

LIMITED SECESSION RIGHTS: ENCOURAGING UNITY AND MINIMIZING HOSTILITIES IN ETHNOFEDERALIST NATIONS

TYLER PRIME

I. INTRODUCTION

Nations comprised of people that do not share a common ethnic identity present a particular challenge for constitutional design. Failing to accommodate ethnic differences can be dangerous, resulting in genocide and state disintegration in extreme cases.¹ Some nations seek to manage ethnic heterogeneity within a constitutional framework known as ethnic federalism or “ethnofederalism.”² Ethnofederalist nations are comprised of subunits in which one or more of the subunits is based on an ethnicity.³ Ethnofederalism is not always selected willingly. In some situations, demands for self-autonomy may make it inevitable that this form of government is selected to keep nations intact.⁴ Whether or not this choice is made freely, ethnofederalist nations still must consider what powers they should grant to these subunits in order to maximize national stability, safety, fairness, and quality of life.⁵

¹ See Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 YALE J. INT’L L. 51, 52 (2003) (“Even now at the dawn of the new century, the failure to accommodate ethnic differences has produced Rwanda’s horrific genocide, Somalia’s disintegration, Liberia’s implosion, and Sudan’s still-raging civil war that has already claimed thousands of lives and displaced vast portions of the population.”).

² See Liam Anderson, *Ethnofederalism and the Management of Ethnic Conflict: Assessing the Alternatives*, 46 J. FEDERALISM 1, 2–3 (2016) (explaining that “allowing ethnic groups to exercise some degree of self-government over sensitive issues like education, language, and/or religion, ethnofederalism removes these as sources of conflict at the central level, thereby reducing ethnic tensions across the system.”).

³ See generally *id.* at 3–4 (“In the broadest sense of the term, therefore, ethnofederalism equates to ethnically defined territorial autonomy, a definition that includes system-wide federations in which one or more of the subunits is ethnic, and systems in which ethnic autonomy is granted by an otherwise unitary state.”).

⁴ *Id.* at 18 (“For most of the world’s contemporary ethnic conflicts, ethnofederalism remains the only viable institutional option available to practitioners and policy-makers.”).

⁵ Evaluating a nation’s success is ultimately dependent upon the evaluator’s values. Despite this unavoidable limitation, several attempts have been made to measure and weigh certain factors in determining an overall assessment of national success. While the many attempts are unique, they all track factors that generally fit into categories relating to a nation’s stability, safety, fairness, and quality of life. These assessments will always be contestable, but they remain useful as tools of comparison by providing consistent (if challengeable) scoring methods. This Note makes an assumption that a government is trying to achieve optimum outcomes in those four specific measures, while acknowledging this may not always be true. See Rafael la Porta et al., *The Quality of Government*, 15 J. L., ECON., & ORG. 222, 226–27 (1999); Amanda Ruggeri, *How Can You Measure What Makes a Country Great?*, BBC (Jan. 12, 2018), <http://www.bbc.com/future/story/20180111-how-can-you-measure-what-makes-a-country-great> (criticizing assessments of success as based on Western values); *2019 Social Progress Index*, SOC. PROGRESS IMPERATIVE, <https://www.socialprogress.org/> (last visited Nov. 2, 2018); *Worldwide Governance Indicators*, WORLD BANK GROUP, <http://info.worldbank.org/governance/wgi/index.aspx#doc> (last visited Nov. 2, 2018).

One such power that many ethnofederalist nations, including Spain, Canada, and Ethiopia, have considered is the power to secede.⁶ In each of these nations, the power for a subunit to secede has been treated differently and has produced different results.⁷ Collectively, the three nations demonstrate three lessons about granting the right to secession to subunits in ethnofederalist nations: first, that refusing to provide secession rights in any form will increase ethnic tensions, as in Spain;⁸ second, permitting secession after following a defined process, which requires a mutual agreement from the mother country, will likely ease ethnic tensions, as in Canada;⁹ and third, that unactionable secession rights, no matter how clearly defined increase ethnic tensions more than they relieve them, as in Ethiopia.¹⁰

In general, ethnofederalist nations with an undefined or unrespected secession process will see secession threats used as a political bargaining chip, which slows democratic cooperation and encourages nationalist tendencies. However, if instead, an ethnofederalist nation provides a clear and difficult path to secession, this bargaining chip would be eliminated, or at least more difficult to use, and states would be more likely to cooperate. When states cooperate, ethnofederalist nations are better situated to achieve national stability, safety, fairness, and quality of life.

This Note will continue in Part II by further defining ethnofederalism and will provide arguments for and against its use. Part III will explore various approaches on how to extend the right to secede within the context

⁶ See Ferran Requejo, *National Pluralism, Recognition, Federalism and Secession (or Hegel Was a Clever Guy)*, in UNDERSTANDING FEDERALISM AND FEDERATION 157, 165 (Alain-G. Gagnon et al. eds., 2015).

⁷ *Id.*

⁸ See Sam Jones, *Can Catalonia Declare Independence From Spain?*, GUARDIAN (Oct. 4, 2017), <https://www.theguardian.com/world/2017/oct/04/can-catalonia-declare-independence-from-spain> (explaining that the Spanish national government holds the position that subunits do not have the right to unilaterally secede, but by violently enforcing that position, it further galvanized support for Catalonia's position that it does have the right and should be independent); Michael Keating, *Catalonia, Spain and the Right to Decide*, CTR. ON CONST. CHANGE (Oct. 2, 2017), <https://www.centreonconstitutionalchange.ac.uk/blog/catalonia-spain-and-right-decide> (asserting that Catalonia would not be recognized internationally after a unilateral declaration of independence, but by forcibly denying Catalans the right to formally express their wishes, Spanish authorities breached the democratic notion of the right to decide, and this will exacerbate matters).

⁹ See An Act to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference, S.C. 2000, c. 26 (Can.) [hereinafter Clarity Act] (“WHEREAS the Supreme Court of Canada has confirmed that there is no right, under international law or under the Constitution of Canada, for the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally. . . .”); Reference re Secession of Quebec, [1998] S.C.R. 217, 220 (Can.) [hereinafter Secession Reference] (“Since Confederation, the people of the provinces and territories have created close ties of interdependence (economic, social, political and cultural) based on shared values that include federalism, democracy, constitutionalism and the rule of law, and respect for minorities. A democratic decision of Quebecers in favour of secession would put those relationships at risk. The Constitution vouchsafes order and stability, and accordingly secession of a province ‘under the Constitution’ could not be achieved unilaterally, that is, without principled negotiation with other participants in Confederation within the existing constitutional framework.”); Francisco Javier Romero Caro, *The Spanish Vision of Canada’s Clarity Act: From Idealization to Myth*, 9 PERSP. ON FEDERALISM 133, 139 (2017) (“To date, a third referendum is not on the agenda, as the PQ has committed itself not to hold one if they return to power as the winning conditions are far from being a reality.”).

¹⁰ See Selassie, *supra* note 1, at 78.

Even more importantly, the potential for realizing the benefits of deliberation and participation critically depends on the existence of an enabling political environment. Ethnic federalism may serve to promote these values but only in polities that are committed to constitutionalism and the rule of law. Without these critical conditions, including the acceptance of the legitimacy of political opposition, meaningful deliberation and participation by citizens cannot occur. Ethiopia has not yet succeeded in establishing the conditions for the realization of these values. *Id.*

of ethnofederalist nations, with a focus on the Spanish, Canadian, and Ethiopian experiences. Finally, Part IV will contextualize the lessons found in Part III and make suggestions about how to optimally approach creating secession rights in ethnofederalist nations.

II. ETHNIC FEDERALISM: RESPONDING TO THE CHALLENGES OF ETHNIC DIVERSITY WITH UNCERTAIN RESULTS¹¹

Ethnofederalism¹² has been described as a “paradox” for being a structure of government that is arguably both secession-inducing and secession-preventing.¹³ Whatever may be the case, “for the vast majority of states that opt for ethnofederalism, the real choice is not between ethnofederalism and a variety of feasible alternative institutions, it is between ethnofederalism and either independence for the ethnic unit . . . or the forcible recentralization of the state.”¹⁴ Given this, observers have urged that the debate should be refocused “on how best to design ethnofederal systems so as to maximize the probability of survival.”¹⁵ To do this, national governments must understand the common issues present in ethnofederalist nations that are responsible for this paradox.

A predominant issue that ethnofederalist nations grapple with is whether “ethnicity” is a valid basis for state formation at all. Many opponents of ethnofederalism argue that dividing subunits in this way actually exacerbates ethnic balkanization.¹⁶ Instead of dividing along ethnic lines, critics prefer

¹¹ Before discussing possible rights ethnofederalist nations may consider extending to their states, it is necessary to understand the context in which the rights are to be proposed. This Note explores the possibility of extending secession as a right to a state within a nation which follows the principles of Ethnic Federalism. Thus, before secession can be explored, ethnofederalism and its theoretical benefits and challenges must be understood.

¹² Ethnofederalism, as considered by this Note, is defined quite broadly. However, the term was originally used to specifically describe the Soviet Union’s structure of “nominally autonomous ethnic homelands.” See Anderson, *supra* note 2, at 3. Scholars have since expanded the definition to include nations in which “at least some, if not all, the constituent units of the federation are homelands controlled by their respective ethnic groups.” *Id.* Many also consider a nation in which “at least one constituent territorial governance unit is intentionally associated with a specific ethnic category” an example of ethnofederalism. *Id.* Ethnofederalism encompasses federations with one or more somewhat autonomous ethnic subunits in an otherwise unitary state. *Id.* The semi-autonomous subunits often wield decision-making power on issues of significant ethnic concern, including education, language, and religion. *Id.* at 3–4.

¹³ Philip G. Roeder, *Ethnofederalism and the Mismanagement of Conflicting Nationalisms*, 19 REGIONAL & FED. STUD. 203, 205 (2009) (“The enthusiasm with which ethnofederalism and autonomy arrangements have been embraced in the past decade is all the more remarkable because it appears to have run headlong into a substantial body of prior expert opinion warning against this.”); see Anderson, *supra* note 2, at 1 (“To dismiss ethnofederalism as an imprudent choice, however, is to imply that alternative institutions exist that are both feasible to implement and that would plausibly succeed where ethnofederalism fails. To date, critics have struggled to make a convincing case on either point.”).

¹⁴ Anderson, *supra* note 2, at 17.

¹⁵ *Id.* at 18.

¹⁶ See LIAM D. ANDERSON, FEDERAL SOLUTIONS TO ETHNIC PROBLEMS 16–17 (2013); SAMUEL P. HUNTINGTON, POLITICAL DEVELOPMENT IN ETHIOPIA: A PEASANT-BASED DOMINANT-PARTY DEMOCRACY, REPORT TO USAID/ETHIOPIA ON CONSULTATIONS WITH THE CONSTITUTIONAL COMMISSION MAR. 28 TO APR. 1, 1993, 14–16 (1993) (“This attempt to classify people by ethnic background is reminiscent of practices which used to exist in the former Soviet Union and in South Africa. It seems totally contrary to a political process one of whose purposes is to promote a common Ethiopian national identity. It also seems inappropriate in a country in which substantial portions of the population are of mixed ethnic background or unsure of which ethnic group they belong to or wish to identify with.”); MARVIN SUESSE, CAUSES AND CONSEQUENCES OF SECESSIONIST MOVEMENTS: LESSONS FROM THE

testing the “contact hypothesis.”¹⁷ This hypothesis suggests that “under conducive conditions, intergroup contact can reduce mutual suspicions and diminish the tendency to think of the ‘other’ in terms of negative stereotypes.”¹⁸ In short, “if identities (including ethnic identities) are not ‘givens,’ then there may be many institutional solutions to the problem of divided societies. Moreover, these need not involve transferring rights from individuals to groups, or reifying ethnicity at the expense of potentially more productive, enlightened identities.”¹⁹

Proponents of ethnofederalism are often skeptical that ethnic identities are so plastic. After all, people have killed and died to secure status and recognition for their group.²⁰ Thus, proponents take a position counter to the contact hypothesis and argue that mere exposure to rival ethnic groups does not eliminate “deep, enduring, emotional ethnonational attachments.”²¹ Furthermore, not only do proponents find the contact hypothesis foolish, they see subunits delineated by ethnicity as a possible strength:

Proponents would argue that by devolving power to territorially concentrated ethnic groups federalism provides a framework in which the more overt manifestations of ethnic distinctiveness, especially culture and language, may be publicly expressed and nurtured. This framework, they might add, allows individuals to live in an environment “where one can feel a sense of familiarity or even identification with the rulers, irrespective of whether this is indeed true or merely a comfortable illusion.”²²

As a consequence to the decision to govern along ethnic lines, however, critics point out that border drawing raises additional significant concerns. However a nation draws the borders for ethnic subunits, many individuals belonging to one ethnic group will be residents of the territory of another.²³ As ethnic outsiders, these individuals may receive inferior governmental services or even be subject to governmental discrimination and extralegal violence.²⁴ The politics of ethnic conflict, especially when reinforced by

SOVIET BREAKUP 3 (2016) (“The most powerful predictor of leaders’ attempts at separation, however, was the degree to which their regions had historically promoted the use of indigenous languages . . .”).

¹⁷ ANDERSON, *supra* note 16, at 20.

¹⁸ *Id.*

¹⁹ *Id.* at 21.

²⁰ See Selassie, *supra* note 1, at 53 (stating that “ignoring or suppressing ethnicity has led to militant ethnic nationalism, conflict, and political disorder”).

²¹ ANDERSON, *supra* note 16, at 54.

²² Selassie, *supra* note 1, at 73; see Lars-Erik Cederman et al., *Territorial Autonomy in the Shadow of Conflict: Too Little, Too Late?*, 109 AM. POL. SCI. REV. 354, 355 (2015) (“The territorial nature of such provisions contributes to satisfying the group’s concern about guaranteeing its physical security as well as the survival of its ethnonationalist identity.”).

²³ See ANDERSON, *supra* note 16, at 26 (noting that it is impossible to draw state boundaries without including a large number of individuals belonging to segments whose territorial base is elsewhere because very few multiethnic states have clearly defined concentrations of ethnicities).

²⁴ Hewan Alemayehu & Brook Abegaz, *Commentary: Increasing Accounts of Displacement, Violence Against Ethnic Amharas and Why Solving It Should Be a Priority*, ADDIS STANDARD: COMMENT (June 4, 2018), <https://addisstandard.com/commentary-increasing-accounts-displacement-violence-ethnic-amharas-solving-priority/> (ethnic Amharas in the Ethiopian Oromia territory have been forced to flee their homes as they have been targeted in ethnic attacks by crowds of people holding knives and swords); Steven Erlanger, *As French-Speakers Spread North in Belgium, Flemish Hear a Threat*, N.Y. TIMES (May 13, 2008), <https://www.nytimes.com/2008/05/13/world/europe/13iht-belgium.4.12857851.html> (politicians in Flemish towns restrict French-speaking children from accessing extra-

recent conflicts, can drive such results.²⁵ On the other hand, proponents argue that a lack of complete ethnic homogeneity within a subunit deters secession.²⁶ Studies have shown that “the more exclusively subnational units are populated by an ethnic group, the higher the risk for secessionist conflict.”²⁷ Ethnic subunits may be hesitant to leave behind significant numbers of ethnic members living outside of “their” region.²⁸

The feeling that regions are “owned” by an ethnic group may highlight the critics’ concern that ethnofederalism impedes the formation of a common national identity.²⁹ Critics argue that ethnofederalism encourages citizens to become “hopelessly biased” in their own favor and facilitates the rise of oppressive regimes and “ethnic entrepreneurs.”³⁰ In ethnofederalist subunits, moderate parties have tended to disappear, falling victim to parties of the same ethnicity attempting to outmaneuver each other by adopting increasingly extreme positions.³¹ This creates a “vicious cycle whereby those attributes that are essential to the effective sharing of power (moderation and a willingness to compromise on the part of elites) are precisely those qualities that are in the shortest supply.”³² Ethnofederalism may be a sure way to produce political gridlock and a system of government that provides leaders with powerful incentives to actively escalate ethnic conflict.³³ This leads to the belief that “ethnofederal institutions increase the willingness and desire of autonomous ethnic units to ‘go it alone,’ and, crucially, furnish them with the institutional resources necessary to mount a successful secession bid.”³⁴

curricular activities, including school trips and sports); Charlotte McDonald-Gibson, *Français Interdit: Belgian Town of Menen Bans the Use of French*, INDEPENDENT, <https://www.independent.co.uk/news/world/europe/fran-ais-interdit-belgian-town-of-menen-bans-the-use-of-french-8800788.html> (last visited Jan. 24, 2020) (the mayor of a Municipality in the Belgian Dutch-speaking state of Flanders banned the use of the French language from the town hall and ordered staff to only speak Dutch to “end the Frenchification of the municipality.”).

²⁵ See ANDERSON *supra* note 16, at 66 (“It clearly matters whether boundary lines are being used to separate belligerent ethnic groups in the midst, or immediate aftermath, of civil war (as in Bosnia), or whether the context is entirely peaceful (as in Belgium).”).

²⁶ Christa Deiwijs, *The Curse of Ethno-federalism? Ethnic Group Regions, Subnational Boundaries and Secessionist Conflict* 7, 15 (Dec. 30, 2009) (unpublished manuscript) (paper presented for presentation at the Annual Meeting of the Swiss Political Science Association, Geneva, Jan. 7–8, 2010).

²⁷ *Id.*

²⁸ See ANDERSON, *supra* note 16, at 68–69 (arguing that the ethnically-heterogeneous city of Brussels is the “glue” that holds Belgium together because many Flemish, who might otherwise favor independence, would prefer to stay unified with Belgium rather than to leave without Brussels).

²⁹ See Katharine Adeney, *Does Ethnofederalism Explain the Success of Indian Federalism?*, 16 INDIA REV. 125, 130–31 (2017) (political leaders in India were concerned that re-organizing their political map along linguist lines would balkanize the country, however the reorganization solidified support for the Indian state and the Indian nation according to public polling); Edmond J. Keller & Edith M. Omwami, *Federalism, Citizenship and National Identity in Ethiopia*, 6 INT’L J. AFR. STUD. 37, 68–69 (2007) (polling of Ethiopians from various ethnic groups show that respondents generally did not see contradictions between their group identity and their identity as Ethiopian citizens); David Rennie, *Belgium ‘an Accident of History with Football and Beer’*, TELEGRAPH (Aug. 19, 2006, 12:01 AM), <https://www.telegraph.co.uk/news/1526739/Belgium-an-accident-of-history-with-football-and-beer.html> (the region premier of Flanders, Yves Leterme, stated that the Belgian nation had “no intrinsic value” and was nothing more than the “king, the national football team and certain brands of beer”).

³⁰ ANDERSON, *supra* note 16, at 19.

³¹ *Id.* at 34.

³² *Id.*

³³ *Id.*

³⁴ Anderson, *supra* note 2, at 3.

Problematically, the mere presence of secession bids harm individual rights and economic prosperity.³⁵

On the other hand, proponents note that “regional autonomy permits extensive representation of ethnic groups in the local bureaucracy and that this, in turn, may prevent the spread of secessionist identities.”³⁶ Additionally, proponents argue that critics unfairly ignore the realities of the situation. They point out that ethnofederalism has generally failed in contexts where no institutional alternatives could have plausibly succeeded, and that in the majority of cases, ethnofederalism has succeeded where other institutional forms have demonstrably failed.³⁷ Ethnofederalism receives a worse reputation than traditional formations, like Unitarianism, because ethnofederalism is often a “last resort” that fails for the same reasons that its predecessor struggled.³⁸ Ethnofederalism simply receives the most negative attention because after ethnofederalism, there is no alternative left to try before secession occurs.³⁹

III. SECESSION AS A RIGHT: A BATTLE OF RIGHTS AND INCENTIVES

Because ethnofederalism is often selected to preserve national unity and to avoid secession, it seems ironic to consider extending the right of secession to subunits. However, as ethnofederalist governments are sometimes formed under pressure from ethnic groups demanding self-autonomy, this right may be part of their demands and included as a precondition to unification.⁴⁰ Thus, it is worth exploring the right and how it

³⁵ See SUESSE, *supra* note 16, at 4 (“Once another region’s adherence to the Union became doubtful—for example because it had just issued its declaration of autonomy—it became rational to cut trade with that potential separatist.”); Selassie, *supra* note 1, at 89, 91–93 (arguing that there are three reasons why ethnofederalism may impede economic progress: (1) “it has the potential to restrict the mobility of labor, goods, and capital across subnational jurisdictions, and thus to undermine the notion of a common market”; (2) “[s]uch a structure may exacerbate, rather than reduce, interjurisdictional disparities in wealth”; and (3) ethnic leaders’ preoccupation with their ethnic economic interests may conflict with the economic interests of the nation as a whole).

³⁶ Roeder, *supra* note 13, at 207.

³⁷ Anderson, *supra* note 2, at 1, Table 1 (claiming that only four of the thirty-six failed ethnofederalist governments from 1945 to 2016 can be labeled as failures of ethnofederal governments alone). *But see* Roeder, *supra* note 13, at 208 (arguing that ethnofederalism focuses on short-term problems to find a compromise to satisfy the demands of parties in a conflict, but gives less consideration to the days after the agreement and passes problems to their successors.).

³⁸ Anderson, *supra* note 2, at 18 (“... it is clear that these entities will not be reunited with their parent states under any alternative institutional arrangement . . .”).

³⁹ See *id.* (“In real-world cases . . . the choice is not between ethnofederalism and something else, but between ethnofederalism and nothing.”).

⁴⁰ This explains how the Ethiopian Constitution came to be. Tigrayans, a primarily northern-based ethnic minority group which currently account for just over 6 percent of Ethiopia’s population, were the target of government sponsored oppression since the establishment of the modern Ethiopian state at the end of the nineteenth century. See Aregawi Berhe, *The Origins of the Tigray People’s Liberation Front*, 103 AFR. AFF. 569, 570–73 (2004); *Ethiopia Population*, WORLD POPULATION REV., <http://worldpopulationreview.com/countries/ethiopia-population/> (last visited Sept. 24, 2018). In 1975, a group known as the Tigray People’s Liberation Front (“TPLF”) organized with the intent to secure self-determination of Tigray within the Ethiopian polity. See Berhe, *supra*, at 569. As the group engaged in the struggle for power, some TPLF leaders, including the Ethiopian-Prime-Minister-to-be, Meles Zenawi, developed support for a new goal for the TPLF: secession from Ethiopia and the establishment of an independent republic of Tigray. *Id.* at 591. However, this goal was rejected by the majority of TPLF supporters and was proclaimed to have been dropped by 1978. *Id.* By 1991, the group managed to win control of Ethiopia in the name of the Ethiopian People’s Revolutionary Democratic Front (“EPRDF”). See Lovise Aalen, *Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia*, 13 INT’L J. ON MINORITY & GROUP RTS. 243, 250 (2006). The EPRDF

might be best structured to preserve national unity and increase the likelihood of national success. Generally, extreme solutions are unpromising. Providing no right to secede is a dismissive stance and likely to provoke conflict,⁴¹ while the unilateral right to secede encourages brinksmanship.⁴² Thus, nations exploring this right should consider a conditional version that preserves national unity while still permitting self-autonomy. However, failure on the part of the national government to uphold that process in good faith will offset any potential gains.⁴³ Therefore, a nation should propose a process which is as difficult as possible to execute so that the national government can trust it to prevent secession except in situations where both parties would approve of it.

A. UNILATERAL RIGHT TO SECESSION

One possibility an ethnofederalist nation may consider is to grant the right to secession to a subunit unilaterally. Proponents of permitting a unilateral right to secession see it as a powerful deterrent to oppressive and

received support from other ethnic groups during the struggle to overthrow the preceding government, but became known as “a Tigrean front.” See Berhe, *supra*, at 569. Once in power, the Tigrayan leaders, including Zenawi, dominated the structuring of the new government. See Aalen, *supra*, at 250; Jane Perlez, *Talks on a New Ethiopia Affirm Right to Secede*, N.Y. TIMES (July 4, 1991), <https://www.nytimes.com/1991/07/04/world/talks-on-a-new-ethiopia-affirm-right-to-secede.html>. This domination included the drafting and ratifying of the new Constitution which was done without a genuine consolidation of the wider sections of the Ethiopian people. See Aalen, *supra*, at 250. In that Constitution, the EPRDF were able to introduce self-determination for national conferences and a right to secession for every nationality. *Id.* The inclusion of the right to secession is seen as directly attributable to Zenawi and his like-minded supporters. See Berhe, *supra*, at 592.

⁴¹ Consider Scotland’s efforts to secede from the United Kingdom (“UK”). See *infra* Part III(B) (Spain is facing a similar issue of Constitutional interpretation and have experienced violence as a result). Scotland first held a referendum on independence with approval from the UK Parliament in 2012, but voters elected to stay. See Nicole Winchester, *Scottish Independence Referendum Procedure: Section 30 Orders*, HOUSE OF LORDS LIBR. (2017), <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LIF-2017-0036>. The independence movement resurfaced in 2016 following the United Kingdom European Union membership referendum which resulted in a vote for the UK to leave the European Union despite every Scottish constituency voting in favor of staying. See *EU Referendum: Scotland Backs Remain as UK Votes Leave*, BBC NEWS (June 24, 2016), <https://www.bbc.com/news/uk-scotland-scotland-politics-36599102>. In response, in the Spring of 2017, Scotland’s Prime Minister Nicola Sturgeon confirmed that she would follow 2012’s precedent and ask the UK Parliament for permission to ask Prime Minister Theresa May for an agreement to hold a second referendum. Winchester, *supra*. However, May rejected the call for a second referendum, saying “now is not the time.” *Id.* In response to this dismissal, many have shown support for Scotland to hold a referendum anyway. Whether it would be legal to do so without UK approval is the subject of current legal debate. See Ewan Smith & Alison Young, *That’s How it Worked In 2014, and How it Would Have to Work Again*, UK CONST. L. BLOG (Mar. 15, 2017), <https://ukconstitutionallaw.org/2017/03/15/ewan-smith-and-alison-young-thats-how-it-worked-in-2014-and-how-it-would-have-to-work-again/>. While this issue remains unresolved, unrest is visible in Scotland. See Libby Brooks & Mattha Busby *Scottish Independence Supporters Rally in Edinburgh*, GUARDIAN (Oct. 6, 2018), <https://www.theguardian.com/politics/2018/oct/06/scottish-independence-supporters-rally-in-edinburgh-second-referendum>. In October of 2018, tens of thousands of independence supporters marched through the capital city of Edinburgh to pressure Scottish leadership to decide on the timing of a second referendum. *Id.*

⁴² For example, the Soviet Union guaranteed the right to secede in their Constitution (“Each Union Republic shall retain the right freely to secede from the Union”). Victor Danilenko, *Vilnius: Its Own Worst Enemy*, N.Y. TIMES (Apr. 17, 1990), <https://www.nytimes.com/1990/04/17/opinion/vilnius-its-own-worst-enemy.html>. It tried to limit the right by relying on a lack of legal mechanism to hold a successful referendum and argued that other articles of the Constitution took precedent. See *id.* Despite these efforts, secession occurred and the Soviet Union dissolved. See *id.*

⁴³ See Aalen, *supra* note 40, at 250–51.

discriminatory practices from the central government.⁴⁴ This may be valuable in ethnofederalist nations where there is a tendency for the central government to be dominated by one ethnic group, which may use its power to discriminate against rival groups.⁴⁵ Additionally, some view unilateral secession as a subset of the human right to self-determination⁴⁶ and reason that if a state no longer wants to exist within a nation, it should not be forcibly made to do so.⁴⁷

This argument, however, has not been accepted by the vast majority of commentators nor has it been incorporated into international human rights law.⁴⁸ Furthermore, while unilateral secession rights may act as a deterrent against an oppressive central government, there are numerous costs that offset this small benefit.

To place such a right in a founding document would increase the risks of ethnic and factional struggle; reduce the prospects for compromise and deliberation in government; raise dramatically the stakes of day-to-day political decisions; introduce irrelevant and illegitimate considerations into those decisions; create dangers of blackmail, strategic behavior, and exploitation; and, most generally, endanger the prospects for long-term self-governance.⁴⁹

These effects would be made more extreme, or more likely to occur, in ethnofederalist nations (as opposed to ethnically homogeneous nations) where ethnic struggles are common, compromise and deliberation in government are already rare, strategic behavior is systematically encouraged, and secession is a regular concern.⁵⁰ Thus, unless a subunit

⁴⁴ Cass R. Sunstein, *Constitutionalism and Secession*, 58 U. CHI. L. REV. 633, 635 (1991) (“The principal argument for recognition of a right to secede is that it would operate as a powerful deterrent to oppressive and discriminatory practices, and also serve as an effective remedy for these practices.”).

⁴⁵ See Selassie, *supra* note 1, at 80 (“It is a common lament heard throughout Ethiopia today that the ruling party unfairly diverts national resources to a region of the country that constitutes the core base of its political support.”).

⁴⁶ G.A. Res. 2200A (XXI), at art. I, § 1 (Jan. 3, 1976) (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”).

⁴⁷ Nicolas Levrat et al., *Catalonia’s Legitimate Right to Decide: Paths to Self-Determination*, COMMISSION INT’L EXPERTS 1, 8 (Nov. 27, 2017) (explaining the fundamental liberal idea of individual autonomy, whereby individuals who are members of a political community have a legitimate right to define the territorial limits of the collective in which they exercise their right to self-government. Further, this does not require any specific injustice to justify secession).

⁴⁸ The Canadian Supreme Court issued a decision on Quebec’s right to hold a secession referendum, which is a popular standard for interpreting international human rights laws in the area of secession. The decision acknowledges the right to secession only arises under the right to self-determination of a people in three specific situations: (1) “where a ‘people’ is governed as part of a colonial empire”; (2) “where a ‘people’ is subject to alien subjugation, domination or exploitation”; and (3) “possibly where ‘a people’ is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.” See *Secession Reference*, *supra* note 9, at 295. According to the Court, in the absence of these situations, international law has established that the right to self-determination of a people is fulfilled through internal self-determination i.e., within the framework of an existing state. *Id.*

⁴⁹ Sunstein, *supra* note 44, at 634.

⁵⁰ See ANDERSON, *supra* note 16, at 4 (“[E]thnically defined federal arrangements are prone to a variety of pathologies; they harden, rather than alleviate, ethnic identities; they empower extremist ethnic leaders; they foster a zero-sum political dynamic at the center; they elevate a ‘primitive’ form of identity over more elevated, progressive identities; they generate periodic state crises because they are unable to achieve equilibrium; and, ultimately, they equip ethnic groups with the resources needed to challenge the territorial integrity of the common-state. Hence, ethnofederations are inherently vulnerable to the secession of one, or all, of the ethnically-defined subunits.”).

demands the right in exchange for not dissolving a nation, a unilateral right should not be seriously considered. Furthermore, if a nation is truly unable to convince the subunit to put some conditions on their right to secession, it should instead consider if it is worth retaining the subunit in their union at all. Subunits holding this level of power may be more of a burden than a benefit, and it may be in the interests of both parties to let the subunit go it on their own.

B. NO RIGHT TO SECESSION

At the other extreme, some advocate for leaving the right unexplored in a nation's founding document.⁵¹ However, this approach appears to be untenable in ethnofederalist nations for several reasons. Foremost among them is that, as repeatedly noted, ethnofederalism is not always a government structure chosen willingly.⁵² In other words, including a right to secession might be a choice made under pressure. The right to secession may be a non-negotiable demand from a subunit threatening to dissolve a union.⁵³ Even when it is not a forced decision, there are still reasons a nation would want to provide some sort of right to secession, particularly for its uniquely self-interested ethnofederalist subunits.⁵⁴ This is because, in the ethnofederalist setting, there is a heightened potential for secessionist movements. By not including a standard process for secession, an ethnofederalist nation invites a subunit's political actors to make up their own.⁵⁵ If the movement is perceived as legitimate, and worse, arguably successful, the national government will have to intervene to preserve unity. This intervention, which may undermine a decision made by the subunit's legitimate governmental body and approved by its people, can be further weaponized by political actors who may argue that the intervention is a human rights violation of the subunit's right to self-determination.⁵⁶ This could provide a legal basis for their movement for independence, and while it is unlikely to be persuasive

⁵¹ See Sunstein, *supra* note 44, at 634.

⁵² See *supra* Part II.

⁵³ The Tigray leaders did not permit negotiations on the inclusion of the near-unilateral right to secession when they drafted the current Ethiopian Constitution. See Aalen, *supra* note 40, at 250; Perlez, *supra* note 40.

⁵⁴ See *supra* Part II.

⁵⁵ For example, subunits in Spain and Canada have attempted to secede by holding referendums under their own terms. See Aritz Parra & Ciaran Giles, *Spain: Top Court Officially Rules Catalan Referendum Illegal*, CHI. TRIBUNE (Oct. 17, 2017, 9:42 AM), <https://www.chicagotribune.com/news/nationworld/ct-catalonia-spain-independence-20171017-story.html> (The Catalan independence referendum was created by the Catalan-regional-parliament passed "self-determination referendum law," which the Spanish Constitutional Court held was unconstitutional); Ben Smith, *The Quebec Referendums*, HOUSE OF COMMONS LIBR. (2013) (The Quebec referendums were based on legislation passed by the National Assembly of Quebec and the questions were set by the Quebec government. The wording of the question was highly controversial in the second referendum, with No campaigners arguing that it was not clear and that that lack of clarity favoured the Yes side.).

⁵⁶ See Keating, *supra* note 8.

What is a cause for concern, however, is that the Spanish authorities have gone beyond establishing this fact, to forcibly denying Catalans the right formally to express their wishes. This breaches the modern, democratic, notion of the right to decide. The enforcement of its view only exacerbates matters. Going to the polls on Sunday was, at worst, an act of peaceful civil disobedience in pursuit of a principle. Using heavy-handed police tactics to prevent citizens from expressing themselves is an attack on democratic dissent. If the Spanish government argued that Catalonia does not have a grievance, it has itself undermined its own argument. The sense of historic wrongs is a strong one in Spain, which has a turbulent political history. The Spanish Government has given Catalan nationalism another one. *Id.*

to international sources of authority, it may be convincing to the population of the subunit that perhaps already feels disrespected by the national government.⁵⁷ Predictably then, national intervention in a popular secessionist movement will not improve, and will likely worsen relations between the subunit and the nation.

One such ethnofederalist nation facing the consequences of not providing a secession process is Spain, which decided to intervene in Catalan's attempt to secede from the national union.⁵⁸ In 2006, Catalan was granted "nation" status under the Spanish Constitution and was given the same level of taxation responsibility as the central government.⁵⁹ The Constitutional Court clarified in 2010 that while this recognition gave Catalans a recognized "nationality," it did not go so far as to make Catalonia, itself, a "nation."⁶⁰ Still, this increased autonomy helped fuel Catalonia's long-existing desire for independence and led to referendums on independence in 2014 and again in 2017, both of which were initiated by Catalan's own government. The 2014 referendum was dismissed as a "sham" by the national government, but a vote was held as an unofficial poll nevertheless.⁶¹ While only one-third of registered voters participated, 80 percent of those voting supported independence.⁶² The referendum was ultimately not further acted upon by the Catalonian government, but the movement persisted.

In the 2017 attempt, the Spanish government intervened by seizing ballots, arresting pro-independence officials, and using violence to physically prevent Catalonians from entering polling places on the day of the vote.⁶³ Despite no clear evidence of majority support,⁶⁴ the Catalonian Parliament persevered through the interference, and on October 27, 2018 it voted to declare independence from Spain. Seeing "no alternative," the

⁵⁷ See *id.*

⁵⁸ Spain has been dealing with ethnic-based conflict with Catalonia since at least the nineteenth century. Catalan first emerged as a distinct group in the eleventh century with the rise of the Country of Barcelona. *Catalonia Profile*, BBC NEWS (May 14, 2018), <https://www.bbc.com/news/world-europe-20345073>. It has been part of Spain since it was brought under Spanish control with the marriage of King Ferdinand and Queen Isabella in 1469. *Id.* From that point, it was increasingly integrated into the Spanish state. These trends produced a backlash and a renewed sense of Catalan identity which created growing support for political autonomy and even independence. *Id.* When Spain became a republic in 1931, Catalonia was granted extensive self-rule. *Id.* However, that was short-lived as it was stripped of these powers by General Francisco Franco's right-wing forces in 1939. *Id.* Under Franco's rule, Catalan nationalism was intensely repressed. *Id.*

⁵⁹ Renwick McLean, *Autonomy Passes for Catalonia*, N.Y. TIMES (Mar. 30, 2006), <https://www.nytimes.com/2006/03/30/world/europe/autonomy-passes-for-catalonia.html>.

⁶⁰ Amanda Erickson, *Catalonia's Independence Vote: What You Need to Know*, WASH. POST (Oct. 27, 2017, 8:36 AM), https://www.washingtonpost.com/news/worldviews/wp/2017/09/30/catalonia-independence-referendum-spain/?utm_term=.a26ab1a2fa3d.

⁶¹ *Catalonia Vote: 80% Back Independence - Officials*, BBC (Nov. 10, 2014), <https://www.bbc.com/news/world-europe-29982960>.

⁶² *Id.*

⁶³ Raphael Minder & Ellen Barry, *Catalonia's Independence Vote Descends Into Chaos and Clashes*, N.Y. TIMES (Oct. 1, 2017), <https://www.nytimes.com/2017/10/01/world/europe/catalonia-independence-referendum.html> ("More than 750 people were injured in the crackdown, Catalan officials said.")

⁶⁴ The Catalan government said that the referendum had been approved by 90 percent of some 2.3 million voters, but those figures could not be independently confirmed. Public polling indicated that Catalan's citizens were close to split on the issue of independence and may have supported it. *See id.* Overwhelmingly, however, that public polling clearly indicated that Catalan's citizens felt they should have the ability to vote on such matters. Pau Mari-Klose & Ignacio Molina, *Catalans Don't Want To Secede, They Want To Be Heard*, POLITICO (Sept. 29, 2017), <https://www.politico.eu/article/catalonia-referendum-independence-want-to-vote-not-secede/> ("People want a say in their future and, accordingly, tend to see referendums as a good thing.")

Spanish President responded by invoking Article 155 of the Spanish Constitution,⁶⁵ which allowed him, with the national government's approval, to take control of Catalonia's government, dismiss the Catalan parliament, and call for fresh elections.⁶⁶

In Spain, secession referendums can only be called with the approval of the national President, following Article 92 of the Spanish Constitution.⁶⁷ If approved, the referendum procedure would be set by an "Organic Act," which requires approval from "the overall majority of the Members of Congress in a final vote on the bill as a whole."⁶⁸ Thus, the Constitutional Court of Spain has claimed that any secession referendum initiated otherwise would be unconstitutional.⁶⁹ Furthermore, Article 2 of the Constitution refers to the "indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards."⁷⁰ In other words, Spain has specifically not included a right to secession within its constitution. The President would have to approve of the referendum and even if the President did, there is no predetermined process.

While many believe that a secession argument rooted in international law is very difficult to craft for Catalonia, as the Catalan people have not been oppressed by Spain and have enjoyed meaningful internal self-determination rights, it has not stopped leaders from asserting it.⁷¹ Furthermore, after Spain's violent reaction to Catalan's most recent referendum, it is not likely that these arguments will disappear, especially as secession-supporting parties won the majority of the seats in the Catalan parliament in the most recent elections.⁷² Thus, by failing to provide a

⁶⁵ C.E., B.O.E. n. 155, Dec. 29, 1978 (Spain) ("(1) If a Self-governing Community does not fulfill the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to meet said obligations, or to protect the above-mentioned general interest. (2) With a view to implementing the measures provided for in the foregoing paragraph, the Government may issue instructions to all the authorities of the Self-governing Communities.").

⁶⁶ Raphael Minder & Patrick Kingsley, *Spain Dismisses Catalonia Government After Region Declares Independence*, N.Y. TIMES (Oct. 27, 2017), (<https://www.nytimes.com/2017/10/27/world/europe/spain-catalonia-puigdemont.html>).

⁶⁷ See C.E., B.O.E. n. 92, Dec. 29, 1978 (Spain) ("(1) Political decisions of special importance may be submitted to all citizens in a consultative referendum. (2) The referendum shall be called by the King on the President of the Government's proposal after previous authorization by the Congress. (3) An organic act shall lay down the terms and procedures for the different kinds of referendum provided for in this Constitution.").

⁶⁸ See *id.* at § 81 ("(1) Organic acts are those relating to the implementation of fundamental rights and public freedoms, those approving the Statutes of Autonomy and the general electoral system and other laws provided for in the Constitution. (2) The approval, amendment or repeal of organic acts shall require the overall majority of the Members of Congress in a final vote on the bill as a whole.").

⁶⁹ See generally S.T.C., Oct. 17, 2017 (No. 4334-2017) (Spain), (<https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20referendum%20ENGLISH.pdf>).

⁷⁰ See C.E., B.O.E. n. 2, Dec. 29, 1978 (Spain).

⁷¹ Keating, *supra* note 8 (taking the position that Catalonia does not have a strong case for self-determination because it is not a colony and enjoys democracy and individual freedom).

⁷² Nafees Hamid & Clara Pretus, *How Spain Misunderstood the Catalan Independence Movement*, ATLANTIC (Oct. 1, 2017), (<https://www.theatlantic.com/international/archive/2017/10/catalan-referendum-spain-independence/541656/>).

Madrid's strategy of denying a referendum will not cool the independence movement. Its obstinance will backfire, inflaming the passions of some Catalans and further maligning the undemocratic image of the central government in the eyes of other Spaniards. Conversely, allowing a vote with multiple options could have driven down support for total independence and had a cathartic effect on the most passionate

defined secession process and then physically halting a referendum, the national government created a situation of legal ambiguity which secessionists will take advantage of to pursue their ends.⁷³

C. CONDITIONAL RIGHT TO SECESSION

As neither extreme is without its flaws, nations have experimented by offering a conditional right to secession in an attempt to move politics away from the question of secession. This approach has two noticeable benefits. First, if a group attempts to secede by a method outside of the agreed-upon process, a nation is more clearly justified in stopping the movement if it has a defined process already in place instead of depending on its, possibly unwritten, right to maintain national unity.⁷⁴ Second, defining a secession process may be beneficial because the national government can craft a sufficiently difficult process to achieve. Granted, it may be impossible to severely limit the right if subunits will dissolve the nation without the right extended unilaterally.⁷⁵ However, in nations where significantly conditioning the right to secession has been possible, restrictive terms have made it less likely that subunits will even attempt to secede.⁷⁶

One such ethnofederalist nation that has experienced success from this approach is Canada. Canada's ethnic conflict with the French-speaking subunit of Quebec can be attributed to the country's colonial roots.⁷⁷ Ethnic differences between Quebec and the rest of the nation have provided justification for increasing the subunit's self-autonomy.⁷⁸ The first movement

of independence activists, even if they lost. Allowing an official referendum will work in the favor of the central government and lead to more unity, not less. Unfortunately, Madrid has chosen the path of greatest resistance. *Id.*

⁷³ See Caro, *supra* note 9, at 151 (“... secessionist parties are the champions of ambiguity, and attempt to take advantage of such situations to pursue their ends, disregarding any legal notion, with the defense of the democratic principle as their justification.”).

⁷⁴ For example, in Canada, it was argued that the court did not have jurisdiction over the issue because it did not have the authority to interpret international law. The Court rejected this argument. See *Secession Reference*, *supra* note 9, at 219.

⁷⁵ See *supra* Part III(A).

⁷⁶ Peter Leslie, *The Supreme Court Sets Rules for the Secession of Quebec*, 29 J. FEDERALISM 135, 136 n. 2 (1999) (“Quebec Premier Lucien Bouchard, whose government was re-elected in November 1998, but with a reduced majority and with fewer votes than the Quebec Liberal Party, is generally regarded as less strongly committed to sovereignty than most PQ militants. He has announced that his government will hold a new referendum on sovereignty during the latter half of its mandate, or perhaps as early as spring 2000, but only under ‘winning conditions.’ The federalist strategy is to ensure that ‘winning conditions’ never materialize, and that a referendum is never held.”).

⁷⁷ Canada's ethnic conflict can be traced back to France and England's rush to control North America. Canada was settled by the French at the start of the seventeenth century and became a “Royal Province” in 1663. *New France: French Colonies, North America*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/New-France>; Pierre Tousignant, *Constitutional Act 1791*, CANADIAN ENCYCLOPEDIA (last edited Mar. 4, 2018), <https://www.thecanadianencyclopedia.ca/en/article/constitutional-act-1791>. Over the next one hundred years, English settlers from the colonies in the south made various attempts to seize land from the province. In 1756, the colonies and their mother countries entered into the “Seven Years’ War,” which ended with the signing of the Treaty of Paris in 1763. *Id.* By signing the treaty, France ceded nearly all of its North American territory east of the Mississippi to the British, making more than sixty thousand French Canadians instantly British subjects. *See id.*

⁷⁸ To avoid losing Quebec to the same unrest that would turn to revolution in the American colonies, England passed the Quebec Act in 1774. See Maxime Dagenais, *Quebec Act, 1774*, CANADIAN ENCYCLOPEDIA (last edited Jan. 31, 2020), <https://www.thecanadianencyclopedia.ca/en/article/quebec-act>. The Act, which aimed to assimilate the French-Canadian population, most importantly granted freedom of religion and restored French civil law. *Id.* This decision did not sit well with British loyalists in the territory who wished to use the British system of law. *Id.* Britain responded with the Constitutional

for an independent Quebec under the modern Canadian parliamentary system, which began in 1867, did not surface until the 1960s.⁷⁹ The movement gained popularity under Liberal Cabinet Minister René Lévesque in 1967.⁸⁰ With the political group “Parti Québécois,” he supported a separatist platform through the 1970s, and their efforts culminated in 1980 with a secession referendum.⁸¹ The referendum failed, with only about 40 percent of voters supporting an independent Quebec.⁸² Support for the movement further declined through the early-1980s.⁸³ However, following disagreements over the “patriation” of the Canadian Constitution from the British Parliament in 1984 and 1987, to which Quebec never consented, the separatist movement re-emerged.⁸⁴ Another secession attempt took place in 1995; this time it was rejected by a slimmer margin, with 50.6% voting “no” to secession and 49.4% voting “yes.”⁸⁵

This repeated push for secession motivated the Canadian federal government to look for clarification on the legality of such an action from the Supreme Court. In response, the Supreme Court recognized its dedication to internationally recognized human rights and Canada’s dedication to federalism, democracy, constitutionalism and the rule of law, and respect for minorities.⁸⁶ With these principles in mind, the Supreme Court did not find that Quebec had the unilateral right to secede from Canada under domestic or international law.⁸⁷ However, it stated Canada had a duty to negotiate in good faith in the event that the people of Quebec demonstrated a clear expression of will to secede.⁸⁸

After the decision, the federal government responded to this now-articulated duty, by introducing the “Clarity Act.”⁸⁹ The act’s stated purpose was to clarify the circumstances under which the government of Canada

Act of 1791, which split the territory into “Upper Canada” and “Lower Canada”. *Id.* Upper Canada attracted loyalists and adopted English common law, and Lower Canada retained all the rights and privileges established by the Quebec Act. *Id.* This arrangement led to the Lower Canada Rebellion, the first of several Quebecois independence movements. See Phillip Buckner, *Rebellion in Lower Canada*, CANADIAN ENCYCLOPEDIA (last edited Oct. 4, 2019), <https://www.thecanadianencyclopedia.ca/en/article/rebellion-in-lower-canada>. After peaceful protests against the British government were ignored and economic troubles set in, French Canadians turned to armed insurrections beginning in 1837 and ending the following year. *Id.* The rebellion was unsuccessful but did lead to the reunification of Canada and the introduction of responsible government in 1841. *Id.* Canada would gain additional autonomy in 1867 when Britain passed the British North America Act. See *British North America Act*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/British-North-America-Act>. The act created the “Dominion of Canada,” which combined the colonies into a federal state with a parliamentary system and would later become Canada’s own Constitution. *Id.*

⁷⁹ See Michael Stein, *Separatism in Canada*, CANADIAN ENCYCLOPEDIA (Dec. 8, 2016), <https://www.thecanadianencyclopedia.ca/en/article/separatism>.

⁸⁰ See Michael B. Stein, *Separatism in Canada*, CANADIAN ENCYCLOPEDIA (Dec. 8, 2016), <https://www.thecanadianencyclopedia.ca/en/article/separatism>; René Lévesque, ENCYCLOPEDIA BRITANNICA (2018), <https://www.britannica.com/biography/Rene-Levesque>.

⁸¹ See Stein, *supra* note 80.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See generally *Secession Reference*, *supra* note 9.

⁸⁷ *Id.* at 292.

⁸⁸ *Id.* at 265 (“The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire.”).

⁸⁹ See generally *Clarity Act*, *supra* note 9.

would enter into negotiations in the event of a provincial referendum in support of secession as well as the requirements for approving secession.⁹⁰ The Act requires the seceding province to first obtain approval from the House of Commons, a component of the Parliament of Canada, on any referendum question before putting it to vote.⁹¹ Then, if a referendum is authorized and a vote is held, it is up to the House of Commons again to determine if “there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada.”⁹² If that ambiguous hurdle is cleared, the provincial governments and the federal government are required to negotiate and, if they so agree, to amend the Canadian constitution to permit the province to secede.⁹³ In response to the Clarity Act, which made secession nearly impossible,⁹⁴ Quebec passed Bill 99 which included its own interpretation of the Supreme Court's ruling.⁹⁵ Bill 99 was much more permissive of secession and directly in conflict with the federal government's Clarity Act, primarily in its interpretation of what a “clear majority” should mean.⁹⁶ While the contradictions have been referred to the Supreme Court, no ruling has been issued thus far.⁹⁷

While questions remain outstanding, there have been no further attempts at secession since the Clarity Act was passed in 2000.

Thanks to the Clarity Act, the secessionist movement can no longer claim that their democratic rights are violated or that their will is not respected. The disappearance of ambiguity and its replacement with

⁹⁰ *Id.* at pmb1. (“the Supreme Court of Canada has determined that the result of a referendum on the secession of a province from Canada must be free of ambiguity both in terms of the question asked and in terms of the support it achieves if that result is to be taken as an expression of the democratic will that would give rise to an obligation to enter into negotiations that might lead to secession. . .”).

⁹¹ *See id.* at § 1(1) (“The House of Commons shall, within thirty days after the government of a province tables in its legislative assembly or otherwise officially releases the question that it intends to submit to its voters in a referendum relating to the proposed secession of the province from Canada, consider the question and, by resolution, set out its determination on whether the question is clear.”); *id.* at § 1(6) (“The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada if the House of Commons determines, pursuant to this section, that a referendum question is not clear and, for that reason, would not result in a clear expression of the will of the population of that province on whether the province should cease to be part of Canada.”).

⁹² *Id.* at § 2(2) (“. . . the House of Commons shall take into account (a) the size of the majority of valid votes cast in favour of the secessionist option; (b) the percentage of eligible voters voting in the referendum; and (c) any other matters or circumstances it considers to be relevant.”); *see id.* at § 2(4) (“The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada unless the House of Commons determines, pursuant to this section, that there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada.”).

⁹³ *See id.* at §§ 3(1)–(2)

⁹⁴ Charles Whites, *Reference Re Secession of Quebec: Secession by Quebec Is a Nearly Impossible Task*, 19 N.Y.L. SCH. J. INT'L & COMP. L. 323, 345 (1999) (“Given all of the hurdles that French-Canadian separatists face to effect secession, it is highly unlikely that Quebec will gain independence from Canada at any point in the near future.”).

⁹⁵ *See* Bill 99, Act Respecting the Exercise of the Fundamental Rights and Prerogatives of the Québec People and the Québec State, C.Q.L.R. c. E-20.2 (“. . . WHEREAS the Supreme Court of Canada rendered an advisory opinion on 20 August 1998, and considering the recognition by the Government of Québec of its political importance; WHEREAS it is necessary to reaffirm the collective attainments of the Québec people, the responsibilities of the Québec State and the rights and prerogatives of the National Assembly with respect to all matters affecting the future of the Québec people . . .”).

⁹⁶ *Id.* at § 4 (“When the Québec people is consulted by way of a referendum under the Referendum Act, the winning option is the option that obtains a majority of the valid votes cast, namely fifty percent of the valid votes cast plus one.”).

⁹⁷ Caro, *supra* note 9, at 139.

the notion of clarity is one of the biggest lessons of the Canadian experience. The notion of clarity, and the subsequent duty to negotiate in good faith, have deactivated the unilateral path to secession, and the recourse to ambiguous questions aimed at influencing the electorate, together with the defense of the simple majority rule as a model of democracy. These instruments, defended by the Parti Québécois in 1980 and 1995, are no longer accepted. Since the Clarity Act, secessionists must abide by the procedure established in that act; otherwise the federal government will refuse to enter into negotiations on secession.⁹⁸

D. UNUSABLE CONDITIONAL RIGHT TO SECESSION

While Canada so far represents a success for ethnofederalist nations dealing with threats of secession by, perhaps counterintuitively, providing subunits a right to secession, this technique has not always worked. Ethiopia is an example of a nation that has provided a limited right to secession yet still struggles. Ethiopia extended the right to secession to its subunits but, through various suppressive techniques, has made it impossible for subunits to organize and actually use the right.⁹⁹ While suppressing these groups has held the nation together, it has come at a significant economic and social cost. Ultimately, this approach is no better, and likely worse, than not extending the right to secession at all.

Ethiopia, a nation with a long history of ethnic conflict, became an ethnofederalist nation in 1994.¹⁰⁰ The nation arrived at this structure under the Ethiopian People's Revolutionary Democratic Front ("EPRDF").¹⁰¹ The

⁹⁸ *Id.* at 151.

⁹⁹ See Aalen, *supra* note 40, at 250 ("By transforming the country into ethnically defined regional states and creating ethnically defined parties under its control, the leadership from the ethnic minority of Tigray was able to be in command of the whole country.").

¹⁰⁰ Ethiopia, in roughly its present territorial form, came into existence at the turn of the nineteenth century under the direction of Emperor Menelik II. See HAROLD G. MARCUS, A HISTORY OF ETHIOPIA xiii, 104–16, 130–81, 194–95 (1994). So constructed, Menelik ruled this territory's heterogeneous population indirectly, "largely through accommodation and co-option." *Id.* at xiii. Centralized rule in Ethiopia did not appear until the rule of Haile Selassie, which began 1926. *Id.* at 130–81. Selassie fostered "unity through the development of a national army, a pan-Ethiopian economy, modern communications, and an official culture whose main feature was the use of the Amharic language in government and education." *Id.* at xiii. Ethiopia began to experience intense social unrest in the 1960s, and in 1974, Selassie's government was overthrown by a socialist military coup known as the "Derg." *Id.* at 181–88. The Amharic Derg were "determined to extirpate any competing civil society or ethnic activity." *Id.* at xiv. To do so, the Derg cracked down on opposition in a period known as the "Red Terror," in which state-sponsored violence, a policy exacerbated famine, and forced resettlement camps left thousands dead. World Peace Found., *Ethiopia: Red Terror and Famine*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocitiesendings/2015/08/07/ethiopia/> ("We use the figure of a minimum of 60,000 deaths for the period 1974–1985. This combines the commonly cited figure of 10,000–20,000 people killed as part of the Red Terror, acknowledging that the dearth of data, particularly from areas outside of Addis Ababa. It further includes an estimated 50,000 additional deaths directly resulting from government policy of forced resettlement during the famine in Tigray."). The attempted suppression only contributed to ethnic separatism and resistance towards the polity of the Ethiopian state. See MARCUS, *supra*, at 202–20. The Derg rule was ended in 1991, when the Ethiopian People's Revolutionary Democratic Front ("EPRDF"), a group largely organized by the Tigrayan People's Liberation Front, but supported by ethnic groups across Ethiopia (excluding Eritrea, which was controlled by the Eritrean People's Liberation Front), overthrew the government. *Id.*

¹⁰¹ See Aalen, *supra* note 40, at 245.

group was largely organized by the Tigray People's Liberation Front (an ethnicity-based political party from the north of Ethiopia), but at the time of formation, enjoyed support from ethnic groups across Ethiopia (excluding Eritrea, which was controlled by the Eritrean People's Liberation Front).¹⁰² The EPRDF overthrew their predecessors and rose to power in 1991.¹⁰³ Once in control, the EPRDF worked on structuring a new government and finally adopted a new ethnofederalist constitution on December 8, 1994.¹⁰⁴

The Constitution not only creates an ethnofederalist structure but also states that "every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession."¹⁰⁵ While the right is explicitly "unconditional," it still requires subunits to meet various requirements articulated by the Constitution. These requirements include receiving a two-thirds majority approval from the subunits' Legislative Council to hold a referendum, allowing the federal government up to three years to organize the referendum, and receiving a majority vote for independence in the referendum.¹⁰⁶ This right in the Constitution has never been utilized.¹⁰⁷ While the now-independent nation of Eritrea seceded following a referendum in 1993, this occurred before the EPRDF Constitution was approved.¹⁰⁸ The remaining Ethiopian subunits have not taken advantage of the right; however, this is not because regional political actors have not demonstrated a desire to do so.¹⁰⁹

The subunits that stayed with this new Ethiopian government quickly became displeased with the Tigrean-dominated EPRDF.¹¹⁰ It became clear that the EPRDF did not intend to share power with other political forces in a democratic manner; it "dominated the drafting and ratifying of the new Constitution."¹¹¹ Furthermore, it created ethnically-defined parties under its control in the regional states, thus permitting it to command the whole

¹⁰² See MARCUS, *supra* note 100, at 216–18.

¹⁰³ *Id.*

¹⁰⁴ See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETH. pmbl. (Dec. 8, 2019).

¹⁰⁵ *Id.* at art. 39, § 5 ("A 'Nation, Nationality or People' for the purpose of this Constitution, is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.")

¹⁰⁶ *Id.* at art. 39, § 4 ("The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect: (a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the nation, Nationality or People concerned; (b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession; (c) When the demand for secession is supported by majority vote in referendum; (d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and (e) When the division of assets is effected in a manner prescribed by law.")

¹⁰⁷ See *generally Ethiopia Profile – Timeline*, BBC (June 24, 2019), <https://www.bbc.com/news/world-africa-13351397>.

¹⁰⁸ *Id.*

¹⁰⁹ See Jean-Nicolas Bach, *EPRDF's Nation-Building: Tinkering with Convictions and Pragmatism*, 27 *CADERNOS ESTUDOS AFRICANOS* 103, 112–13 (2014).

¹¹⁰ The Oromo Liberation Front ("OLF"), a group which supported the EPRDF in overthrowing the former government, from the start felt that it was not able to meaningfully participate in the new government. See *id.* The OLF felt that the EPRDF was overextending its authority into their newly defined territory through its Oromo-based party (The Oromo People's Democratic Organization). See HUMAN RIGHTS WATCH, *ONE HUNDRED WAYS OF PUTTING PRESSURE: VIOLATIONS OF FREEDOM OF EXPRESSION AND ASSOCIATION IN ETHIOPIA* 10–12 (2010). Similar feelings of distrust were held by the Ogaden National Liberation Front, predominantly Somali people of the Ogaden region. See *id.*; Bach, *supra* note 109, at 112–13.

¹¹¹ See Aalen, *supra* note 40, at 250–51.

country.¹¹² As a result, regional and local self-rule were severely restricted and the Constitutionally-granted “self-determination for the nationalities” is, in actuality, more of “a paper provision than an actual principle of government practice.”¹¹³

In addition to undermining the subunits’ political groups institutionally, the EPRDF is responsible for numerous well-documented human rights violations. A recent summary has been provided by Endangered Scholars Worldwide:

Since late 2015, security forces have killed over 1000 people and detained tens of thousands during widespread protests against government policies. A state of emergency began in February 2018, the second in two years, and permits draconian restrictions on rights to freedom of expression, association, and assembly. Authorities regularly use arbitrary arrests and politically motivated prosecutions to silence journalists, activists, and perceived opposition party members. Torture remains a serious problem in detention. The Ethiopian government has not conducted meaningful investigations into any of these abuses. Repressive laws restrict the activities of nongovernmental organizations. The ruling coalition won all 547 parliamentary seats in the 2015 election.¹¹⁴

Collectively, between the human rights violations and the intervening puppet political groups deployed by the national government, it has been impossible for the subunits to legally take actions toward secession under the Constitution.¹¹⁵

Thus, while the Constitution is clear about the unilateral right to secession, it is not clear that the EPRDF ever intended for the right to be used.¹¹⁶ Instead, it seems that the right was extended for reasons other than its theoretical purpose. One possibility is that the EPRDF followed the tactic used in China and the Soviet Union, and extended the right to attract the territory’s numerous ethnic groups into a larger political union for the

¹¹² *Id.* at 251.

¹¹³ *Id.*

¹¹⁴ *Country Profile: Ethiopia*, ENDANGERED SCHOLARS WORLDWIDE (July 3, 2019), <http://www.endangeredscholarsworldwide.net/countryprofile--ethiopia>.

¹¹⁵ Historically, groups demanding independence and taking steps toward secession have been denied from political office through various means and individual political opponents who suggest such actions have been arrested and charged with a variety of offenses, including treason and “outrages against the constitutional order.” See *Ethiopia: Four Editors Convicted, Two Facing Harsh Sentences*, ENGLISH PEN (July 4, 2007), <https://www.englishpen.org/campaigns/ethiopia-four-editors-convicted-two-facing-harsh-sentences/>. Consider the OLF, a political party representing Ethiopia’s largest ethnic group. The OLF has been fighting for an independent Oromia, but until recently, have been banned and their supporters are persecuted and are victims of extrajudicial punishment and killing. See HUMAN RIGHTS WATCH, *supra* note 110, at 16; Aalen, *supra* note 40, at 243–44, 257, 257 n. 42 (arguing that Ethiopia’s rulers accepted liberal democracy rhetorically, but the system has apparent illiberal or authoritarian traits); Abdur Rahman Alfa Shaban, *Like PG7, Ethiopia Gov’t Welcomes Oromo Liberation Front Back Home*, AFRICA NEWS (Sept. 16, 2018), <http://www.africanews.com/2018/09/16/like-pg7-ethiopia-govt-welcomes-oromo-liberation-front-back-home/> (under the direction of Prime Minister Abiy Ahmed, Ethiopia officially welcomed the OLF back to the country).

¹¹⁶ See Wondwosen Teshome B. & Jan Záhorký, *Federalism in Africa: The Case of Ethnic-based Federalism in Ethiopia*, 5 INT’L J. HUM. SCI. 1, 16–19 (2008).

purpose of enjoying perceived economic and social benefits, only to delegitimize the right once the political union was attained.¹¹⁷ Thus, the right only stands to cause tensions between the nation and its subunits as it is not actionable. Tensions will only be reduced in Ethiopia if its subunits and their constituents believe the government will respect not only the right to secession but other constitutionally granted rights as well.

IV. LESSONS LEARNED: THE PATH TO THE OPTIMAL RIGHT TO SECESSION POLICY

Ethnofederalist nations are particularly liable to experience secessionist movements.¹¹⁸ The design inherently encourages political actors to appeal to their group's biases, drives them toward self-dealing extremism, and furnishes them with a government structure to exist independent of the mother country.¹¹⁹ Thus, ethnofederalist nations need to anticipate and prepare for the very real possibility of experiencing such movements. Part III demonstrates that ethnofederalist nations clearly benefit from providing a conditioned right to secession and should propose as restrictive terms as possible.¹²⁰ This maximizes the chance that such a right cannot be used as a political bargaining chip,¹²¹ is not dismissive,¹²² and does not make any empty promises.¹²³ However, different circumstances, such as whether the right is proposed proactively or reactively or how strained the relationship between the nation and the subunit is, may influence how a nation is able to structure the right.

A. LESSONS IN PROACTIVITY

Ethiopia and Canada demonstrate the lesson that if an ethnofederalist nation has the opportunity to define a secession process when there is no active threat of secession, it should. Furthermore, Ethiopia and Canada demonstrate that nations should only provide a process that they are willing to honor. Canada's model¹²⁴ is optimal because it is simultaneously difficult for a subunit to achieve and also accommodating to those that believe a subunit should have the right to decide to secede.¹²⁵ It accomplished this by

¹¹⁷ *See id.*

¹¹⁸ *See supra* Part II.

¹¹⁹ *Id.*

¹²⁰ *See supra* Part III(C).

¹²¹ *See supra* Part III(A).

¹²² *See supra* Part III(B).

¹²³ *See supra* Part III(D).

¹²⁴ This Note includes Canada even though it followed a secession movement because the movement failed on its own. When Canada passed the Clarity Act and defined the secession process, it was under no significant pressure from its subunits to provide generous terms.

¹²⁵ *See* Stéphane Dion, *The Reference on Quebec Secession: A Positive Impact for All*, 6 *REVUE QUÉBÉCOISE DE DROIT CONSTITUTIONNEL* 21, 37 ("The breakup of a modern state such as Canada would be a very difficult thing to do—and an unreachable goal if pursued without clarity and outside the rule of law."); *id.* at 36 ("But in no way does double-speak give politicians the rights they don't have over citizens. The Government of Quebec has no right to take Canada away from those Quebecers who want to keep their country. What the Government of Quebec is entitled to do is ask Quebecers, by referendum, if they clearly want to secede. If it is proven that Quebecers clearly agree to secession, then such clear support would trigger an obligation to enter into negotiations on secession; these negotiations could then lead to a fair-for-all separation agreement and to a constitutional amendment removing all references to Quebec from the Canadian Constitution.").

providing two possible paths to secession: first, a subunit can secede if there is mutual approval from its people and the national government;¹²⁶ or second, a subunit can secede unilaterally if it is a colony, has no meaningful access to the nation's government, or is the target of oppression.¹²⁷ By providing this second path explicitly, Canada takes some risk that a subunit will achieve a "clear majority" and it will be forced to negotiate. However, because it is a difficult threshold to overcome, political actors in a subunit may find it more productive to work within the confines of the union instead of pushing for independence.¹²⁸

Ethiopia's experience, on the other hand, demonstrates that proactively defining a path to secession is not, at least on its own, the solution to mitigating secession threats in ethnofederalist nations. In fact, Ethiopia's decision to adopt the secession process it did is likely responsible for some of the current ethnic conflict it has experienced. In contrast to Canada's defined secession process, Ethiopia enacted a secession process that is relatively achievable.¹²⁹ However, when political actors inevitably began to express interest in using it, the national government reacted by making it impossible to initiate any movements through oppression and the use of political puppets at the subunit level.¹³⁰ This significantly undercuts the self-autonomy promised by the Ethiopian Constitution.¹³¹

If the controlling Tigrayans did not intend for any Ethiopian subunit to use this right and included it only for self-serving purposes, then the current Ethiopian Constitution was never one designed for the nation to succeed as a whole. A nation designed with such corrupt, self-serving principles has obstacles greater than those inherent to ethnofederalism to overcome and falls outside the scope of this Note.¹³² However, renewed optimism for Ethiopian success arrived after protests of the government resulted in the

¹²⁶ See *supra* text accompanying notes 85–93.

¹²⁷ See Secession Reference, *supra* note 9, at 222 ("... a right to secession only arises under the principle of self-determination of people at international law where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.").

¹²⁸ See Caro, *supra* note 9, at 139 ("To date, a third referendum is not on the agenda, as the PQ has committed itself not to hold one if they return to power as the winning conditions are far from being a reality."); Dion, *supra* note 125, at 35 ("It is encouraging to see a noted secessionist, Joseph Facal, write that it would be necessary to have [Translation] 'a clear, stable and solid majority . . . which will not vary quantitatively from week to week, as the mood dictates. The decision of whether or not to leave Canada is a solemn and serious decision. We should not take advantage of an inflamed climate to rush into a referendum.' All the more that [Translation] 'The referendum timetable paralyzes the machinery of government on virtually all other issues. You cannot really govern and prepare a referendum at the same time. Anyone who has lived through it will tell you so.'").

¹²⁹ See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETH. pmb. (Dec. 8, 2019); *supra* text accompanying notes 104–03.

¹³⁰ See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETH. pmb. (Dec. 8, 2019); *supra* text accompanying notes 104–03.

¹³¹ See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETH. pmb. (Dec. 8, 2019) ("We, the Nations, Nationalities and Peoples of Ethiopia: Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development . . .").

¹³² This Note makes an assumption that a government is trying to achieve national success. Any government that does not have that goal would not find these lessons helpful. See *supra* note 5 and accompanying text.

resignation of Prime Minister Hailemariam Desalegn in February of 2018.¹³³ His replacement, Prime Minister Abiy Ahmed, is the first Oromo to take the position.¹³⁴ While instances of ethnic conflict have persisted since he has taken office,¹³⁵ Ahmed has already taken several actions many see as promising signs of progress. Ahmed has been responsible for the release of thousands of political prisoners,¹³⁶ reached peace with a secessionist movement,¹³⁷ and voiced support for a multi-party government.¹³⁸ Thus, there is an indication that the current Ethiopian government does have an interest in national success and should consider the lessons offered for nations that are taking reactive measures following a secession attempt.

B. LESSONS IN REACTIVITY

If ethnofederalist nations do not have a defined secession process in place when an independence movement mounts and a referendum is proposed,¹³⁹ such nations have a better chance of improving their relations with subunits if they do not intervene, as demonstrated by Canada and Spain. If a nation intervenes, it guarantees that it interferes with a subunit's perceived right to decide. If it waits, it is possible that the movement will fail on its own and the nation benefits from respecting the subunit's perceived right. If it waits and the movement allegedly succeeds by the subunit's own terms, a nation can then exercise its recognized rights to deny the unilateral secession. Waiting would not pose any greater strain on the nation's relationship with the subunit than intervening.

In both Canada and Spain, there were no fears of legitimate claims to unilateral secession on account of human rights abuses,¹⁴⁰ and it was not clear in either country pre-referendum that their subunits, Quebec and Catalan respectively, internally supported an independence movement.¹⁴¹ However, the two nations handled the situations quite differently. Spain decided to

¹³³ *Abiy Ahmed: Ethiopia's Prime Minister*, BBC NEWS (Oct. 11, 2019), <https://www.bbc.com/news/world-africa-43567007>.

¹³⁴ *Id.*

¹³⁵ Ineke Mules, *Ethiopia: Talk of Peace Fails to Quell Ethnic Clashes*, DEUTSCHE WELLE (Sept. 24, 2018), <https://www.dw.com/en/ethiopia-talk-of-peace-fails-to-quell-ethnic-clashes/a-45620873>.

¹³⁶ *Abiy Ahmed: Ethiopia's Prime Minister*, *supra* note 133.

¹³⁷ Aaron Maasho, *Ethiopian Rebels Declare Ceasefire Amid Government Reforms*, REUTERS (Aug. 12, 2018, 10:24 AM), <https://www.reuters.com/article/us-ethiopia-politics/ethiopian-rebels-declare-ceasefire-amid-government-reforms-idUSKBN1KX004>. Ahmed-supported reform resulted in the Ethiopian Parliament's removal of ONLF's "banned" status. *Id.* The group responded by agreeing to cease all military operations to "find an available and lasting solution to the Ogaden conflict." *Id.*

¹³⁸ *Ethiopian Prime Minister Calls for Multiparty Democracy*, DEUTSCHE WELLE (July 22, 2018), <https://www.dw.com/en/ethiopian-prime-minister-calls-for-multiparty-democracy/a-44779968>.

¹³⁹ Because of the nature of ethnofederalist subunits, independence movements should be an expected threat. *See supra* Part II.

¹⁴⁰ Unilateral secessions traditionally require self-determination to be systematically denied by human rights abuses designated as "in extremis" before they receive international recognition; "in extremis" abuses include such acts as ethnic cleansing, genocide and mass killings. *See generally* Ilya Berlin, *Unilateral Non-Colonial Secessions: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law*, ELECTRONIC THESIS & DISSERTATION REPOSITORY, abstract, Aug. 15, 2017.

¹⁴¹ *See* John Fox et al., *The Polls and the 1995 Quebec Referendum*, 24 CANADIAN J. SOC. 411, 414 (1999); Eric Guntermann, *The Myth of Massive Support for Independence in Catalonia*, WASH. POST (Oct. 11, 2017, 3:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/10/11/the-myth-of-massive-support-for-independence-in-catalonia/> ("The most recent survey by the Catalan government's Center for Opinion Studies (CEO), which was conducted in July, showed that only a minority of Catalans (35 percent) supported independence.").

preemptively interfere and break up the Catalan referendum with violence while Canada elected to wait for the results of the Quebec vote. As a result, Spain guaranteed that it would increase tension between itself and Catalan, while Canada reserved the possibility that it would be able to resolve the issue without undermining Quebec's limited autonomy.

Canada was fortunate and Quebec failed to even meet its own terms for secession.¹⁴² However, the secessionist defeat was by a very slim margin, and Canada took the opportunity to enact a difficult-to-achieve secession process.¹⁴³ The process it provided was largely accepted. While there is still some disagreement as to what constitutes the "clear majority" approval required before the national government negotiates with the seceding subunit, there has not been significant pushback on Canada's right to deny unilateral secession to a subunit.¹⁴⁴ This may not have happened as peacefully had Quebec's secession referendum returned a vote supporting independence.¹⁴⁵

Spain may have had an opportunity to achieve a similar outcome as Canada, but lost it when it flinched, electing to physically stop the Catalan referendum. If Spain had waited out the referendum and Catalonians voted against secession, which was a significant possibility,¹⁴⁶ it would have found itself in a situation similar to post-1995-referendum Canada. Catalan would not have qualified for unilateral secession,¹⁴⁷ and Spain could have used the failed attempt as an opportunity to assert its right to be restrictive except in situations of human rights violations and mutual approval. A Canadian-like secession process, while needing some modifications to fit the Spanish Constitution,¹⁴⁸ may have been a satisfactory solution because of its permissive approach to referendums. The Catalonian people indicated

¹⁴² Clyde H. Farnsworth, *Quebec, By Razor-Thin Margin, Votes 'No' on Leaving Canada*, N.Y. TIMES (Oct. 31, 1995), <https://www.nytimes.com/1995/10/31/world/quebec-by-razor-thin-margin-votes-no-on-leaving-canada.html> ("Final returns from 22,400 polling stations showed the federalists winning with a 50,000-vote margin of 4.65 million cast.").

¹⁴³ See Caro, *supra* note 9, at 150–51 ("After the traumatic experience of the 1995 referendum the federal government went on the offensive and settled the terms of the quarrel with the Clarity Act Thanks to the Clarity Act, the secessionist movement can no longer claim that their democratic rights are violated or that their will is not respected.").

¹⁴⁴ Quebec passed "Bill 99" which offers a different interpretation of the Canadian Supreme Court's decision on unilateral secession than what the national government offered with the Clarity Act, but it does not argue that Quebec has a unilateral right to secession. See generally Bill 99, Act Respecting the Exercise of the Fundamental Rights and Prerogatives of the Québec People and the Québec State, C.Q.L.R. c. E-20.2.

¹⁴⁵ Matthew Horsman, *If Quebec Splits, the Tremors Will Be Global*, INDEPENDENT (Oct. 27, 1995), <https://www.independent.co.uk/news/uk/if-quebec-splits-the-tremors-will-be-global-1579686.html>

("Worse, they feel, any subsequent negotiation between an independent Quebec and the rump of Canada would create insurmountable tensions. For a start, it is not even clear who would represent Canada in any talks. The Prime Minister is Jean Chretien, a Quebecer. He represents a Quebec riding. Seventy-five seats in the House of Commons are held by Quebec politicians. In a country where the relationship between the provinces and the centre is usually tense, who would speak for the rest of Canada in any negotiation with Quebec on the terms of divorce?").

¹⁴⁶ See Guntermann, *supra* note 141.

¹⁴⁷ While the referendum was stopped with violence by the national government, Catalan is not the target of systematic "in extremis" human rights abuses. See generally Berlin, *supra* note 140.

¹⁴⁸ See Caro, *supra* note 9, at 140 ("In Spain, referendums can only be called with the approval of the President, following article 92 of the Spanish Constitution. This legal difference between the two constitutional systems, together with the absence of a constitutional clause concerning the unity of the Canadian state, have been underestimated by some of the advocates of the Canadian experience.").

through post-referendum-polling that they were split on independence but felt strongly that they should be able to vote on the issue.¹⁴⁹

In neither case after the nation waited did the referendum succeed. However, if this had happened, international law would not have required the nations to honor the results in either case.¹⁵⁰ While this would be helpful for preserving their unions, ignoring subunits' interest in secession likely would damage relationships.¹⁵¹ Additionally, this outcome would not present as clear an opportunity to peacefully pass a strict secession process. If a nation still attempts to implement a new process at this point, concerns for subunit relations may pressure the government to adopt a less restrictive secession process than what it would have otherwise.¹⁵² Perhaps, for example, a nation might be willing to negotiate secession terms with subunits following referendums achieving just a simple majority of approval rather than demanding more restrictive requirements, like Canada's "clear majority."¹⁵³ Thus, while a successful referendum is not an ideal outcome, there is no evidence that relationships between a nation and its subunits would be as significantly damaged if the nation waits for the result before asserting its right to retain unity as compared to when the nation intervenes preemptively, particularly when it does so with violence.¹⁵⁴ Waiting at least offers greater potential for better relationships with a nation's subunits.

C. NEGOTIATING THE RIGHT TO SECESSION

Because ethnofederalist nations are so likely to engage in independence movements, nations should try to define secession processes or redefine them if they find that their current processes are too permissive. Evidence does not indicate that ignoring an independence movement will cause it to go away on its own; thus, nations will need to engage.¹⁵⁵ While higher tensions between a nation and its subunits will likely make it more difficult to implement a difficult-to-achieve secession process, there are still benefits gained from unification and difficulties associated with unilateral secession that make it more likely that the subunits will agree to some restrictions. Possible paths to reform in Spain and Ethiopia illustrate bargaining powers that each side in this negotiation may have.

In Spain, the national government still has significant bargaining power because, while it did resort to violence to stop the Catalan independence referendum, it has not committed any act of oppression significant enough

¹⁴⁹ See Mari-Klose & Molina, *supra* note 64.

¹⁵⁰ See Secession Reference, *supra* note 9, at 288; Berlin, *supra* note 140, at 6–7.

¹⁵¹ See *supra* note 41.

¹⁵² Calls for Spanish Constitutional reforms may be more scrutinized and the outcomes more permissive as a result of increased tensions. Ignasi Ribó, Opinion, *To Solve Catalonia, Spain Needs a New Constitution*, POLITICO (Nov. 13, 2017, 4:05 AM), <https://www.politico.eu/article/to-solve-catalonia-spain-needs-a-new-constitution/> ("It's now become painfully apparent that Spain needs a new constituent process in order to establish more transparent, democratic and efficient institutions.").

¹⁵³ See Caro, *supra* note 9, at 152 ("An ambiguous formulation like the one in the Clarity Act is unlikely in Spain, as most actors have expressed their preference for a complete regulation of the issue.").

¹⁵⁴ As Catalan separatist leaders are tried for rebellion and other charges stemming from their roles in the unauthorized Catalan independence referendum, thousands march in protest of the judiciary. Former Catalan President, Carles Puigement, called the trial "a stress test for the Spanish Democracy." See Aritz Parra & Joseph Wilson, *Trial of Catalan Separatists Begins in Madrid Amid Protests*, ASSOCIATED PRESS (Feb. 12, 2019), <https://www.apnews.com/f3b43ab00f7c40009021903f5c6471ab>.

¹⁵⁵ See *supra* note 41.

for Catalan to receive international support for a unilateral secession.¹⁵⁶ The oppression traditionally imagined for such an outcome requires a much more sustained and systematic form of oppression.¹⁵⁷ Currently, Catalan actually enjoys significant freedoms internally and it has representation at the national level.¹⁵⁸ Thus, if Spain wishes to continue its relationship as is, Catalan likely does not have a clear route to independence. Spain then can impose a difficult secession process; however, as discussed, it may wish to include elements that are permissive with respect to referendums in order to accommodate the belief that subunits should be able to vote on such issues and to ease tensions.

Ethiopia is faced with a significantly more challenging situation than its Spanish counterpart as it has two obstacles that Spain does not. First, it has so far behaved in a manner much more likely to be considered sufficient to provide grounds for a subunit's unilateral secession.¹⁵⁹ Second, it has already Constitutionally enshrined a secession process that would require amendment-level support to change.¹⁶⁰ Because of these two obstacles, Ethiopia has much less bargaining power to implement a new, more restrictive secession process. Still, the Ethiopian government should attempt to negotiate a new secession process because the process as currently written is overly permissive and will likely be used as a political bargaining chip.¹⁶¹

However, while Ethiopian ethnic subunits may have legal standing to make more demands and keep restrictions on the right of secession minimal, the potential benefit from preserving the union may entice the subunits to consent to something more restrictive than what is currently in place. First, the new Prime Minister has given hope that the national government is committed to respecting human rights for all of Ethiopia's ethnic groups.¹⁶² Second, Ethiopia is experiencing significant economic growth.¹⁶³ To benefit from these two promising trends, the subunits may be willing to give up some of their unilateral rights to maintain the union.

Ultimately, a nation should never agree to anything more than what it is prepared to face, as experience indicates that the subunits will eventually use any opportunity made constitutionally available to them. However, if the subunits do satisfactorily exercise their right, it should be honored. Otherwise, the ambiguity will lead to more tension, which may include violent retaliations.¹⁶⁴ At this point, a nation should either renegotiate with

¹⁵⁶ See generally Berlin, *supra* note 140.

¹⁵⁷ *Id.* at 66.

¹⁵⁸ See Elisabeth O'Leary et al., *Factbox: How Catalan Autonomy Stacks Up Against Other Regions*, REUTERS (Oct. 2, 2017, 9:40 AM), <https://www.reuters.com/article/us-spain-politics-catalonia-devolution-f/factbox-how-catalan-autonomy-stacks-up-against-other-regions-idUSKCN1C7271>.

¹⁵⁹ Restrictions on freedom of expression, use of torture, and targeted abuses against certain ethnic minorities may be on the cusp of being considered "in extremis" human right abuse. If so, subunits in Ethiopia may be entitled to unilateral secession. See Berlin, *supra* note 140, at 73.

¹⁶⁰ Article 39 can only be amended using process detailed in Article 105. See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETH. art. 105 (Dec. 8, 2019) ("All rights and freedoms specified in Chapter Three of this Constitution... can be amended only in the following manner...").

¹⁶¹ See *supra* Part III(D).

¹⁶² See *supra* notes 133–32 and accompanying text.

¹⁶³ Alex Gray, *Ethiopia is Africa's Fastest-Growing Economy*, WORLD ECON. F. (May 4, 2018), <https://www.weforum.org/agenda/2018/05/ethiopia-africa-fastest-growing-economy/> ("The IMF World Economic Outlook predicts 8.5% growth in 2018, far outstripping that of advanced economies.").

¹⁶⁴ See *Ethiopia Detains 1,200 After Deadly Addis Ababa Clashes*, BBC (Sept. 25, 2018), <https://www.bbc.com/news/world-africa-45638856>.

the subunit or accept their secession. This choice demands a cost-benefit analysis, choosing between possibly being held hostage by extreme subunit demands or losing part of itself. However, further rejecting independence will only escalate tensions between the parties and increase the likelihood of a unilateral secession supported by the global community.¹⁶⁵ Thus, it is a choice that must be made.

V. CONCLUSION

Ethnofederalism presents a paradox: it arguably prevents and causes secession. Yet, as explained in Part II, while it is a controversial form of government, demands from ethnic groups for self-autonomy may make it inevitable that this form of government is selected to keep nations intact. Because of its inevitability, it is important to investigate the optimal way ethnofederalist nations should be structured to improve their ability to achieve national stability, safety, fairness, and an improved quality of life. Ironically, considering the paradox, one discussion needs to be about subunits' right to secession.

Four possible approaches were addressed in this Note in Part III: (1) a unilateral right to secession; (2) no right to secession; (3) conditional right to secession; and (4) an unusable right to secession. This Note finds that the most successful approach to the right to secession in ethnofederalist nations is a conditional one that acknowledges international law but is otherwise restrictive. This does not preclude permitting subunits to hold referendums on the subject, but should require such actions to follow strict rules. Ideally, secession in situations other than when international law would allow it unilaterally should be limited to when it is desired by both the people of the subunit and the national government.

This Note acknowledges in Part IV, however, that not all ethnofederalist nations exist under the same set of circumstances. Their history and current political arrangement with their subunit may make it difficult or impossible to impose extremely restrictive secession process terms peacefully. In those situations, this Note finds that ethnofederalist nations are best served by engaging in negotiations with its subunits to find the most restrictive terms the parties find mutually acceptable taking their respective bargaining positions into consideration. Although denying a path to secession will clearly foster unrest, the alternative is also problematic. If the terms are too permissive, a nation may find it wise to permit a subunit to secede instead of giving it a possible tool that the subunit can take advantage of at the expense of the nation. Thus, the optimal strategy appears to offer the most difficult path that subunits will still believe is attainable. This will encourage unity while minimizing hostilities, thereby giving the best chance of national success.

¹⁶⁵ See Berlin, *supra* note 140, at 160, 163–64.