, can be justified only by absolute necessity.

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71 *Id.* at 154–55.
72 *Id.* at 159.
73 *Id.*
74 *Id.* at 163.
75 *Id.* Vermont’s Secretary of State, Josiah Dunham, also attended as an informal observer. *Id.*
Instead of secession, the Hartford Convention recommended nullifying—or ignoring—perceived unconstitutional Acts. Nevertheless, Hartford Convention delegates were shadowed by rumors that the Convention harbored a seditious secessionist agenda. John Quincy Adams wrote that “[t]he Hartford Convention was to the Northern confederacy precisely what the Congress of 1774 was to the Declaration of Independence.” The secretary of the convention lamented that “the Hartford Convention . . . has been the general topic of reproach and calumny, as well as of the most unfounded and unprincipled misrepresentation and falsehood” from “a multitude of persons who were totally unacquainted with its objects, and its proceedings, and . . . who probably were ignorant even of the geographical position of the place where the convention was held.” One convention delegate testified that although “much has been said and published” insinuating a “treasonable” purpose of the Hartford Convention, the accusations are “without the least foundation” and “[n]o one act [of the Convention delegates] has ever been pointed out . . . as inconsistent with their obligations to the United States[.]” Despite these attempts to distance themselves from a supposed secessionist agenda, reaction to the convention in Vermont was swift.

In Vermont, the Hartford Convention proved to be the political lightning rod that brought an end to the Federalists as a mainstream political party. The Vermont legislature formally condemned the Convention. Governor Martin Chittenden, the Federalist who recalled Vermont’s militia during the War of 1812, was defeated by a Democratic-Republican in the 1815

77 Id. at 9.
80 A Case Which Depended Upon the Objects of the Hartford Convention, 3 LITERARY INTELLIGENCE 104, 106 (1831).
81 FREEDOM AND UNITY, supra note 38, at 164.
Vermont never again elected a Federalist governor. The radical idea of secession did not find fertile soil in Vermont during the War of 1812, as modern secessionists suggest. In fact, the mere stigma of secession ended a venerable political party in the state. Although they find little solace in history, modern secessionists may turn to modern principles of international law.

III. VERMONT AND THE INTERNATIONAL RIGHT TO SELF-DETERMINATION

According to modern Vermont secessionists, Vermont needs to hold the international moral high ground during any secession. Vermont would then garner international recognition and support that might prevent the United States from taking military, economic or diplomatic actions against the state. The right of “peoples” to self-determination is a well-entrenched, if vague, principle of international law. The right is enshrined in the U.N. charter, and has been developed in United Nations resolutions, decisions by the International Court of Justice, and the Supreme Court of Canada’s referendum on Quebec secession. The meaning of “peoples” has not been developed, but could include Vermonters. However, modern secessionist movements do not claim violations of Vermonters’ self-determination that would justify secession.

A. Does Self-Determination Mean Secession?

The United Nations has long recognized a right of peoples to self-determination, but has always balanced that right against the importance of its members’ sovereignty. Article 1 of the United Nations Charter lists a goal of the U.N. “[t]o develop friendly relations among nations

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82 Id. at 164, 629.
83 Id. at 164.
based on respect for the principle of equal rights and self-determination of peoples[.]”85 The next Article establishes a competing purpose of the organization “based on the principle of the sovereign equality of all its Members.”86 From its inception, the United Nations has struck a balance between respect for sovereign nations and protection of the self-determination of “peoples.”

The nature of the right to self-determination is unclear from the Charter, but subsequent resolutions describe the self-determinative choices that “peoples” must be allowed to make. The United Nations has frequently affirmed that “all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right[.]”87 In some cases, the right may be one to an “independent State[.]”88 The U.N.’s Declaration concerning Friendly Relations describes “modes of implementing the right of self-determination” including “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people[.]”89 During decolonization, a people may choose one of these paths as an expression of their self-determination.90 These paths might also allow a people to secede from a sovereign that

85 U.N. Charter art. 1, para. 2.
86 U.N. Charter art. 2, para. 1.
89 Declaration concerning Friendly Relations, supra note 86, at 124.
violates the right to self-determination. The Supreme Court of Canada, interpreting these international principles, concluded that “when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession.”\textsuperscript{91} The International Court of Justice may address directly whether there is a right to unilateral secession under international law when it rules on the legitimacy of Kosovo’s unilateral secession from Serbia.\textsuperscript{92}

Perhaps the broadest understanding of the right to self-determination came out of the World Conference on Human Rights, held in Vienna in June 1993.\textsuperscript{93} The \textit{Vienna Declaration and Programme of Action} declares that “peoples [may] take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination[.]”\textsuperscript{94} The right to self-determination may be a powerful tool. But who may wield it?

\textbf{B. What “Peoples” Hold the Right to Self-Determination?}

The definition of “peoples,” the group that holds the right to self-determination, may be the least-developed aspect of the right. The United Nations has clearly distinguished between a “people,” who possess the right to self-determination and the state, which cannot suppress that right.\textsuperscript{95} According to the International Court of Justice, the General Assembly has occasionally

\textsuperscript{91} Reference re Secession of Quebec, [1998] 2 S.C.R. 217, ¶ 134 (Can.) [hereinafter Reference re Quebec]. \textit{See infra} Part III.C (describing in more detail the Supreme Court of Canada’s decision regarding Quebec secession).

\textsuperscript{92} Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law, G.A. Res. 63/2, U.N. Doc. A/RES/63/3 (Oct. 8, 2008). \textit{See infra}, Part IV.B.


\textsuperscript{94} \textit{Id}.

\textsuperscript{95} \textit{See} Declaration concerning Friendly Relations, \textit{supra} note 87, at 123 (“Every State has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination[.]”).
decided that “a certain population did not constitute a ‘people’ entitled to self-determination[.]”\textsuperscript{96} Therefore, not all populations inhabiting a territory are “peoples.” This creates a tripartite system for evaluating any given geographic area. Every geographic area contains a “population” under the control of a “state.” Certain populations may also be considered a “people.” The “people” possess the right to self-determination, which the state cannot suppress.

There has been little formal development of what distinguishes “peoples” from mere populations. The International Court of Justice recognized the existence of a Palestinian people, but avoided an extended discussion of the legal definition of “peoples.”\textsuperscript{97} According to the court, “the existence of a ‘Palestinian people’ is no longer in issue[.]”\textsuperscript{98} The Court pointed to Israel’s recognition of a Palestinian people in letters and formal agreements.\textsuperscript{99} This ties the definition of “peoples” to formal recognition by governments, but does not describe any objective criteria for determining whether a population should be considered a “people” possessing the right to self-determination.

Federal and foreign authorities have not officially recognized the existence of a people of Vermont, although local officials have. For instance, Massachusetts state congressman H.G. Otis promised to “aid the Governor of Vermont and the people of that state” in his resistance to the War of 1812.\textsuperscript{100} Of course, congressmen Otis may have been using “people” in its generic sense, as a synonym for population. More recently, secessionists have attempted to advance the official recognition of a Vermont people. At a 2005 convention of around 300 secessionists at the Vermont State House in Montpelier, delegates “called for the Second Vermont Republic to

\textsuperscript{96} Western Sahara, Advisory Opinion, 1975 I.C.J. 12, 33 (Oct. 16).
\textsuperscript{97} Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 182–83 (July 9).
\textsuperscript{98} Id.
\textsuperscript{99} Id. at 183.
\textsuperscript{100} WILLS, supra note 7, at 160.
seek membership in the Unrepresented Nations and Peoples Organization.”101 If represented, this would be one step in garnering official recognition of a Vermont “people.”

Perhaps the populations of Vermont and Quebec together could be considered one people. Governor James Douglas, speaking in Quebec, described the “uncommon—even exceptional—relationship among our people.”102 The majority of native-born Vermonters are of French Canadian heritage.103 Vermont draws a significant percentage of its power from the Hydro-Quebec power plant.104 A sign on Vermont’s interstate as you enter Montpelier bids “Bienvenue a Montpelier,” a nod to the frequent French speaking visitors.105 And Derby Line, a small town in Northern Vermont, literally straddles the border between Quebec and Vermont.106 Quebec also harbors a well-developed secessionist movement.

C. Pragmatic “Peoples”: Quebec and the Right to Self-Determination

The legitimacy of Quebec secession is an issue that has reached the Canadian Supreme Court. In 1995, the secessionist Parti Quebecois barely lost a popular referendum vote on whether the province of Quebec should begin the process of seceding from Canada.107 A remarkable 92% of the province’s voters went to the polls, and the referendum was defeated by by less than one percent.108 In response, the government requested an advisory opinion from the

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101 SECESSION, supra note 18, at 76.
103 Id.
104 Id.
105 Id.
Supreme Court of Canada on whether Quebec could legitimately secede under Canadian or international law. In 1998, the Court ruled that legitimate secession was possible under Canadian law. According to the Court, the Canadian “Constitution is not a straitjacket” and constitutional principles necessarily accommodate a continuous process of discussion and evolution, which is reflected in the constitutional right of each participant in the federation to initiate constitutional change. This right implies a reciprocal duty on the other participants to engage in discussions to address any legitimate initiative to change the constitutional order. . . . [A] clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participations in Confederation would have to recognize.

The Canadian court also surveyed and synthesized principles of self-determination under international law. The Canadian Supreme Court noted that “much of the Quebec population certainly shares many of the characteristics (such as a common language and culture) that would be considered in determining whether a specific group is a ‘people,’ as do other groups within Quebec and/or Canada.” The Court declined to reach the issue of whether there is a distinct “people” of Quebec because the Court held that it cannot “be suggested that Quebeckers have been denied meaningful access to government to pursue their political, economic, cultural and social development.” Nevertheless, the Canadians’ pragmatic interpretation of “peoples” offers some insight into potential peoplehood for Vermonters. Vermonters do not share a language different from the rest of the United States, nor do those living here have a shared cultural history. The history of modern Vermonters extends into

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109 Wroth, supra note 107, at 709. 110 Reference re Secession of Quebec ¶ 150. 111 Id. 112 Id. ¶ 125. 113 Id. ¶¶ 125, 154.
its neighboring states and Canada—almost half of the people currently living in Vermont were not born in the state.\textsuperscript{114} Although a small state, Vermont has experienced regional tension between the towns east of the Green Mountains and those west.\textsuperscript{115} These historical divisions and modern immigrations undermine the homogeneity of a distinct Vermont people. Nevertheless, Vermonters do share a number of more intangible properties.

Perhaps the “people” of Vermont could be defined by their shared attraction to the intangible qualities of the state itself. As Vermont Judge Frank Mahady noted, “[i]n our heterogeneous national society, the ethical, sociological, and economic concerns of the citizens vary greatly from state to state.”\textsuperscript{116} States in close geographic proximity may have “very dissimilar . . . ethical, sociological, and economic concerns.”\textsuperscript{117} Vermont has defined itself in opposition to its neighbors, declaring itself independent from New York and New Hampshire.\textsuperscript{118} Vermont, like other New England states, has historically “emphasized widespread land ownership, attitudes of agricultural independence, and political participation through the town meeting[.]”\textsuperscript{119} Nearby New York, on the other hand, developed around a “‘manorial system’” that included “high property requirements for suffrage” to ensure that “a few prominent families” would reap the greatest benefits from the land.\textsuperscript{120}

\textsuperscript{115} WILLIAM DOYLE, THE VERMONT POLITICAL TRADITION: AND THOSE WHO HELPED MAKE IT 1, 3 (Revised ed. 2005). State legislative sessions were rotated between east-side towns and west-side towns until 1805, when Montpelier was selected as state capitol because of its central location. FREEDOM AND UNITY, supra note 35, at 150.
\textsuperscript{116} Frank Mahady, A Judge’s Thoughts, 13 VT. L. REV 145, 149 (1988).
\textsuperscript{117} Id.
\textsuperscript{118} See FREEDOM AND UNITY, supra note 38, at 79–80 (describing “intense prejudice New Yorkers held for New Englanders” and the “deep-seated prejudices” of New Englanders to New York “‘land jobbers,’ ‘land pirates,’ and ‘land thieves’”).
\textsuperscript{119} Id. at 80.
\textsuperscript{120} Id.
neighboring states, they share an attraction to the distinct ideals of Vermont. This has always been the case.

The current composition of Vermont’s population is similar to its historical composition. The population of Vermont has always consisted of immigrants from other states. For instance, Vermont’s population tripled between the start of the American Revolution and 1791, bringing a new class of settlers to the state. This change in citizenry was reflected in the delegates who ratified the United States Constitution, only twelve of whom attended the 1777 convention creating the First Vermont Republic. The new delegates were “lawyers, large landholders, and merchants” from out of state. At this time, Vermont “began to assume its identity . . . from the magnetic allure of the land for a diversity of people.” In 1791, as in 2008, Vermont’s population consisted largely of immigrants drawn to the state’s open spaces and distinct values.

Vermont also has a unique history of a progressive commitment to human rights that could constitute a unifying tradition. Thomas Naylor describes Vermont as “[a]rguably . . . the most radical state in the Union in terms of its commitment to human solidarity, sustainability, direct democracy, egalitarianism, political independence, and nonviolence[.]” Vermont was the first state unequivocally to ban slavery and guarantee universal male suffrage. The state constitution was also among the first to provide for state-wide public education. More recently, Vermont became the first state to provide state-sanctioned, constitutionally-mandated

\[ \text{References:} \]
\begin{itemize}
  \item \textit{Id.} at 75.
  \item \textit{Id.} at 126
  \item \textit{Id.}
  \item \textit{Id.} at 75.
  \item \textit{WILLIAM DOYLE, THE VERMONT POLITICAL TRADITION: AND THOSE WHO HELPED MAKE IT 22, 24 (Revised ed. 2005).}
  \item Brigham v. State, 166 Vt. 246, 258 (1997).
\end{itemize}
equal benefits for same-sex couples.\textsuperscript{128} And in 2009, Vermont became the first state to legislatively guarantee full marriage rights to same-sex couples.\textsuperscript{129} This “radical” commitment to human rights is a shared tradition that could define a people of Vermont. But even if Vermonters are a “people” in the international sense, has their right to self-determination been infringed?

\textit{D. What Violates the Right to Self-Determination?}

The United Nations has described several situations in which a people’s right to self-determination is violated. The right of self-determination is most frequently violated by colonization or alien subjugation.\textsuperscript{130} The right accrues to non-self-governing peoples governed by a foreign, colonizing power.\textsuperscript{131} The right is also violated when an alien power denies a people “complete independence and freedom . . . in accordance with their freely expressed will and desire[.].”\textsuperscript{132} For instance, acts of “foreign military intervention, aggression and occupation” violate the right.\textsuperscript{133} The right is also violated when a government uses mercenaries, whether discreetly or openly, to oppress a people.\textsuperscript{134} The United Nations has never expressly recognized

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\item[130] Declaration on the granting of independence to colonial countries and peoples, G.A. Res. 1514 (XV) (Dec. 14, 1960); Universal realization of the right of peoples to self-determination, G.A. Res. 62/144, U.N. Doc. A/RES/62/144 (Feb. 28, 2008). \textit{See also} Reference re Quebec at ¶¶132-134 (describing how the “[t]he right of colonial peoples to exercise their right to self-determination by breaking away from the ‘imperial’ power is now undisputed” and how “[t]he other clear case where a right to external self-determination accrues is where a people is subject to alien subjugation, domination or exploitation outside a colonial context”).
\item[132] Declaration on the granting of independence to colonial countries and peoples, G.A. Res. 1514 (XV) at 67 (Dec. 14, 1960).
\end{itemize}
\end{footnotesize}
that the right exists in a purely domestic setting, absent alien or colonial oppression, but this conclusion has been implied. For instance, in 2008 the United Nations reaffirmed “the universal realization of the right of all peoples, including those under colonial foreign and alien domination, to self determination[.]”135 The right to self determination is most commonly abused through colonial or alien domination, but the right is broader—extending to “all people.” In a domestic setting, however, the right may be exercised through a government that represents the whole people.

The right to self-determination is not violated by a State “possessed of a Government representing the whole people belonging to the territory without distinction of any kind.”136 According to the Supreme Court of Canada, Quebec had no right to secede under international law because

[t]he population of Quebec cannot plausibly be said to be denied access to government. Quebecers occupy prominent positions within the government of Canada. Residents of the province freely make political choices and pursue economic, social and cultural development within Quebec, across Canada, and throughout the world. The population of Quebec is equitably represented in legislative, executive and judicial institutions.137

A state that vests all people with equal rights and representation does not infringe on the right of its people to self-determination.

Vermont is equally represented in the United States Congress. Although the three electoral votes cast by Vermont occasionally seem meaningless in national elections, Vermont is actually over-represented for its small size. Each of Vermont’s three electoral votes represents

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137 Id. ¶ 136.
about 207,000 Vermonters.\textsuperscript{138} New Yorkers, meanwhile, cast one electoral vote for every 622,000 citizens.\textsuperscript{139} By moving to Vermont, a New Yorkers’ vote becomes three-times as valuable in presidential elections. New York, therefore, has a better claim for being unrepresented in the electoral process than Vermont. Of course, Vermont secessionists do not claim that the people of Vermont are under-represented, but that American government itself has become undemocratic.\textsuperscript{140} However, the right to self-determination is not necessarily the right to a perfect government. For the right to be violated, restrictions must be severe.

Annexation and disruption of everyday life interfere with a people’s right to self-determination. The International Court of Justice held that an Israeli-constructed wall that would “almost completely encircle[ ]” 160,000 Palestinians “would be tantamount to de facto annexation” and would “severely impede[ ] the exercise by the Palestinian people of its right to self-determination.”\textsuperscript{141} The right to self-determination is violated when a nation attempts to encircle or split a people with a wall. However, the International Court of Justice’s opinion expressly declined to rule on the legality of the section of wall built on Israeli territory.\textsuperscript{142} Therefore, it is difficult to know whether these principles would apply to entirely domestic actions within the United States that nevertheless affect a “people.” Even assuming the

\textsuperscript{140} Secession, supra note 18, at 23 (2008).
\textsuperscript{141} Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 170, 184 (July 9).
\textsuperscript{142} Id. at 164.
principles do apply, and that Vermonters are a “people,” there are only minor instances of federal interference with daily life in Vermont.

There are isolated cases of federal officials interfering with the everyday life of citizens living near or in Vermont. In Derby Line, a town whose library and Opera House straddle the Vermont–Canada border, federal authorities threatened to seriously disrupt everyday life by constructing barriers.\textsuperscript{143} Canadian firefighters responding to a fire in Rousse’s Point, New York—a town on Lake Champlain that borders Vermont and Canada—were delayed for eight minutes while the border officials checked the firefighters ID’s and the license plate on the truck.\textsuperscript{144} If “peoples” is defined broadly to include New York, Vermont, and Quebec citizens, these federal actions have lead to the destruction of property and disruption of everyday life. Although these actions do not rise to the level of “de facto annexation,”\textsuperscript{145} they infringe (however slightly) on the people’s “economic, social and cultural development[.]”\textsuperscript{146} Even if Vermonters’ right to self-determination has been infringed, there is not enough support for independence to exercise the right and form a new republic.

The right to self-determination may be exercised by “a free and genuine expression of the will of the peoples concerned.”\textsuperscript{147} Assuming the existence of a people of Vermont, what would this “freely expressed will” require? Thomas Naylor suggests, and most secessionists agree, that support by 2/3’s of Vermonters would be necessary.\textsuperscript{148} Current support for secession in Vermont

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\item Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 170 (July 9).
\item Declaration concerning Friendly Relations, \textit{supra} note 87, at 13.
\item Western Sahara, Advisory Opinion, 1975 I.C.J. 12, 33 (Oct. 16).
\end{enumerate}
\end{footnotesize}
is about 13%.\textsuperscript{149} Of course, it is not clear that more than a third of colonists supported the American Revolution,\textsuperscript{150} nor is it certain that a majority of Vermonters supported leaving New York in 1777, especially in the southeast of the state.\textsuperscript{151} Still, international legitimacy will likely require overwhelming support for secession. Even if supported by an overwhelming majority, exercising the right to self-determination remains a complex prospect. These complexities are illustrated by groups calling for Hawaiian sovereignty, as well as the recent secession of Kosovo.

IV. POINTS OF REFERENCE: HAWAI’I AND KOSOVO

Hawai’i and Kosovo provide two strong examples of a people’s right to self-determination being violated. Next to these violations, the claims of Vermont secessionists look nearly frivolous. Nevertheless, both Hawai’i and Kosovo present a host of complications that underscore the difficulty of applying the international right to self-determination in practice.

A. The Kingdom of Hawai’i

A variety of independence movements have developed in Hawai’i, championing diverse paths to the common goal of Native Hawaiian sovereignty.\textsuperscript{152} These strategies include calling a Native Hawaiian constitutional convention,\textsuperscript{153} returning to traditional values of land management,\textsuperscript{154} and “establishing a revised Constitution, legislature and elected officials” for the

\textsuperscript{149} Grunwald, supra note 66.
\textsuperscript{150} John Adams estimated that one-third of the colonists supported independence, one-third opposed, and one-third were ambivalent. JOHN PATRICK DIGGINS, JOHN ADAMS 28 (2003).
\textsuperscript{151} FREEDOM AND UNITY, supra note 38, at 85. A 1778 poll of towns in Cumberland County—modern Windham and Windsor counties—showed strong support for New York. WILLIAM DOYLE, THE VERMONT POLITICAL TRADITION: AND THOSE WHO HELPED MAKE IT 29 (Revised ed. 2005). In Brattleboro, 165 poll respondents supported remaining part of New York while 1 respondent supported an independent Vermont. Id.
Kingdom of Hawai‘i. One group, the Hawaiian Kingdom, took a more active approach: on April 30, 2008, the group’s members occupied the historic ‘Iolani Palace and refused to admit non-Native Hawaiians. These Hawaiian independence movements have a legitimate claim to invoke the international right of self-determination, but their claims are still riddled with complexities.

The history of the Hawaiian people appears to provide a model template for the right to self-determination. Between 1810 and 1893, the Hawaiian Islands were a unified, independent kingdom. In 1893, a group of western businessmen, backed by the U.S. Minister to Hawai‘i and U.S. Armed Forces, replaced the existing “monarchy with a provisional government.” A year later, the last Queen of Hawai‘i abdicated her throne and in 1898, President McKinley signed a resolution annexing the Hawaiian Islands. Between 1893 and 1959, Hawai‘i was a forced province of the United States. Beginning in 1946, the United Nations required the United States to report Hawai‘i as a non-self-governing territory. This status ended in 1959, when “the people of . . . Hawaii [ ] effectively exercised their right to self-determination” by voting to join the United States. Even this supposed expression of the people’s will was marred by the fact that settlers living in Hawai‘i for only a year were allowed to vote, and by the fact that the

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157 S.J. Res. 19 § 1, 103rd Cong. (1993).
159 Id. See also S.J. Res. 55, 55th Cong., 30 Stat. 750 (1897) (declaring that the Hawaiian Islands are “annexed as a part of the territory of the United and are subject to the sovereign dominion thereof”).
voters were essentially faced with the choice between continued colonial rule and statehood.\textsuperscript{162}

In 1993, the United States Congress formally apologized for “the suppression of the inherent sovereignty of the Native Hawaiian people[.]”\textsuperscript{163} This formal apology recognizes both the existence of a “Native Hawaiian people” and a violation of that people’s “inherent sovereignty.”\textsuperscript{164} That the United States violated the self-determination rights of the Native Hawaiians seems clear. And yet, the situation of Native Hawaiians is riddled with complexities that reflect the basic ambiguities and tensions of the right to self-determination.

One complexity is that even Native Hawaiians do not share a homogenous history, and the unification of a Hawaiian kingdom is intertwined with western influence. When Captain James Cook first reached the Hawaiian Islands in 1778 to 1789, he found the islands divided into four kingdoms that generally followed the geographic boundaries of the major islands.\textsuperscript{165} Although Native Hawaiian’s shared a Polynesian heritage,\textsuperscript{166} they were not a unified nation. The islands were ruled by hereditary kings who claimed authority through divine ancestry, not the

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\textsuperscript{163} S.J. Res. 19 § 1, 103rd Cong. (1993).

\textsuperscript{164} The U.S. Supreme Court recently said that the apology resolution’s “terms are not the kind that Congress uses to create substantive rights[,]” Hawaii v. Office of Hawaiian Affairs, 556 U.S. --, slip op. at 8 (2009). However, this holding does not undermine the use of the resolution to establish international legitimacy, which is the focus of this article.

\textsuperscript{165} 1 Ralph S. Kuykendall, \textit{The Hawaiian Kingdom} 30 (1938). In 1778-1779 the Hawaiian islands were divided into four kingdoms: (1) the island of Hawaii under the rule of Kalaniopuu, who also had possession of the Hana district of east Maui; (2) Maui (except the Hana district) and its three dependent islands, rules over by Kahekili; (3) Oahu, whose king was a distinguished old ali'i named Peleioholani; (4) Kauai and Niihau, where the political scene was somewhat confusing and shifting.

\textsuperscript{166} Id. at 3. See generally 1 Abraham Fornander, \textit{An Account of the Polynesian Race, Its Origins and Migrations and the Ancient History of the Hawaiian People to the Times of Kamehameha I} (1878) (tracing Polynesian genealogies and myths through the Hawaiian Islands); 3 Abraham Fornander, \textit{An Account of the Polynesian Race, Its Origins and Migrations and the Ancient History of the Hawaiian People to the Times of Kamehameha I} (1885) (comparing the vocabulary of Native Hawaiians to that of Polynesians and Indo-Europeans, and concluding that it is more closely linked to Polynesians).
When the king of Hawai‘i, the biggest Hawaiian island, died in 1782, a fractious war of succession divided the island into three kingdoms. One kingdom was ruled by the deceased king’s nephew, Kamehameha—the man who would eventually unite the Hawaiian Islands.

Kamehameha drew on considerable western aid as he fought to bring the Hawaiian Islands under his control. He developed a good relationship with the British Captain George Vancouver. He “collected a large fleet, well manned, including double canoes armed with cannons, and the sloop *Fair American*; he is said to have placed [two westerners] John Young and Isaac Davis in command of his artillery.” He signed away the legal rights to the Hawaiian Islands to Britain, perhaps voluntarily or perhaps through confusion or coercion, and in return he received a variety of western weapons, including “skyrockets and a half dozen hand grenades” as well as western laborers to aid in the construction of a ship, to be named *The Brittanica*.

Kamehameha obtained “a large supply of muskets, cannons, and ammunition[,]” constructed a “vast fleet” of war canoes rigged with “foreign style sails[,]” and “had a squadron of small schooners built by his foreign carpenters[.]” With this western aid, Kamehameha succeeded in bringing all of the Hawaiian Islands under his control by 1810. Without western influence, it is unlikely that there would have been a unified Hawaiian Kingdom whose sovereignty the United States could violate. Modern Hawaiian sovereignty movements must consider what “people’s” sovereignty has been violated. For instance, could the smaller islands claim that their

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167 KUYKENDALL 8–9.
168 *Id.* at 33.
169 *Id*.
170 *Id.* at 44.
171 *Id.* at 37.
172 *Id.* at 42.
173 *Id.* at 48.
174 *Id.* at 50. See JARED DIAMOND, GUNS, GERMS AND STEEL 64 (1997) (describing the unification of the Hawaiian Islands in general terms).
sovereignty was violated by King Kamehemea in 1810? Maybe “people” should be defined more broadly.

Perhaps the Hawaiian people should be defined generally based on their shared Polynesian origin. After all, a Native Hawaiian from any island is more closely related to a Native Hawaiian from another island than to the western Europeans who claimed their Islands. This is the approach taken by Congress in its apology resolution, which defined “Native Hawaiians” to include “any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.” However, this definition raises constitutional concerns.

The Hawaiian experience reveals the fundamental tension between the right to self-determination and the U.S. Constitution. Describing a particular “people’s” right to self-determination sounds a lot like a classification based on race or national origin. These classifications typically draw the most searching constitutional scrutiny. For instance, Hawaiian statutes distinguish between the general population of the state and two subsets with ancestral ties to the Islands. According to the statute, the title “Hawaiians” applies to “any descendant of the aboriginal peoples inhabiting the Hawaiian Islands” before 1798, and the title “Native Hawaiians” applies to “any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778[.].” In Rice v. Cayetano, the U.S. Supreme Court held that a state-wide election open only to these groups was a race-based classification

175 Id. § 2. See also Kathryn Nalani Setsuko Hong, Understanding Native Hawaiian Rights: Mistakes and Consequences of Rice v. Cayetano, 15 ASIAN AM. L.J. 9, 9 n.2 (2008) (listing other definitions attempting to “classify[ ] the Hawaiian race”).
176 See, e.g., Parents Involved in Comm. Sch. Dists. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007) (“It is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny.”).
177 HAW. REV. STAT. § 10-2 (West 2008).
178 Id.
that violated the Fifteenth Amendment. The election was intended to allow descendants of Native Hawaiians exclusive control over a state agency tasked with “administer[ing] programs designed for the benefit of” Native Hawaiian descendants. This is exactly the type of empowerment that might allow a “people” to exercise their international right to self-determination, and yet the Supreme Court held it violates the Fifteenth Amendment rights of the rest of the population.

In light of Rice, federal and state governments face a challenging task in seeking to empower the Hawaiian “people” to exercise their right to self-determination. The international right to self-determination is held by “peoples.” But, any attempt to offer specific services or authority to a “people” defined by ancestry will draw constitutional challenges. One solution is to define “people” without consideration of ancestry. For instance, the broadest formulation of people avoids the constitutional issues entirely:

The Native Hawaiian people . . . are entitled to self-determination under international law not because they meet some statehood-oriented threshold criteria of “peoplehood,” but rather, because they are human beings: human beings who, like those among other segments of humanity, possess and value community bonds within a seamless global web of human interaction.

Defining “peoples” broadly, without regard to ancestry, avoids the constitutional issues and leaves the door open for Vermonters to claim the right. After all, ancestry is one thing Vermonters do not share. Of course, a broad definition of “peoples” makes possible the runaway fragmentation of existing countries, as illustrated by the recent independence of Kosovo.

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180 Id. at 499.
182 See supra note 113 and accompanying text.
B. Kosovo and the International Secessionist Debate

The recently declared independence of Kosovo provides an informative test case of the international principles of self-determination applied in a concrete political climate. The independence of Kosovo appears to be a legitimate exercise of a people’s right to self-determination. The people of Kosovo, who are predominantly ethnic Albanians, suffered numerous human rights violations at the hands of Serbs. However, the Kosovar situation illustrates the underlying tension between the right of self-determination and the international principle of territorial integrity. While some countries quickly recognized Kosovo as a legitimate independent nation, other countries steadfastly withheld recognition, claiming that officially sanctioning an independent Kosovo will lead to a cascade of secessions world-wide. The legitimacy of Kosovo’s declaration of independence is now before the International Court of Justice.

The territory of Kosovo, although enjoying some autonomy, was dominated by neighboring Serbia between 1912 and 1999. Kosovo is predominantly inhabited by ethnic Albanians, who share a language, religion, culture, and history distinct from that of the Serbs. Between 1989 and 1999, Kosovo was an occupied province of Serbia. The Serbian

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185 Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law, G.A. Res. 63/2, U.N. Doc. A/RES/63/3 (Oct. 8, 2008).
186 Watson, supra note 180, at 269–273.
188 Watson, supra note 180, at 272.
government denied ethnic Albanians the right to participate in government, officially sanctioned
discrimination, and permitted frequent violations of human rights. In 1999, NATO forces
expelled the Serbian military from Kosovo, and between 1999 and 2008, Kosovo was
administered by the United Nations. Kosovo declared its independence from Serbia on
Sunday, February 17, 2008.

A meeting of the U.N. Security Council the day after Kosovo declared its independence
illustrates the practical, political implications of Kosovo’s attempt to exercise its right to self-
determination. Serbian President Boris Tadic declared that “Kosovo will forever remain a part
of Serbia.” President Tadic appealed to the Security Council to consider the “catastrophic
consequences” of legitimatizing Kosovo’s independence:

Imagine, members of the Council, that you were in my place: that
of the President of a country which is being deprived of a part of
its territory against its will. How would you feel, and how would
you respond? I am asking this question because if you turn a blind
eye to this illegal act, who guarantees to you that parts of your own
countries will not declare independence in the same illegal way?
Who can guarantee to you that a blind eye will not be turned to the
violation of the Charter of the United Nations, which guarantees
the sovereignty and integrity of each state, when your country’s
turn comes?

The specter of rampant secession moved the Security Council representatives from Russia and
China to denounce Kosovo’s independence. Of course, both Russia and China face serious
independence movements within their own borders. On the other hand, council members from Belgium, the United Kingdom, France and the United States offered official recognition to Kosovo. Although probably not thinking of Vermont, the U.S. representative was careful to minimize the precedential value of Kosovo’s independence. He noted that Kosovo is clearly a special case and has been treated as such by the United Nations since 1999. . . . My country’s recognition of Kosovo’s independence is based upon the specific circumstances in which Kosovo now finds itself. We have not, do not and will not accept the Kosovo example as precedent for any other conflict or dispute.

These varied reactions to Kosovo’s independence illustrate the practical political reality of secession. Describing nebulous international principles of self-determination is one thing, but applying those principles to an actual secession is a fact-intensive and politically sensitive process.

Even within Kosovo, support for independence is not unanimous. Thousands of Serbs still live in Kosovo, and many strongly oppose Kosovar independence. In parts of Kosovo where ethnic Albanians are not an overwhelming majority, Serbs continue to resist independence. These internal reactions reveal the self-perpetuating, and self-defeating,
potential of the right to self-determination. Have the Kosovar Serbs, severed from their country without consent, suffered a violation of their international right to self-determination? Could they now secede from Kosovo, and form their own country?

One check on the complete fragmentation of nations into the smallest possible ethnic enclave is the Roman concept of “uti possidetis, ita possideatis,” or “as you possess, so may you possess.” According to the doctrine of uti possidetis, new independent states should adopt national boundaries that follow existing internal administrative boundaries. This doctrine was used to establish the boundaries of new countries in Latin America and Africa during decolonization. This concept also informed the break-up of the Soviet Union, Czechoslovakia, and Yugoslavia, all of which generally dissolved along pre-existing administrative boundaries. This principle limits the potential dissolution of nations. Therefore, the northern section of Kosovo remains part of an independent Kosovo despite the strong Serbian presence, the Hawaiian Islands remain one nation despite the islands’ divergent histories, and Vermont retains its current borders after secession despite the regional differences and heterogeneous population. Of course, taken to its logical extreme the principle of uti possidetis does not foreclose the possibility of rampant, if not unlimited, fragmentation. What would prevent a Vermont town from seceding from the new republic? For instance, the Vermont town of Killington has already expressed an interest in seceding from the state. Could it leave,

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201 Watson, supra note 177, at 269–273.
202 Id.
203 Id. at 278–79.
204 Id. at 280.
while retaining its current administrative boundaries?\textsuperscript{206} In short, although the principle of \textit{uti possidetis} prevents every person from forming an “Independent Republic of Himself[,]”\textsuperscript{207} it still permits extensive fragmentation. It is this logic that led Abraham Lincoln to argue that “the central idea of secession is the essence of anarchy.”\textsuperscript{208}

**CONCLUSION**

The international right to of peoples to self-determination is not a valid avenue for Vermont independence. In fact, modern Vermont independence movements represent a minority of voices—however well-spoken those voices may be. This is consistent with Vermont’s unique history. The state blazed its own trajectory onto the American flag, but it has never wholeheartedly embraced independence. Since joining the Union, the state has retained its distinct voice. Certainly, as Daniel Buck of Norwich predicted in 1791, statehood cost Vermont some transparency of government and some responsiveness to community needs. But in a myriad of other ways, the state remains a bulwark of small community activism, direct democracy, and transparent government. These values are nowhere better displayed than the in the state’s respectful stance towards its secession movements.

\textsuperscript{206} Of course, the Vermont Legislature retains complete authority to “alter, divide, modify, or abolish a municipal corporation, created for the purposes of government[,]” Montpelier v. East Montpelier, 27 Vt. (1 Williams) 704 (1855).


\textsuperscript{208} Abraham Lincoln’s First Inaugural Address, delivered March 4, 1861 \textit{reprinted in Inaugural Addresses of the Presidents of the United States} 133, 138 (1989).