Denial of Rights and Self-Determination: The Case of the Kurds of Iraq

by

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ABSTRACT

This thesis seeks to prove that the Kurds of Iraq possess the legitimate right to independent statehood. Investigating the theory of self-determination illuminates the relationship between those who struggle for recognition of their rights as a separate entity and those who reject the idea, who envision the state as being impermeable. The moral arguments examined focus on this relationship; Brilmayer is concerned with the historical relationship of territory; Buchanan is more focused on the relationship between the state and the minority group.

Self-determination is an important ethical principle. Although valuing liberty and self-determination, the liberal tradition generally does not accept the right of self-determination for minority groups. Self-determination, an accepted principle in international law, defined in Articles 1(2) and Article 55 of the United Nations Charter, is generally overlooked as a viable option for national groups.

The objective of this thesis is to examine the right of self-determination as it applies to the Kurds controlled by the Iraqi state. I will argue that the Kurds in Iraq are an oppressed group; that they have a strong moral case for secession from the Iraqi state; and that this quest for self-determination also receives support from fundamental principles of international law.

ACKNOWLEDGEMENT

As a Kurd and a student of international relations, I believe that I am morally obligated to present the Kurdish case for legitimate secession from the state of Iraq. This thesis would not have been possible without the support and assistance of many people. To begin, my thesis supervisor, Dr. Margaret Moore, who was accessible to my questions and concerns. Without her help and commitment to my work, this thesis would have been greatly more difficult to complete. Thank you for all of your efforts.

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Hardy Cojer
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DEDICATION

This thesis is dedicated to the memory of my mother, a woman who had no educational opportunity, yet persuaded me to stay in school. I am indebted to her for her strength, guidance and encouragement. She was and is an inspiration to me. Where I am now and where I will be in the future is a direct result of her influence. God bless her.

Hamin Bapir
February 16, 1996

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Chapter 1

Introduction

If from my poems
You wrench away the flower
From the four seasons of my poetry
One of my seasons will die.
If you take away love
Two of my seasons will die.
If you take away bread
Three of my seasons will die.
And if you take away freedom
All four seasons and I will die.

by Kurdish poet, Sherko Bekas

Since the first world war and specifically since the establishment of the United Nations, the principle of self-determination has been championed with considerable enthusiasm. In the past fifty years the world has witnessed several sovereignty changes; formally dependent nations have gained independence or have been incorporated into independent states; territories have shifted from one country to another and new states have been established as the consequence of dismemberment of state boundaries.

Events the world over have motivated international interest regarding the implementation of self-determination, particularly in unstable regions. Guerrilla warfare, internal conflicts, transnational confrontations and political insurrection are the conventional methods by which oppressed national groups have attempted to end the control of the dominant power. Although force has often been a substitute for decisive political action, it is the

convictions of the oppressed group that inspire the single-minded struggle for self-determination.

The Middle East is an ethnically, racially and culturally diverse region. Rather than the accepted concept of one race, one language, one religion, the Middle East is composed of diverse peoples and cultures. These pockets of diversity are frequently divided by artificially created state boundaries.

The Kurds of Iraq are a national group, as distinct from the state, who have struggled for self-determination. The moral rights of a minority in a state, in which they are a non-dominant group, are frequently denied. The rights of non-dominant minority groups are less often translated into legal rights as opposed to groups who possess their own state. It is the absence of a state that bears a direct correlation to the suffering of the Kurds.

The Kurds relentlessly strive to remind us that it is they who are the majority in their territory, and are only minorities because their territory was divided into a number of states. The Kurds demand, at least, the right to preserve their identity. The volatile relationships between the Kurds and their oppressors results solely from nationalistic feelings and the unanswered question of self-determination.

The Kurds are now identified with the territory of a particular state. The territorial boundaries carved out by colonial powers rarely reflect the natural borders of minority identity. The boundaries were drawn up administratively and economically and were politically convenient for the colonizing power, but these new borders overlooked the interests of the Kurds. This division was not merely left to chance; rather it was a calculated manoeuvre on

behalf of the colonial powers based on the policy of divide and rule. As a result Kurdish self-determination/secessionist issues are threats to the perceived legitimacy of the state.

Since the incorporation of Kurdish territories into the state of Iraq after World War I, Iraqi governments have systematically denied the rights of the Kurds. They have committed every kind of oppressive and brutal action known to humans in order to destroy the Kurdish identity. One of the most heinous and blatant violations of human rights was the Iraqi use of chemical weapons against the Kurds, despite the prohibition of chemical weapons after World War I.

Iraqi governments have justified their intervention in Kurdistan based on the premise of the legitimacy of the sovereign state. What is not acknowledged is that the state of Iraq was created by a colonial power and that Kurdish territory was annexed and incorporated into Iraq by force. The Kurds have never willingly acquiesced to the annexation of their land. Thus, the Kurds as an oppressed and at risk group have struggled for decades to end the control of the Iraqi totalitarian regimes and to establish a sovereign territorial state. The Kurdish quest for self-determination is justified by both legal and moral principles of secession.

Even though the Kurds possess all the distinctive components required for self-determination, such as culture, language, economy and territory, their cause has been neglected. The reasons for this are two-fold, encompassing both regional and international factors. At the regional level the Iraqi state holds to the policy of subjugation and destruction of the Kurdish identity, in the international realm there exists a dangerous bias supporting the existing state sovereignty system. Furthermore, the Kurds have not been able to defend their cause alone nor

have they a supportive state on which they can rely. The unofficial Kurdish national credo, is simply, "The Kurds have no friends."

The purpose of this study is to examine and analyze the basis for self-determination or secession in the case of the Iraqi Kurds. This investigation into the study of secessionist theory focuses on both the legal and moral implications of secession.

I intend to analyze the concept of self-determination within the context of legal rights by examining secessionist theory. Two predominant theories of the moral aspects of self-determination will be examined. Allen Buchanan's theory of moral justice for secession and Lea Brilmayer's interpretation of territorial legitimacy of self-determination will be reviewed and analyzed.

In chapter three Kurdish origins are discussed in order to demonstrate the distinctive Kurdish cultural identity and the legitimate Kurdish claim to territory, which comprises the core argument for many academics and writers who focus on the controversial issue of self-determination.

Chapter four focuses on the historical perspective of Kurdish territory. This chapter provides an historical explanation for the annexation and incorporation of Kurdistan into Iraq. Brilmayer's territorial interpretation of secession will be applied to prove the validity of the Kurdish claim to Kurdistan.

In chapter five Buchanan's theory of moral secession is applied to the Kurds. Within this context Iraqi state policy is addressed to demonstrate, with clarity, how the Kurds have systematically been denied their rights, proving that the Kurds have a moral right to secede

from the tyranny of the totalitarian Iraqi state. In my efforts to prove the case for Kurdish self-determination I argue that their claim is legitimate and not a baseless objective.

International laws and principles advocating human rights and self-determination are discussed in chapter six. As well, the definition of what constitutes the self is examined, to prove that Kurds are indeed a nation. In this chapter United Nations' articles and resolutions provide substantial evidence to support the legality of the Kurdish claim.

My rationale for using only the Kurds of Iraq in this case study, and not the other parts of Kurdistan, stems from Britain's control in the region in which independence was promised to the village of Mosul. The fact that I have chosen to discuss only secession for Kurdistan of Iraq in no way negates the legitimate claims to secession by the other parts of Kurdistan.

My goal in writing this thesis is to clearly, even at times bluntly, demonstrate that both moral and legal theories of self-determination prove that the Kurds do possess a legitimate claim to establish their own independent state.

Chapter 2

Moral Theories of Secession

Since World War II the world is teeming with secessionist demands. Some of these demands have been granted and the old world order of inviolable territorial boundaries has come to be questioned with the break-up of the former Yugoslavia, Czechoslovakia, Ethiopia and the Soviet Union. In this chapter I will discuss two of the leading moral arguments for justified secession. Allen Buchanan's *Secession, The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, is considered a benchmark work in secessionist theory and Lea Brilmayer's *Secession and Self-Determination: A Territorial Interpretation*, an essay often quoted by Buchanan in his work presents an interesting territorial dimension to secessionist theory.

I will demonstrate, by examining and later applying these theories to the case of the Kurds in Iraq, that their claim to secession is justified in moral theory. Buchanan's criteria for secession and Brilmayer's territorial interpretation support the Kurdish quest for justified secession.

Buchanan's Moral Theory of Secession

Interpretation of Theory

Political philosopher Allen Buchanan, in his theory of justice, indicates that the world is in critical need of an accepted theory of secession.[1] Currently there is no single comprehensive theory of secession universally accepted in schools of political philosophy. The absence of secessionist theory leads Buchanan to question why neither a theory has been developed, nor a rationale been put forward to explain why secessionist theory is not necessary.[2] Buchanan presents a theoretical framework for secession. Within this framework a definition of secession is offered, as a desire for a group within an established state to seek sovereign status in order to achieve political independence. The political authority of the state is not denied, only the authority that the states holds over the secessionist group.[3]

Liberal political philosophers, in Buchanan's view, have overlooked the idea of secession as a legitimate option for minorities. The liberal tradition, although valuing liberty and self-determination generally, ignores the importance of secessionist movements.

The basic problematic of liberal theory is its aversion to collective rights and deference to the rights of the individual. Secession, then, being a group right, is overlooked in liberal political thought. By focusing on individual rights, liberal theorists avoided the entire secessionist issue. Because no one individual can secede from a sovereign state on his/her own,

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[1] Allen Buchanan. Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec. (Westview Press: Boulder CO. 1991), p.2.

[2] Ibid. p.4.

[3] Ibid. p.10.

liberals disregard secession as an option. This, Buchanan believes, is faulty logic. Protection of group rights encompasses protection of the individual, especially the values individuals find as group members.[4]

Like the liberals, communitarians overlook secessionist theory in their political thought. Buchanan asserts that communitarian philosophy, or any political philosophy which places value on the collective, must look at the boundaries of communities and the rights of groups to self-determination. By not acknowledging, within certain specific situations, that secession is justified and legitimate, these political philosophies have fallen short of a comprehensive ideology.[5]

Secession is an important, timely issue deserving of its place within a theoretical framework. Buchanan states that the particular theoretical structure is not as significant as the acknowledgement of the concept within a political philosophy, whether it be nonideal or ideal theory.

Nonideal normative theory which "deals with principles suitable for situations in which compliance will not be perfect,"[6] allows for the concept of secession. Buchanan recommends that political philosophy establish an ideal theory in which the principles of legitimate secession would be incorporated. "Ideal theory is the articulation and defense of principles of justice for a society in which these principles are *fully implemented.*"[7]

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[4] Ibid. p.8-9.

[5] Ibid. pp.4-5.

[6] Ibid. p.6

[7] Ibid. p.6.

Ideal theory overlooks secession, yet justifies revolution and civil disobedience. Buchanan claims that secession should not be relegated to only nonideal theory; he suggests that ideal theory investigate secession. The same principles that apply to revolution and civil disobedience, in cases where the state is either unjust or violates the rights of the people, could be applied to legitimate secession.

The main goal of secessionists, as opposed to revolutionaries, is not to overthrow the government in power, but to detach themselves from the authority of the existing government, by redrawing the state boundaries. The acceptance of revolution as a justified claim to overthrow the authority of the state indicates that secession should be accepted as well. If the state situation is so unsatisfactory as to warrant overthrowing the government, then an equivalent situation should allow for a portion of the population to detach themselves from the unjust authority.[8]

Justificatory Arguments

Buchanan presents several arguments to justify secession. Within these arguments Buchanan illustrates how secession in certain specific circumstances is legitimate. Once a moral right to secede has been established, two principles apply: (1) "...it is *morally permissable* for those who have this right to *secede*, and (2) that others are *morally obligated not to interfere* with their seceding."[9]

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[8] Ibid. p.10-11.

[9] Ibid. p.27.

Buchanan acknowledges that the association between moral and legal rights is complicated. He proposes that in certain situations the strength of the moral right to secession should be supported by international law. Moral rights pertinent to this thesis include, *Protecting Liberty, Escaping Discriminatory Redistribution, Preserving Cultures, Self-Defense* and *Rectifying Past Injustices.*

Protecting Liberty

According to Buchanan this argument centres on liberty and its accepted limits. The Harm Principle is introduced stating that it is "impermissible to interfere with an individual as long as her choice does not harm others."[10] Buchanan defines the harm, in this particular context, to mean the violation of a right. He extrapolates from this idea to say that if it is wrong to interfere with an individuals' right then it is equally wrong to interfere with a groups' right to secede, if there is no harm intended for others. The responsibility to prove harm is placed upon the antisecessionists to demonstrate that the harm incurred is so serious as to warrant the exercise of force against the secessionists.[11]

A basic tenet of liberal theory is that the state should safeguard the rights of the individual such as, freedom of expression, the right to participate in the political process and the equality of opportunity. When the state maintains these values, groups can thrive within the state; however, when these values are denied groups may choose to detach themselves from the existing state. They would be justified in this action as long as no harm is perpetrated against

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[10] Ibid. p.29.

[11] Ibid. p.30.

the state. Buchanan claims, "Seen in this way, the right to secede is the logical extension of a principle of toleration thought to be central to the liberal point of view."[12] Where rights are denied, such as the right to emigrate, then groups may have no other choice but to opt for secession from the existing state in order to pursue freedoms and political independence. The great concern with this argument is that unjust governments who pursue the policy of non-emigration are likely to prevent secession by any means at their disposal. The strength of the groups claim to secession is greatly enhanced when the state denies the right to emigration. The normal course for unjust or totalitarian states prohibits the right of people to emigrate to other states, thereby secession may be the only option to security of life.[13]

In accordance with the Harm Principle the right to secede does not include appropriating territory or resources to which the separating group never possessed any legitimate claim. In this case the act of secession would harm the people of the existing state, thereby rendering the secession morally unjustifiable.[14]

Escaping Discriminatory Redistribution

This argument focuses on unfair taxation practices, inequitable government regulated programs or biased economic policies of the existing government. Rights need not be violated or denied: discriminatory redistribution alone justifies secession. Buchanan defines

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[12] Ibid. p. 31.

[13] Ibid. p.31.

[14] Ibid. p.32.

discriminatory redistribution as programs and policies that, "systematically work to the disadvantage of some groups, while benefiting others, in morally arbitrary ways."[15]

A familiar and serious charge against ethnic groups who control the governments of Third World countries is that unfair distribution of wealth is directed toward people of their own ethnicity. Economic development is also geared toward the region controlled by the dominant ethnic group, leaving the minority group with little opportunity for advancement. Discriminatory redistribution is often linked to violations of other rights, but not always so. When coupled with other infringements of rights, discriminatory redistribution is a clear and significant grievance against the existing government.[16]

It is not a violation of individual, group or state rights, Buchanan asserts, to engage in practices of discriminatory redistribution; rather it is a breach of the "social contract." Governments that operate to benefit only a portion of their citizens and exploit others lose their legitimate authority, ergo discriminatory redistribution presents a valid argument for secession.[17]

Failure to implement fair economic redistribution programs, "in effect voids the state's claim to the territory in which the victims reside, whereas the fact that they have no other recourse to avoid this fundamental injustice gives them a valid title to it."[18] Discriminatory redistribution provides legitimate grounds for territorial claims for the secessionist group, "...

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[15] Ibid. p.40.

[16] Ibid. pp.41-42.

[17] Ibid. pp.43-44.

[18] Ibid. pp.44-45.

there are cases in which the state's persistence in the injustice of discriminatory redistribution, together with the lack of alternatives to secession for remedying it, generates a valid claim to territory on the part of the secessionists."[19] The states lawful claim to territory is dependent upon its policies of just economic practices and egalitarian treatment of all citizens.[20]

Preserving Cultures

Buchanan lists five criteria that must be met by a nation which chooses to secede from the state based upon Preserving Cultures.[21] The criteria include: an endangered culture; other means of cultural preservation must be unavailable or inadequate; the culture must maintain an acceptable level of justice; secession of the group must not result in an illiberal state, and no other state or third party can have a legal claim to the seceding territory.[22]

Those who argue for secession based on Preserving Culture must demonstrate that there is a justifiable right to preserve the specific culture and that this right leads to a legitimate moral basis for secession.[23] Buchanan believes that because any individual who belongs to a cultural group can freely choose to associate with another cultural group, "...there is, strictly speaking, no right to the perpetual existence of any one particular culture."[24]

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[19] Ibid. p.45.

[20] Ibid. pp.41-45.

[21] Ibid. The argument for Preserving Cultures runs from pages 52 to 64, in Buchanan's book. Only the information relevant to this thesis has been detailed.

[22] Ibid. p.61.

[23] Ibid. p.54.

[24] Ibid. p.55.

For the argument for Preserving Cultures to be valid, it must be proven that the only way to adequately protect and preserve the culture is for the group to possess or obtain territory. In the case where the group has no previous historical claim to territory, Buchanan's argument states that it, "...does not begin with a preexisting claim to territory. Instead, its conclusion includes such a claim."[25] No special claim to territory is required. The group may be in such need for protection that territory would be awarded to them. A cultural groups valid claim to territory does not necessarily legitimize secession from the state based on the Preserving Cultures argument.

> Any such principle would be unacceptable for at least two reasons. First, it treats valid territory claims too lightly, according them too little substance. Second, because the notion of a culture and hence of a cultural group is so expansive and vague, the principle is a recipe for intolerable excessive international instability.[26]

The Preserving Cultures argument, does not presuppose that the cultural group possesses a legitimate, historical claim to the seceding territory. For a sufficient and acceptable argument the group must show that a third party has no genuine right to the territory in question. Buchanan contends that only infrequently does the necessity to preserve cultures satisfactorily support secession.[27]

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[25] Ibid. p.56.

[26] Ibid. p.60.

[27] Ibid. p.64.

Self-Defense

The Self-Defense argument states that a national group is entitled to protect itself against a lethal threat. Justified secession within the parameters of the self-defense principle is so compelling that Buchanan advances the argument that a group's necessity for self-defense can induce a claim to territory that voids the claim of the state that previously held legitimate title.[28]

> Whatever moral title to the seceding territory the aggressor state previously held is invalidated by the gross injustice of its genocidal efforts. Or, at the very least, we can say that whatever legitimate claims to the seceding territory it has are outweighed by the claims of its innocent victims. We think of the aggressors right, in the former case, as dissolving in the acid of his own inequities, and, in the latter, as being pushed down in the scales of the balance by the greater mass of victim's right of self-defense.[29]

Buchanan perceives the moral right to self-defense as paramount to property rights. In the case of a self-defense argument to justify secession, Buchanan asserts that self-defense of an endangered group takes precedence over ownership of territory. The group in need of protection would be entitled to land over which they formally had no legitimate claim.

> It would be a mistake to assume that this type of case is fanciful simply because it is hypothetical. One of the strongest arguments for recognizing a Kurdish state or an Armenian state may be that only this status, with the territorial sovereignty it includes, will ensure the survival of these peoples in the face of genocidal threats. So there can be and indeed are situations in which the right of self-defense grounds a right to secede.[30]

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[28] Ibid. p.65.

[29] Ibid. p.65.

[30] Ibid. p.67.

Rectifying Past Injustice

The act of unjust incorporation of a region into a larger unit qualifies as legitimate grounds for secession, according to the principle of Rectifying Past Injustices. The segment of the population who wish to secede may reside on land that was directly annexed by the existing state or the territory may have been unjustly acquired by the former state, the predecessor of the current state. This principle of moral secession focuses on the concept of reappropriation of territory by the legitimate owner of stolen land.[31]

The basis for this argument is so strong that many scholars argue that any claim for secession must be established on this moral principle. Buchanan refers to this argument as the "historical grievance version of the territoriality thesis," which contends that every bid for legitimate secession must be based on a provable right to territory.[32]

Buchanan states that while the historical grievance thesis is a valid argument to support secession, he differs from other academics who believe that an historical claim to territory is the only legitimate secessionist principle. As in the argument for secession based on the self-defense hypothesis, aggressor states lose title to territory as a result of their genocidal tendencies against subnational or ethnic groups. The land in question becomes the autonomous territory of the persecuted secessionist group.[33]

To acknowledge that there is, in certain circumstances, a legitimate moral right to secession indicates that the group should not be prevented from seceding. There are some

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[31] Ibid. p.67.

[32] Ibid. p.68.

[33] Ibid. p.69.

justifications favouring secession that are so compelling that interference would be immoral. Reasons that in other cases may vindicate interference, that would seem to benefit the current state system, are not substantial enough to balance the scales of injustice and immorality of the aggressor state. Thus, Buchanan contends that secessionist groups who conclusively demonstrate their irrefutable case ought to have the unrestricted right to control their own destinies.[34]

[34] Ibid. p.151.

Brilmayer's Territorial Claim to Secession

Interpretation of Theory

International law cannot be completely depended upon to absolutely ensure the right to secession. Lea Brilmayer states,

> ... the principle of self-determination of peoples suggests that every "people" has a right to its own nation-state. While the positive law status of this norm and its applicability to the secessionist context are debatable, on a rhetorical level few deny the principle's appeal. Unfortunately, it seems directly contrary to another, equally venerable, principle of international law, which upholds the territorial integrity of existing states.[35]

Brilmayer believes that, above all other issues related to the secessionist claim, the legitimate foundation of the claim must be based on a territorial conflict. Rather than an active dispute between rights of people and territorial claims, the two principles work together to compose a valid claim for the separatist group, with the claim to territory being the core of the argument.[36]

The distinct culture argument does not, in Brilmayer's belief, represent a valid case for secession; without a claim to territory the argument is illegitimate. International law centres on the distinctiveness of the oppressed group, overlooking the importance of a valid claim to land. Brilmayer contends that the crux of the argument is not bilateral, between the distinct people and the state, rather it is a trilateral relationship combined of people, state and territory.[37]

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[35] Lea Brilmayer. "Secession and Self-Determination: A Territorial Interpretation." Yale Journal of International Law, vol. 16, no.1, Jan. 1991 pp.177-178.

[36] Ibid. p.178.

[37] Ibid. p.179.

Secessionist groups frequently rely on United Nation's principles which acknowledge the right to self-determination. So much emphasis is placed on these principles that the fact that these precepts do not overpower the present state's territorial integrity is often overlooked. Great importance is attached to the right of self-determination, the drawback being that secession qualified only by the right to self-determination could potentially lead to destabilization of the world order. Brilmayer contends that restrictions must be placed on the right of self-determination to avoid the possibility of anarchy. An argument is presented differentiating between a nation or a people and minority groups, stating that secession is always inappropriate for minority groups. The argument focuses on defining a group either as a nation or a people.

Brilmayer further contends that the right to secession would be legitimate only for those groups under alien control. This argument is dependent upon whether the people in question form a genuine nation. The main criteria for this definition include a distinct race, language, religion or ethnicity from the state's dominant group.[38]

> The debate over the validity of particular claims to secede is thus framed in terms of the two generally recognized values of self-determination and territorial integrity... The appeal of a secessionist argument lies in the importance of self-determination, the links between that principle and the concept of democratic self-government, and the alleged moral superiority of self-determination over the preservation of territorial boundaries. Ethnic distinctiveness plays an important role in these arguments because the secessionist needs to limit the number of groups entitled to claim a right to secede.[39]

The historical acceptance of disagreement between the arguments for secession based on rights of self-determination and secession founded on territorial claim is misleading.

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[38] Ibid. p.183.

[39] Ibid. pp.183-184.

Territorial sovereignty provides a more legitimate claim for secession than the right of people in the self-determination argument. The concept of territorial sovereignty does not permit the state to maintain control over territory, for which they do not possess legitimate ownership.[40]

> If secessionists argue that the current exercize of territorial power is illegitimate, and that territorial sovereignty in fact belongs to the minority group rather than to the majority, then the secessionists can base a right to secede upon a territorial claim, rather than on a personalistic one. In other words, tacit consent can be attributed to a state's inhabitant's only when the state has legitimate power over its territory.[41]

Territorial demands, asserted by secessionist groups that they have a valid claim to a specific territory exists; however, these claims must be based on solid grounds and the importance should be acknowledged in international law. Like Buchanan, Brilmayer states that secessionist territorial claims based on historic grievance are more striking and self-evident.[42]

Two historic grievance arguments are presented to support separatist group demands. The first argument entails a group's desire to secede from state conquered territories. In this case it is appropriate to assign blame with the aggressor state being the antagonist. The second argument focuses on third party violations against the secessionist group. Colonializing powers, in the past, manipulated ethnic boundaries to suit their own needs. The drawing of the boundaries rarely reflected the interests of the ethnic groups.

The current result of the cavalier and unrealistic drawing of boundaries has lead to serious disputes between the dominant and separatist groups. The fallout of the colonial

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[40] Ibid. pp.186-187.

[41] Ibid. p. 187.

[42] Ibid. p.189.

powers' interference is reflected in secessionist movements and groups who stand firm in their beliefs to regain their territory and establish sovereign statehood.[43]

> ...one major defect of the standard account of self-determination namely its insufficient focus on the history of the dispute. A secessionist claim based on nothing other than the rights of existing peoples to have their own nations would concentrate on the issue of whether an identifiable group constituted a people, and whether the group was subject to alien subjugation... So static a view of the division of a society into peoples cannot fully capture an important normative feature of separatists' demands, namely that the asserted historical grievance confers on it the right to a particular territory. The standard account neglects the fact that separatists typically seek to right historical wrongs.[44]

An important element included in the historical grievance argument involves establishing the degree of acceptable territorial change in order to correct the injustice incurred by the secessionist group. This predicament is referred to as "adverse possession." The problem is a result of uncertainty in regards to maintaining the status quo and correcting the past injustice.[45]

One factor useful in reaching a resolution examines the continuance of the territorial claim, kept alive by the secessionist group. Where claims have been kept active adverse possession is not a consideration, due to the fact that the separatist group has never conceded the disputed land to the dominant group. Groups who cannot keep a territorial claim alive because of repressive methods used against them are seriously disadvantaged. The lack of opportunity to actively and openly work toward secession should not detract from their justifiable cause.

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[43] Ibid. p.190.

[44] Ibid. p.191

[45] Ibid. p.199.

A second issue pertinent to adverse possession centres around population transfers of citizens loyal to the dominant state to areas populated by the secessionist group. This strategy implemented by the state, minimizes the strength of the secessionist claim in the eyes of the world. Population transfers validate the state's claim to the disputed territory. Therefore strong resistance is evident, on behalf of the secessionist groups, who see their claim to territory weakened.[46]

All separatist movements are valid only when they possess a legitimate claim to specific territory. The group must be able to demonstrate why they should own this piece of land. Archetypal political philosophy divides self-determination as a reason for secession against territorial claims. Brilmayer contends that a fully grasped comprehension of territorial integrity would embrace the principle of self-determination. Secession disputes always focus on the quest for independent territory.[47]

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[46] Ibid. p.200.

[47] Ibid. pp.201-202.

Chapter 3

Kurdish Background

My intention in this chapter is to examine the relationship of the Kurds to the territory in question and to investigate the history of the disputed land. The origins and culture of the Kurds must be discussed to establish their historical claim to territory and their distinct cultural status. I propose to lay the groundwork for the application of Buchanan's and Brilmayer's secessionist arguments. This chapter demonstrates that the Kurds are a unique group, separate from the dominant group in the state of Iraq. The evidence will forcefully prove that the Kurds indeed possess the qualities and characteristics of a nation.

I will discuss the land that the Kurds occupy because that is an important element in Buchanan's case for rectifying past injustice and Brilmayer's territorial theory. In order to effectively apply these arguments it is imperative to establish that the land is Kurdish. A discussion on Kurdish natural resources is an essential application to Buchanan's discriminatory redistribution argument. All these elements are important in assessing the legitimate Kurdish claim for a moral right to secession.

Origins

The compound proper noun, Kurdistan is actually composed of two words. The first phonetic form, "Kurd," carries the ethnological connotation of the people who populate the area

and the second lexical representation "istan," reveals a territorial suffix meaning "the land of." Kurdistan, therefore, is defined as, "the land of the Kurds."[48]

The earliest records indicating the existence of mountain tribes in the Zagros region were found in the historical records of the Greeks and Sumerians dating from 2500BC to 2000BC. These records referred to the Kurtis, Guti, and the Kardohki (Kardo) tribes.[49]

> In the ancient world the Kurds played a prominent role by establishing three kingdoms: Lullu, Guitium, and Urartu. In addition, they established two empires, the Kassite and the Hurri-Matani. As a matter of fact, for most of the second millennium BC, the Kassites and the Hurri-Mitani were the leading powers controlling Mesopotamia and the Zagros highlands.[50]

Historical documents indicate that Assyrian King Tiglath-Pileser I, fought a tribe of wild mountain men known as the Kur-ti-e in 1100BC[51]. Accounts of the Athenian soldier-adventurer Xenophones' tormented retreat from Persia to the Black Sea, 400-401BC written in

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[48] Mustafa Al Karadaghi. Kurdistan Times. vol.1, no.1, (Kurdish Human Rights Watch, U.S.A., 1992.) p.66.

[49] There is agreement, albeit to varying degrees, among the following scholars and writers that these tribes were the precursors of the present day Kurds. For more information on the origins of the Kurds see...
(1) Al Karadaghi. ibid. p.54. (2) Qanaty Kurdo (Kurdoiev). [Correcting] Some Wrong Beliefs on Kurdish Language and History. (Baghdad: Centre for Kurdish Studies, 1973). p.43-50. This book is written in Kurdish, I take responsibility for the translation of the title and text. (3) Hassan Afra.The Kurds: An Historical and Political Study. (Toronto: Oxford University Press, 1966) p.3. (4) Borhanedin A. Yassin. Vision or Reality: The Kurds in the Policy of the Great Powers. 1941-1947. (Lund: Lund University Press, 1995) p.35.

[50] Mustafa Al Karadaghi. Kurdish Human Rights Watch. (Fairfax: Kurdish Human Rights Watch, 1995), p.3-4.

[51] Afra., p.3

the *Anabasis* (meaning go inland or "upcountry") recounts a clash with the hostile Kardu. Xenophone describes the Kardu as an heroic people unwilling to submit to foreign rule.[52]

Different opinions prevail regarding the ancient origins of the Kurds. The renowned and prolific Kurdologist, Qanaty Kurdo, argues that the Kurds are the indigenous inhabitants of Kurdistan. "They are not of Iranian origin, as some writers believe, nor have they any link to the Arabs or Turks. The Kurds comprise an amalgamation of tribes and nations..."[53]

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[52] While scholars dispute the origins of the Kurds prior to the retreat of Xenophone's Ten Thousand, writers seem to have reached a consensus that the Kurds were indeed the fierce tribe who attacked the Greek troops. Research lending evidence to this contention include: (1) Stephen C. Pelletiere. The Kurds an Unstable Element in the Gulf. (Westview Press: Boulder, 1984) p.21; (2) Phillip G. Kreyenbroek & Stefen Sperl (eds.) The Kurds: A Contemporary Overview. (Routledge: New York, 1992) p.10; (3) Sa'ad Jawad. Iraq & the Kurdish Question 1958-1970. (Ithaca Press: London, 1981) p.1; (4) Abdul Rahman Ghassemlou. Kurdistan and the Kurds. (Collet's: London, 1965) p.35; (5) Finley Hooper. Greek Realities: Life and Thought in Ancient Greece. (Wayne State Press: Detroit, 1978) p.358.

[53] Kurdo. pp.43-44.
Rashid Yasemty, the Iranian writer, links the Kurds to Persian origins. Arabic writers, such as Tabari and Masoudi endow the Kurds with an Arabic heritage, while the Turks continue to dwell in a state of denial, refusing to recognize the existence of the Kurds, referring to the Kurds in Turkey as "Mountain Turks." Debate among scholars continues:
(1) Pelletiere. pp.20-21 claims that the Kurds are the descendants of Iranian tribes immigrating to the Zagros Mountains; (2) Afra. pp. 2-3, traces the Kurds to Iberians moving into Kurdish regions from Asia Minor; (3) David McDowell. The Kurds. (Minority Rights: London, 1992) p.11, states that the Kurds are a mix of immigrating Indo-European tribes and indigenous peoples; (4) Yassin. p.35, concurs with McDowell's hypothesis; (5) According to Ghassemlou. pp.66-67, a commission sent to Mosul, by the League of Nations in 1924, to settle boundary disputes between Turkey and England concluded that, "The Kurds are neither Arab, Turks nor Persians, though they are most nearly related to the Persians. They are different and clearly distinguishable from the Turks, and still more different and remote from the Arabs."

Many credible sources argue that the Kurds are an ancient communal group, associated with the Medes, who inhabited the mountainous Zagros region of present day Kurdistan.[54] Over the course of time the Medes became an agglomeration of Indo-European tribes located in the Zagros highlands. The Medes upon immigration to the region encountered an established tribal people, the ancient Kurds, when they first ingressed the eastern Zagros. The Kurds aligned with the Medes, in approximately 700BC, in order to retaliate against Assyrian aggression.[55]

From 700BC to 550BC the Medes were the controlling force of the Zagros region, at this time the language of the Kurds, an ancient Caucasian vernacular, evolved into a dialect of the Indo-European Median tongue.[56]

Language

The present-day Kurdish language is a derivative of an early Indo-European language, related to Persian, Afghan and Tajik.[57] The language of the Kurds, although related to a dialect of western Iranic is, etymologically, a distinct language.[58] The Kurdish language, spoken in isolated mountains areas, urban centres and all points between has developed dialectical and

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[54] C.J. Edmonds. Kurds, Turks and Arabs. (Oxford University Press: Toronto, 1957). p.7.

[55] For a more detailed discussion on the Medes/Kurd relationship see Al Karadaghi.Kurdistan Times, vol. 1, no. 1, pp.35-57, also Ghassemlou. pp.34-35.

[56] For brief discussions on the Median origins of the Kurdish language see Al Karadaghi, Kurdistan Times, vol.1, no. 1, p.57, also Edmonds. p.7.

[57] Ghassemlou. p.26 also Yassin. p.36.

[58] Yassin. p.36.

regional idiosyncrasies. Two main dialects have been established: Sorani and Kurmanji, as well as three minor dialects: Hawrami or Gorani, Garmiyani or Luri and ZaZa, however the speakers of this dialect prefer to call it Dimli.[59] For the purposes of this thesis only those dialects spoken in Kurdistan of Iraq will be discussed.

The Great Zab river acts as a linguistic boundary for the dialectical differences of Kurdistan of Iraq. Sorani (sometimes referred to as Kurdi), considered the primary dialect of the Kurdish language, is spoken mainly in the central region. Kurdish literature is written in Sorani and where Kurdish is taught in public schools, it is the Sorani dialect that students learn. The Kurds from the north and west of the Great Zab communicate in the Kurmanji dialect. Residents of the narrow strip of Kurdish territory south-east of Sulaymania and in small pockets east of Mosul speak the Hawrami dialect. Garmiyani or Luri is spoken in the small district in southern part of Kurdistan, on the border of Iran.[60]

Writers often allege that a single Kurdish language is a myth perpetuated by a band of desperate rebels grasping at ragged straws to substantiate a weak claim to nationhood. One writer states, "...the Kurds have failed to adopt a lingua franca. This has not only hindered inter-Kurdish communication it has also reduced the importance of language as a symbol of ethnic identity for the Kurds."[61] This charge is refuted by other writers who assert that the

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[59] Al Karadaghi. Kurdistan Times, vol.1, no.2, p.87.

[60] Al Karadaghi. Kurdistan Times. vol.1, no.2, pp. 87-89., also Yassin. p.36. Ahmed Ferhadi. Some Morphophonemic Features of Arbili Kurdish. (University of Michigan: Ann Arbor, 1990), pp.23-24.

[61] Nader Entessar. Kurdish Ethnonationalism. (Lynne Rienner Publishers: Boulder, 1992) p.4.

single Kurdish language represents and confirms an unequivocal Kurdish identity.[62] Professor of Near Eastern Languages at New York University, Dr. Ahmed Ferhadi, states that "mutual intelligibility between any two speakers of Sorani and Kurmanji is usually possible with some adjustments on both sides."[63]

Kurdish script is based on a modified Arabic alphabet, as is the Persian and was the pre-Kemalist Turkic script. The Kurds of Iraq added characters to the Arabic alphabet to represent sounds inherent to the Kurdish language. The Kurds in Iraq have Latinized their script, not physically, but in that each individual sound is represented by a single character.[64]

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[62] Kreyenbroek, P.G. "On the Kurdish Language," in Phillip G. Kreyenbroek & Sperl, Stefen.(eds.) The Kurds: A Contemporary Overview. (Routledge: New York, 1992) pp.68-70, 76-78. Yassin. p.36.
It is the belief of this thesis writer that authors often contend that Kurdish dialects are so disparate as to be unrelated languages. This contention, on their part, is inaccurate. It is true that the Kurdish language enjoys rich dialectical diversity, however clear communication between dialectically different groups is an everyday occurrence. This claim is supported by A.R. Ghassemlou. "...in spite of certain differences between Kurdi (Sorani) and Kermanji, it is quite easy for the Kurds from the north-western and south-eastern areas to understand one another." Ghassemlou. ibid. p.28.

[63] Ahmed Ferhadi.p. 21.

[64] Al Karadaghi. Kurdistan Times. vol.1, no.2, p.102.
Writers frequently remark that "Kurdish has no script of its own," see Sa'ad Jawad. p.1., also Phillip G. Kreyenbroek. p.77.
Although Kurdish script is based on the Arabic alphabet, it has over the centuries, evolved into a distinctly Kurdish alphabet. This is to say that no Arab could read Kurdish without study nor could a Kurd read Arabic without an equivalent amount of effort. To say that Kurdish script is Arabic is to say that anyone who can read English can also read Swedish.

The Kurdish language predates the Persian language, reportedly by three hundred years. This is supported by the discovery of the Zend Avesta, the religious book of the ancient Kurdish religion Zoroastrianism in about 800BC.[65]

Religion

Until the seventh century, the Kurds were either pagans, who participated in tree and solar cults or followers of Zoroastrianism.[66] Zoroastrianism was initially practised by the Medes, the Kurds absorbed this religion into their belief system approximately in 800BC. Zoroastrianism is the oldest and first monotheistic religion.[67] An offshoot of this religion is practised today in Kurdistan of Iraq by the Yezidi, who worship the god of evil.[68]

At the time of the Arab conquests, seventh century AD, the Kurds fought against the forced practice of Islam. Eventually, the Kurds submitted to the Arab armies and Islam became the dominant religion of the Kurds.[69] The overwhelming majority (approximately two-thirds) of Kurds in Iraq are of the Sunni persuasion, who follow the Shafaii school. There is a lesser population of Kurds who belong to the Shi'ite sect. Religious minorities include Christians,

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[65] Al Karadaghi. Kurdistan Times. vol. 1, no.2, p.98.

[66] Minority Rights Group. The Kurds: A Minority Rights Group Report. (Minority Rights Group: Britain, 1991) p.9.

[67] Al Karadaghi. Kurdistan Times. vol.1, no.2, p.65.

[68] Minority Rights Group. p.10.
The Yazidi worship their god of evil because they believe that this god will win out over the god of good. They hope to mollify his malice by worship. See Al Karadaghi.Kurdistan Times, vol. 1, no. 2, p.65.

[69] Yassin. p.38.

Jews and Yazidis. There is little religious dissention in Kurdistan of Iraq. The predominately Sunni Muslim Kurds enjoy friendly relations with the Shi'ite Muslim community and all other religious minorities.[70]

Demographics

There is a lack of general consensus among writers regarding the Kurdish populations within the confines of Iraq. Although the governments of Iraq have acknowledged the Kurds as a separate ethnic group, it has never been in the governments best interests to provide the world with an accurate number. Population numbers are deliberately reduced as a strategy to misreport the true size of the Kurdish population and a Kurdish claim to territory. Fewer Kurds in Iraq simply equates to a weaker case for secession.

Arabization of Kurdistan also affects population statistics. Arabs from Iraq are moved by the government into Kurdish areas, while Kurds are forcibly relocated to Arab sections of Iraq.[71] The numbers presented here are estimates gathered by different authors. According to Ismet Sheriff Vanly, the Kurdish population in Iraq in 1975 was three million.[72] David

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[70] Howell, W.N. Jr. The Soviet Union and the Kurds: A Study of National Minority Problems in Soviet Policy. (University of Virginia, 1965) pp.75-79.

[71] Committee Against Repression and for Democratic Rights in Iraq (CARDRI). Saddam's Iraq: Revolution or Reaction? (Zed Books: London, 1989), p.198.

[72] Gerard Chaliand. A People Without a Country: The Kurds and Kurdistan. (Olive Branch Press: New York, 1993), p.143.

McDowell approximates the Kurds at four million, one hundred thousand in 1991.[73] In 1990 Borhanedin A. Yassin counted the Kurds at four million, four hundred thousand.[74]

It is highly unlikely that any of these numbers are completely accurate due to a high incidence of war, Arabization and deportation, flight of refugees and questionable government statistics.

Society

Prior to the twentieth century Kurdish societal organization was governed by a tribal system. Nomadism, an early way of life for Kurds, is virtually non-existent today.[75] Early in this century industrialization and urbanization caused the tribal order to teeter on the brink of extinction: however the values associated with the Kurdish tribal consciousness still exist today. Kurdish tribes are based on an hierarchical organization in which

> The largest unit is the *ashiret*, [Hoz] a confederation of tribes over which a paramount chief may preside. The *ashiret* is made up of *tira*, whose members descend from a common patrilineal ancestor. The *tira*, in turn, is composed of the *khel*, collections of households living as a village or camping together. *Khel* members also descend from a common patrilineal ancestor, and that ancestor is a descendant of the *tira* founding father.[76]

Tribes are not completely composed of members related by blood. In fact "...there were many cases where the tribesmen rallied around a religious chief (shaikh or sayyid) who was not one

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[73] McDowell. p.12.

[74] Yassin. p.37.

[75] Minority Rights Group. p.11.

[76] James John Coyle. Nationalism in Iranian Kurdistan. (George Washington University: Washington, 1993), p.79.
"Hoz" is the Kurdish translation for the Arabic word "ashiret" used in the quote.

of their kin, and identified themselves as a tribe."[77] Life-long membership in a specific tribe is not mandatory. Members do sever allegiances with one tribe in order to negotiate membership in another tribe. Tribe members may leave or form a new tribe for reasons of war, famine, inadequate water supplies or arable land.[78]

There are two distinct subgroups in the Kurdish tribe. The permanent group is composed of members who have direct blood ties with the ruling family. The floating element is made up of people who, depending on the circumstances, may leave a particular group and join with another.[79]

Rather than a kinship group, the tribe is a political or territorial group. The *agha* (tribal chieftain) the political leader of the *ashiret* may control several villages. The *agha* possesses sole power over the tribe. He acts as the leader of the tribal warriors, the diplomat, and chief administrator (including tax collector) of all tribal business. The *agha* never sullies his hands with physical labour. The survival of the tribe depends on the strength of the *agha*. The *agha's* word is law.[80]

Disputes were common between tribes. Conflict usually arose over territorial ownership, economic resources and political self-interest. This friction among the tribal chiefs led to feuds among the hostile tribes. Hostilities between tribes resulted in disunity and a fragile

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[77] Othman Ali. British Policy and the Kurdish Question in Iraq, 1918-1932. (University of Toronto: Toronto, 1992), p.13.

[78] Ali. ibid. p.13.

[79] Coyle. p.80.

[80] McDowell. pp.20-22.
Ali. p.17.

harmony, easily disrupted by even a small transgression. This unstable situation allowed for state interference in tribal affairs. Governments made full use of the conflict between battling tribes, by pitting one faction against the other.[81]

Topography

"For map makers - if not for international lawyers - there is such a place as Kurdistan."[82] The territorial integrity of Kurdistan represents a clear defence for the Kurdish claim to secession. The region referred to as Kurdistan of Iraq has definite boundaries, separating it from Arab Iraq.

> Southern Kurdistan is a geographical term used by the Kurdologists to refer to the Kurdish region of `Iraq in the north. The area corresponds roughly to the old Ottoman *wilayah* of Mosul. It is bounded on the north and north-east by three international frontiers--those of Syria in the Jazira, Turkey within the southern end of Taurus, and Iran where the frontier generally runs with the crest of the main ridge of the Zagros. The internal administrative boundary with the former *wilayah* of Baghdad is formed in the south-east by the Sirwan river and on the south-west by Jabal Hamrin, a low mountain ridge of about five hundred feet above the plain and by a straight up and westward across the Jazira back to the Syrian frontier.[83]

Kurdistan of Iraq is divided into the following provinces: Erbil, Suleimanieh, Dehok, Mosul and Kirkuk; Kirkuk and Mosul are not included in the autonomous region. Other

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[81] Gerard Chaliand. p.17.
The discussion of Kurdish tribal society offered in this thesis is an overview of the topic, for more indepth information see, Othman Ali, pp.13-19 and McDowell, pp.18-23.

[82] Pelletiere. p.14.

[83] Ali. p.1.

provinces are partially located within Kurdistan, such as Kut or Wasit and Diyala.[84] The Kurdish cities of Khanaqin, Mandali and Sinjar still maintain predominately Kurdish populations in spite of the state attempts at Arabization.[85] The boundaries of Southern Kurdistan demarcate this territory from the rest of Iraq.

Minorities

The Kurds constitute the overwhelming majority population in Southern Kurdistan; however there are ethnic and religious minorities. As with the population numbers for the Kurds, accurate numbers for ethnic minorities are impossible to obtain. The Turcoman population resides mainly within the provinces of Kirkuk and Erbil, in the towns of Talafer and Shikan. These people are the descendants of Turks who occupied Southern Kurdistan during the reign of the Ottoman Empire. They form 2-3% of Iraq's total population.[86] Due to the Arabization of Kurdistan, the Arab minority in the region has grown considerably. They occupy area surrounding the Erbil province and the territory west of Mosul, near the Syrian border.[87]

Several Christian sects, Assyrians, Chaldeans, Armenians, are scattered throughout Kurdistan. Assyrians are mainly located in the province of Dahok. Ethnic and religious groups

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[84] Chaliand. p.140.

[85] Yassin. p.42.

[86] Phebe Marr. The Modern History of Iraq. (Westview Press: Boulder, 1985), pp.9-10. Kreyenbroek & Sperl. p.40.

[87] CARDRI. p.198.

residing in Kurdistan of Iraq, have been reduced in number due to wars, mass deportation, massacres and refugee flight.[88]

Prior to the creation of the state of Israel, Southern Kurdistan included a numerically insignificant Jewish population. The Jewish population today is practically non-existent.[89]

Today the territory of Southern Kurdistan is populated predominantly by Kurds. The population of minority groups has been reduced over time. "A result is that Kurdistan has become more homogenous and that a nation state based on Kurdish ethnicity has become at least conceivable."[90]

Economic Factors

Kurdistan enjoys a favourable climate sufficient for agriculture. Generally speaking, Kurdistan is an agrarian society. Rich mineral deposits and oil production provide Kurdistan with potential for great economic expansion. As a single unit, Southern Kurdistan possesses abundant economic resources to successfully establish a separate territory.

Significant oil deposits located in Kirkuk, Ain Zala, Zanboor, Khaniqin and Koysinjaq, provide Southern Kurdistan with one of its most valuable resources. Statistics from 1961 indicate that in Southern Kurdistan oil production was estimated at 80% of Iraq's total oil production, in 1975 the production of oil from Kurdistan of Iraq was estimated at 75% of the

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[88] Kreyenbroek & Sperl. pp. 38-40.

[89] Kreyenbroek & Sperl. p.39.

[90] Kreyenbroek & Sperl. p.40.

total. Oil extracted from Kurdish oil fields provided the state of Iraq with revenues of 7,178 billion.[91]

Kurdistan of Iraq is frequently thought of as a mountainous region; in actuality mountains constitute only 25% of the total land mass. Melted snow from the mountains, as well as considerable rainfall provide moisture for the soil of the fertile plains and valleys. The banks of the Tigris river and its tributaries the Greater and Lesser Zab rivers offer rich soil ideal for rice, grains, vegetables, fruits and tobacco. Livestock grazes in the pastures of both the plains and mountains.[92]

Large quantities of minerals such as copper, iron, lead, silver, sulphur, coal, zinc, tin and magnesium are found throughout Southern Kurdistan, there are also large quantities of marble and alabaster.[93] The huge profits accumulated by the state has done little to improve the lives of the Kurdish people from whom it is taken.

The evidence provided in this chapter establishes the Kurdish historical claim to territory as well as proving, beyond a doubt, that the Kurds are a nation without a recognized state of their own. The issues presented in this chapter provide a basis for the application of moral theory to confirm the legitimate case for an independent Kurdistan.

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[91] Chaliand. p.161.

[92] F. David Andrews. The Lost People of the Middle East. (Documentary Publications: Salisbury N.C., 1982), p. 19.
Mustafa Al Karadaghi. "The Kurdish Nation," Kurdistan Times. no.3 (Kurdistan Times: Fairfax, December 1993), pp.44-45.

[93] Andrews. p.19.

Chapter 4

The Kurdish Claim to Territory: An Historical Perspective

The historical background of Kurdish territory is relevant to Brilmayer's territorial argument for secession. It is also an important element in Buchanan's *Rectifying Past Injustices* argument because only the Kurds of Iraq have a legitimate historical claim to this land. Therefore it is necessary to examine the historical relationship of the Kurds to the territory in question, and the ethics of its present day incorporation into the state of Iraq.

The Kurds Under Ottoman Rule

Within decades of the Ottoman victory over the Seljuk Empire, (circa 1400AD)[94] the Ottomans controlled essentially all of Asia west of Persia, northern Africa and Morocco. The empire absorbed most of the Islamic frontier. Powerful and avaricious, the Ottoman sultan became the self-appointed caliph, the legatee of Prophet Mohammed, who acted as the leader of Islam. The Ottoman sultans, exercized total authority in simultaneous dual roles as both the worldly and religious ruler of a great empire peopled by heterogenous groups of native inhabitants.[95] During the era of Ottoman rule present-day Iraq was divided into three vilayets,

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[94] Dana Adams Schmidt. Journey among Brave Men. (Little Brown: Toronto, 1964), pp 47.

[95] Yosef Shiebaj Gotlieb. Geo-Ethnic Imperatives of Development: The Inter-Dynamics of Territory, Society and State in the Third World. (Clark University, Worcester Mass, 1992), pp.174-175.

(provinces) Basra, Baghdad and Mosul. The overseers of the vilayets were appointed by the sultan, who ruled the territory according to the wishes of the sultan. The authority of the sultan was weakened by his distance from outlying territories.[96]

In the early 1500's, after much solicitation by both the Persians and the Turks, the Kurds became cognizant of their own political power within that dynamic, as the player between the incessantly warring empires. In 1514 the Kurds sided with the Turks to fight the Persians in the Perso-Ottoman battle of Tchaldyran. After a victory for the Turks, to which the Kurds contributed, the grateful sultan agreed to recognize the sixteen independent principalities of Kurdistan. Kurdish princes were given complete freedom to rule over their principalities as they chose. The Kurdish princes answered to no one. They did not pay taxes or tributes to the Ottoman Empire. In return for the freedom extended to them by the Turks, the Kurds were required to pledge loyalty to the Sublime Porte and to maintain the boundaries of individual principalities.[97]

This was system maintained until the nineteenth century. At this time of great stability and independence, referred to as the "Kurdish cultural renaissance," Kurdish literature, culture and civilization developed and flourished. Kurdish artists and scientists were protected and encouraged. Even at this time of advancement and cultural growth, however, the Kurdish princes were unable to unite and build a unified Kurdistan. As men of honour, the princes had no legitimate reason to break the agreement made with the Turks. As committed Muslims, it

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[96] Gotlieb. ibid. p.177.

[97] Chaliand. p.14.
Afra. p.16.
Yassin. p.42.
Adams Schmidt. p.48.

was unthinkable to oppose the sultan-caliph, as long as the agreement was intact, for to do that would be to offend the Umma (Islamic community).[98]

The inability of Kurdish principalities to merge strengthened the already powerful tribal mentality and ideology. The tribal consciousness is the antithesis to the development of a national identity. Ottoman sultans and superior officers played tribal divisions into their favour. Any threat that the Kurds may potentially pose as a single unit was, in effect, obliterated by their tribal divisions.[99]

Turkish intervention into Kurdish affairs in the early nineteenth century resulted in over fifty uprisings against the Ottoman Empire in this century. As the Sublime Portes' influence in Europe waned, it looked to Kurdistan to renew its supply of troops and revenue. Kurdistan had been used as a battlefield during the Russo-Turkish (1828-30) and the Turko-Persian (1877-78) wars. The Turks were threatening the independence and sovereignty of the Kurdish princes, demanding that tributes be paid in order to ease the Ottoman's financial problems. In consequence, the Kurds became frustrated with Turkish financial and military interference and as a result rebelled against the empire. The object of the insurrections was to establish an independent Kurdistan.[100]

> Several important Kurdish revolts occurred in the 1800's partly as a reaction to the increasing taint of Turkish nationalism in Ottoman policy. While local in

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[98] Chaliand. p.15.

[99] Gotlieb. pp.272-279.
Chaliand. pp.15-17.

[100] Chaliand. p.17.
Manouchehr Khosrowshahi. Management of Communal Conflict in the Middle East: The Case of the Kurds. (North Texas State University: Denton Texas, 1983), p.82.

> origin and tribally-based, these uprisings, the two most important of which were lead by Bedir-Khan of Bohtan and Sheikh Ubeidullah of Shamdinan, demonstrated steady progress toward the articulation of Kurdish nationalism.[101]

Attempts by the Kurds to create an independent state were unsuccessful. The Kurds could not win against the powerful army of the Turks. The Turks, under the leadership of Abdulhamid II, endeavoured to integrate and assimilate the Kurds, (early 1890's) implementing a Pan-Islamic appeal the Turks offered to share power with the aghas. Many Kurds acquiesced as a means of survival. Overall this tactic to end Kurdish revolts was successful.[102]

The Ottomans entered World War I, fighting against the Allies; their empire on the verge of ruin. Again the Turks applied the contemptible strategy of the Pan-Islamic appeal. The Turks called their Muslim brothers to arms by declaring a jihad (holy war) against the Allies. Many Kurds heeded the call while others refused to fight with the Turks. The Kurds sustained heavy casualties fighting for the Ottomans.[103]

Russians and Kurds in World War I

Due to the collapse of the Ottoman Empire and the strong nationalistic feelings that were developing among the Kurds, the Kurds saw the opportunity for the creation of an independent Kurdistan. Kurdish leaders sought support from Russia. The Kurdish leader Abdurrazaq Bedir Khan, in 1916, presented an arrangement to the Russians in which the Kurds

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[101] Howell. p.129.

[102] Gotlieb. pp. 282-283.
Chaliand. pp.24-26.

[103] Ghasemlou. pp. 44-45.
Chaliand. pp.29-30.
Khosrowshahi. p.86.

would unite with the Russian armies and in return the Russian would assist the Kurds in establishing an independent Kurdistan. The Russians did agree to collaborate with the Kurds and an independent state was promised. Obviously, the independent state was never achieved. Speculation exists as to why the Russians backed away from the agreement; perhaps it was the realization that such a manoeuvre on their part would be resisted by the Ottomans, Persians and Germans.[104] Other writers suggest that their lack of cooperation was a result of their hidden agenda which was to annex Kurdistan into the Russian Empire.[105]

Some Kurds, rather than fight for the Turks, fought with Russia, embracing the hope perpetuated by the Czarist government who declared that World War I would usher in national independence for Kurdistan.[106] This Russian propaganda was yet but another manipulation of the Kurds to increase their own efforts of colonization and conquest. "By the end of the First World War, Russian forces attacked Kurdistan from Iran.... The Kurds were massacred by the Russians."[107]

The 1917 October Revolution motivated the Russian departure from World War I. The withdrawal created a power vacuum for Great Britain which enabled them to implement their post-war strategies of regional domination and dismemberment of the Ottoman Empire.[108]

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[104] Yassin. pp.47-48.
Khosrowshahi. p.86.

[105] Chaliand. p.30.

[106] Chaliand. pp.29-30.
Khosrowshahi. pp. 86-87.

[107] Khosrowshahi. p.86.

[108] Ali. p.89.

British Intervention

The main objective of the British during the nineteenth century was to create a buffer zone between the borders of the British Eastern Empire and Russia. Consequently, the Sykes-Picot Agreement (March 9, 1916) between the French and the British was aimed at dismantling and partitioning the Ottoman Empire for themselves. The agreement stated that the vilayet of Mosul would be placed under a French mandate. Britain would maintain its interests in Mesopotamia free from any potential Russian interference. The Russians were allotted most of the Kurdish territories; however when Russia withdrew from the war and the Soviet state was established, there was no longer a Russian interest in the territories.[109]

Originally, the British did not have complete agreement among themselves on how to resolve the Kurdish issue. Some British officials supported Kurdish independence, while others were opposed. However, after the collapse of the Ottoman Empire near consensus was reached, in that the foremost British mission was to secure as much territory from the deposed empire as possible. The British wanted to ensure that the former Ottoman power in the region would never be revived. In order to fulfil their objectives the British needed the friendship, if possible, of the Kurds; if not that at least not open hostility.[110] The British established a propaganda campaign focusing on the theme that Turks are oppressors, British are liberators.

> Therefore, a fresh plan for Mesopotamia was to be drawn up, and the British authorities embarked on a campaign to occupy Southern Kurdistan. The territory to the north of `Iraq had difficult terrain inhabited by warlike tribes men, and the

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[109] Ali. pp.89-90.
Howell. p.139.

[110] Yassin. p.48.

> size of the British armed force in Mesopotamia did not allow for a major allocation of troops in operations in the north. Therefore, it was clear that the Kurds could not be subdued by brute force. For this reason an intensive propaganda campaign to win over the Kurds was necessary.[111]

The propaganda campaign proved to be highly successful for the British. On October 23, 1918 the British moved toward northern Iraq to capture Kirkuk. By the end of 1918 the British completely controlled Southern Kurdistan.[112]

The liberation movement in Kurdistan of Iraq developed rapidly in 1918 and 1919. Kurds of the Sulaymania area declared Kurdish independence. The British approved of their leader Mahmud Barzinji becoming governor of the region. The British used Barzinji to contain potential Turkish aggression and to keep the Arabs in line. Shaikh Mahmud was sincerely concerned with the plight of the Kurds and was the driving force behind the secessionist movement. He quickly fell out with the British once he realized that he was little more than a powerless figurehead. Intense struggles between the British and the Kurds eventually resulted in the determining battle in which Shaikh Mahmud was injured and taken prisoner by the British. He was sentenced to death. The sentence was reduced to life in prison. The Shaikh was exiled to India. This first important insurrection was the precursor for years of near-continuous revolts against the British from all strata of Kurdish society.[113]

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[111] Ali. p.90.

[112] Ali. pp.93, 111-112.

[113] Ghassemlou. p.63-64.
Ali. pp.119-131.

Sevres Treaty (August 10, 1920)

The end of World War I and the deterioration of the Ottoman Empire provided the Kurds with a significant opportunity to gain independence. Articles 62, 63 and 64 of the Sevres Treaty granted autonomy to the Kurds within the Ottoman Empire. Contingent upon a referendum by the Kurds full independence was to follow one year later.[114]

> Article 62: A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectfully shall draft within six months from the coming into force of the present Treaty, a scheme of local autonomy for the predominately Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in article 27, II (2) and (3) if unanimity cannot be secured on any question, it will be referred by the members of the commission to their respective Governments. The scheme shall contain full save guards for the protection of the Assyro-Chaldeans and other racial and religious minorities within these areas, and with this object a commission composed of British, French, Italian, Persian and Kurdish representatives shall visit the spot to examine and decide what ramifications, if any should be made in the Turkish frontier, where, under the provisions of the present Treaty, that frontier coincides with that of Persia.
>
> Article 63: The Turkish government hereby agrees to accept and execute the decisions of both the commissions mentioned in article 62 within three months from their communication to the said government.
>
> Article 64: If, within one year from the coming into force of the present Treaty the Kurdish people within the areas defined in article 62 shall address themselves to the council of the League of Nations in such a manner as to show that a majority of the population of these areas desire independence from Turkey, and if the council them considers that these people are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation and to renounce all rights and title over these areas.
>
> The detailed provisions for such renunciation will form the subject of a separate agreement between the principal Allied powers and Turkey.

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[114] Yassin. pp. 48-49.

> If and when such renunciation takes place no objection will be raised by the principal Allied powers to the voluntary adhesion to such an independent Kurdish state of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mosul vilayet.[115]

This treaty, while benefiting the Kurds residing in Kurdistan of Iraq, on the whole was insulting and degrading to all Kurds. According to this treaty Kurdistan was limited to only the vilayet of Mosul as an independent entity.

The terms in the Treaty of Sevres regarding the creation of an independent Kurdish state never came to fruition. One reason for the subversion of the treaty was the strength of Mustafa Kemal Ataturk nationalist movement in Turkey. He captured Kurdish territory and claimed it in the name of Turkey. His efforts interfered with ratification of the provisions of the treaty. The potency of his movement forced the omission of the Kurds in the Treaty of Lausanne, which replaced the Treaty of Sevres in 1923. The discovery of oil in the Kurdish vilayet of Mosul diminished British support for the Kurds. The British chose to protect their interests and back the Iraqi Arabs and the Kurds were forgotten. The plight of the Kurds seemed an inconsequential matter in comparison to the developing relations of Kemal Ataturk with the Russians. In order to maintain goodwill with the Turks and minimize the Russian threat, the British serving their self-interests, disregarded promises made for an independent Kurdish state.[116]

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[115] Coyle. pp.150-151.

[116] Yassin. pp.49-50.
Chaliand. pp.33-35.

The idea of a Kurdish state was met with disapproval by the High Commissioner, Percy Cox. Cox agreed with his predecessor Arnold Wilson that the Kurds were not prepared to establish and maintain their own state.[117]

The King of Syria, Faisal, was deposed by the French as they implemented full colonial rule. Faisal, from the Hashimite family of Mecca, was then installed by the British as King of Iraq on August 23, 1921. This appointment did little to enhance Kurdish-British relations. As hostility and resentment grew amongst the Kurds, the British, in order to sustain their influence, recalled Shaikh Mahmud from India. On September 14, 1922 the Shaikh was declared King of Kurdistan. At this time, the British design of Kurdistan was composed solely of Sulaymania province. Mahmud's objective was to liberate all of Kurdistan. Protection of the rich oil deposits in the Kirkuk region were the motivating force behind the R.A.F. air-raids and British occupation of Sulaymania until it was liberated once again June 11, 1923.[118]

C.J. Edmonds, Political Advisor in Mosul and Advisor to the Ministry of the Interior Iraq, 1935-1945 expressed his views regarding Kurdish nationalism. It is safe to say that the following views are representative of the British at the time of Kurdish demand for self-government.

> I am not an enthusiast[ic] Kurdish nationalist...they are hateful people and if Iraq's government was likely to be strong enough I should say to hell with their Kurdish nationalism. As it is, and in view of the desirability of trying to keep the Turks out as long as possible I regard Sulaimani as a slippery fish that must be patiently played till we land him in the `Iraqi basket.[119]

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[117] Ali. p.226.

[118] Ghassemlou. pp.62-65.

[119] Ali. p.274.

Shaikh Mahmud's nationalistic movement suffered a series of setbacks. Sulaymania was permanently lost to the Kurdish July 19, 1924.[120]

It seems clear that the British never had any serious commitment in allowing the Kurds to establish a sovereign state. Their overwhelming objective was to create a client state that contained rich oil deposits.

> The states of the Middle East (Iraq, Syria, Lebanon and Jordan, etc.) were not created out of the struggles of bourgeois or revolutionary vanguards. On the contrary, they were set up by British and French imperialism, to serve their own ends and in accordance with their own immediate needs. If Anglo-French imperialism had required an independent Kurdistan they would have set one up, of their own accord, since the Kurdish leadership was at about the same stage of underdevelopment as its equivalent in many Arab countries.[121]

Treaty of Lausanne

Signed on July 24, 1923, the Treaty of Lausanne carved up Kurdistan into four separate regions. This treaty confined the Kurds to a life of oppression, which they have rebelled against ever since. Although the Kurds were uninvited, to the Treaty meetings, the British and the Turks presented themselves as their representatives.

This treaty focused on the territory of Mosul and the oil therein. The French had the rights to Mosul, and were unaware of the rich oil deposits. They were convinced by Lloyd George to surrender their rights to the territory in exchange for Celicia. Later when the French learned they had been duped by the British, they received a 25% share of oil profits, at current market value.

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[120] Ghassemlou. p.66.

[121] Chaliand. p.31.

The Americans believed that their interests were not being met. After a bitter press campaign and arduous negotiations they received a 20% share in Turkish Petroleum. Interestingly, this is the same company that held exclusive rights to the Mosul and Mesopotamian oil fields. Even more interesting, the head of the British delegation at the Lausanne Conference, Lord Curzon was the main shareholder in that company.

The Turks, who knew of the oil in Mosul, contested any claim the British made to the territory. The British and the Turks were unable to agree on who should acquire Mosul and both sides were forced to wait for a decision made by the League of Nations. On June 25, 1926 Mosul province became part of Iraq, under a British mandate. This treaty did not mention the Kurds and they were granted no national rights.[122]

The British had envisioned incorporation of Southern Kurdistan into Iraq. From their occupation of these territories until their departure in 1932 the British made every effort to secure the success of the newly established Iraqi state. After a long, brutal and suppressive occupation the British were successful in absorbing Kurdish territories into Iraq; brushing aside the demands and suffering of the Kurds who aspired to form their own independent state.

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[122] Chaliand. p.49-50.
Adams Schmidt. p.54.

Kurdish Territorial Claim for Secession

Application of Brilmayer's Territorial Interpretation of Secession

As has been previously discussed in Brilmayer's explanation of territorial-based right to secession, certain criteria must be met by the secessionist group in order to qualify for such a claim. This section will prove that the Kurds of Iraq do meet her standards for legitimate secession. The Kurds, by anyone's definition are a distinct people - a nation - and do suffer under alien subjugation. Kurdish territorial claims are based on historical grievance and today, because of Arabization and other oppressive state policies the Kurdish right to secession grows even stronger.

The Kurds and the Arabs are distinct races. The Kurdish language is Indo-European and not Semitic. Kurdish origins and language are strictly Kurdish.[123] Although the Kurds and the Arabs are Muslim, there are differences in their religious rites. Kurds are Shafii Sunni, while Arabs are predominately Shi'ite and Hanafi Sunni.[124] By all definitions the Kurds are a distinct people who form a separate nation from the Arabs.[125]

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[123] See chapter 3, pages 23-30 for information on origins, language and religion.

[124] Asti Suhrke & Lela Garner Noble. Ethnic Conflict in International Relations. (Praeger Publishers: New York, 1977), p.69.

[125] Brilmayer states in her article "Secession and Self-Determination: A Territorial Interpretation," that self-determination and territorial claims are inter-related. In order for a claim to territory to be legitimate the secessionist group

> The Kurds constitute a single nation which had occupied its present habitat for at least three thousand years. They have outlived the rise and fall of many imperial races: Assyrians, Persians, Greeks, Romans, Arabs, Mongols, Turks. They have their own history, language and culture. Their country has been unjustly partitioned. But they are the original owners, not strangers to be tolerated as minorities with limited concessions granted at the whim of the usurpers.[126]

The British made a gift of Kurdistan to the Iraqis. Unfortunately, the British did not own Kurdistan and the Kurds were not consulted on the transaction, therefore the British gave away territory to which they never had any legitimate ownership. The process from the beginning was invalid. The Iraqi state itself is a pure invention of the British.[127] The state of Iraq is a mockery because it incorporates territory to which it never had any legitimate right.[128]

> This was a marriage forced upon the Kurdish population of Mosul [vilayet] by the British and confirmed by the League of Nations, absolutely without the consent of the Kurdish people, who have fought against it, and tried to get out of it, for the last seventy-two years.[129]

The Kurds do possess legitimate cause to secede from Iraq from the historic grievance perspective. Britain gained control over Basra and Baghdad (the Arab areas of Iraq) and then

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must prove that they are a nation and not a minority group, to which claims to territory never apply. She lists race, language, religion and ethnic distinctiveness as her criteria for nationhood. p.183.

[126] C.J. Edmonds. "Kurdish Nationalism," The Journal of Contemporary History. vol.6, no.1, (1971), p.88.

[127] Kendal Nezan. "Time for Britain to Repay Its Debt to the Kurdish People," The Independent. (London, 30 August 1990).

[128] Brilmayer discusses illegitimate ownership of minority territory by the state, see page 20 of this thesis. Illegitimate ownership by the state results in a valid argument for secessionist groups. See thesis pages 42-48 for information on the annexation of Kurdistan into Iraq.

[129] Habibollah Atarodi. "The Kurds: A Nation of 30 Million Denied its Freedom," Journal of Social, Political and Economic Studies. vol.16, no.3, (Fall 1991), p. 277.

moved north to annex Kurdish territories by force, after World War I. Kurdistan was forced to become part of the newly created state of Iraq by the British. The unnatural boundaries of Iraq were drawn to include Kurdistan within a predominately Arab state. The Kurds, who had maintained their culture for centuries, were expected to assimilate into the newly established state regardless of cultural, ethnic and linguistic differences and the legitimacy of their own territorial aspirations.[130]

> The modern nation-state of Iraq had been an artificial creation of the League of Nations in the 1920's, when the former southern *vilayet* [Kurdistan of Iraq] of the Ottoman Empire was subdivided into mandate territories administered by Britain and France. Iraq's boundaries, incorporating the *vilayet* of Mosul, reflected British interest in achieving control over that region's known oil resources.[131]

Reference to the Sevres Treaty confirms that Southern Kurdistan (Kurdistan of Iraq) was to be granted independence within a year of acceptance of the treaty. At that time the Kurds of Iraq must demonstrate their desire to establish an independent state. The chief British official in Baghdad, at that time, Arnold Wilson, conceded that four out of five Kurds residing in Southern Kurdistan favoured independence. The opportunity for the Kurds to officially demonstrate their preference for independence never took place.[132]

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[130] Brilmayer presents two grounds for her historic grievance argument, see pages 189-190 of her essay. For the purposes of this thesis I have discussed only the second argument; manipulation by colonial powers, which applies to the Kurdish people.

[131] Middle East Watch. "Genocide in Iraq," Middle East Watch Report. (Human Rights Watch: New York, July 1993), p.32.

[132] Kendal Nezan. "Time for Britain...".

Adverse possession or the reparation of injustice through territorial change favouring the secessionist group, pertains to the Kurdish claim to secession to a lesser degree.[133] Although there are clear boundaries separating Kurdistan from the remaining areas of Iraq. Maps often indicate demarcation between the two territories. To deny the existence of Kurdistan is fallacy. The Kurds have never willingly acquiesced their land to any outside group. They have relentlessly battled to keep their claim for an independent Kurdistan alive. Therefore, in this case, the argument for adverse possession does not apply. The Kurds, the Arabs and the rest of the world know, Kurdistan exists. Therefore to completely redefine the borders of Kurdistan of Iraq is unnecessary.

Adverse possession is a valid argument when the policies of the Iraqi regime are applied against the Kurds. Iraqi state policy has worked to reduce the territory of the Kurds. The province of Kirkuk, historically a Kurdish region, was in 1974 excluded from the Kurdish autonomous region declared by the Iraqi government. The Kurds claimed that the oil fields surrounding Kirkuk were in every way Kurdish and should be left in Kurdistan.[134] The Iraqis disagreed, consequently the Iraqi version of an autonomous region was established without the consent of the Kurds.

> ...The Kurds had reason to believe that Saddam Hussein was delaying a final agreement in the hope that the Kurds would lose their international protection....Yet those details that did emerge indicted that the number of sticking points were increasing rather than decreasing. Baghdad would not accept Kirkuk as the capital of autonomous Kurdistan...[135]

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[133] For Brilmayer's discussion on adverse possession, see page 199 of her article.

[134] Khosrowshahi. p.150.

[135] McDowell. p.119.

After the 1991 Gulf War and the creation of the Allied "safe haven" large sections of Kurdish territory were excluded. These areas are rich in oil and mineral deposits and now fall under Iraqi jurisdiction. For this reason adverse possession does apply to the Kurdish secessionist movement. The Iraqi state would make every effort, as is historically proven, to steal and plunder Kurdish land, thereby reducing Kurdish territorial integrity and denying Kurds their richest and most productive territory.

A peripheral issues related to adverse possession consists of population transfers, in which loyal citizens of the dominant regime are relocated to minority group areas. The secessionist group may believe that this group of people should have no influence whatsoever on their claim; however "as a practical matter, the new settlers tend to legitimize the territorial status quo."[136]

The Iraqi government methodically engages in the policy of Arabization of Kurdistan, again this plan is implemented to minimize Kurdish territorial integrity. The Iraqi government's objective is to transfer Kurdish populations to Arab cities and Arab populations to Kurdistan. These transfers mainly occur in strategically significant districts, surrounding military and economic areas, in order to safe guard Iraqi control over the Kurds. These practices are outlined in a dispatch to the Arab Heads of States from the Patriotic Union of Kurdistan,

> 1) Eviction of thousands of Kurdish peasant and workers' families from their villages and towns to places in the south of Iraq. 2) Confiscation of the lands and possessions of the people by force. 3) Setting Arab tribes in the homes of evicted Kurds. 4) The transfer of most Kurdish civil servants, soldiers, and police to the south of Iraq. 5) The transfer of Arab civil servants to Kurdistan with promotion and generous allowances. 6) Ending teaching in the Kurdish language by schools in Kurdistan. 7) Emptying Sulaimaniya University of Kurdish personnel.

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[136] Brilmayer. p.200.

> 8) Changing the Kurdish names of villages and towns in Kurdistan. 9) Neglect of Kurdistan as regards industrial and civil projects. 10) Subjecting the evicted Kurds to bad social conditions.The Kurds lay claim only to Kurdistan and no other territory.[137]

The Kurds lay claim only to Kurdistan and no other territory. They have always regarded their territory as land stolen by the British and Iraq. Their historical grievance is based on legitimate claim to territory, since this land has been considered Kurdistan from a time beyond recorded history, only since 1925 has it been considered Kurdistan of Iraq.

The Kurdish nation has remained intact despite efforts by external forces to crush them into non-existence. Their national identity and legitimate claim to territory combined with international laws of self-determination: according to Brilmayer's interpretation of secessionist thought, equate to a valid right to secede from the tyrannical state of Iraq.

The unity of Kurdistan is an undisputed reality. The Kurds are Kurds in every way, because of their common culture, language, traditions, and territory. They have refused to become assimilated, dismissed or objectified by external manipulation. They have been deprived of their human rights, but refuse to be deprived of their land. Kurdistan, as the Kurds know too well, will never be relinquished.

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[137] Khosrowshahi. p.154-155.

Chapter 5

Policies of Injustice

Iraqi State Policy Applied to Buchanan's Moral Theory of Justice

In this chapter Iraqi state policy will be examined as relevant to human rights violations, cultural destruction, economic discrimination, territorial appropriation and genocide. The discussion will focus on Buchanan's moral theory of justice. The application of this theory to Iraqi state policy will prove that the Kurds do possess a valid moral claim to secession.

Protecting Liberty

Buchanan's case, in *Protecting Liberty*, conveys that acceptance of the liberal conviction that it is morally unjust to interfere with an individuals right implies that it is equally immoral to interfere with a groups right, even if the groups goal is secession. This case applies to individuals and groups only if their intentions do not harm others.[138]

Iraqi authoritarian regimes have resorted to methods of deprivation of political and cultural rights. The rights of the Kurds to be active partners with the Iraqis in the political process of the state have been denied. Even though, at times, the government has tried to

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[138] See pages 10-11 of this thesis and pages 29-32 of Buchanan's book for more information on the argument for *Protecting Liberty*.

Kurdish participation in the political process within the current state boundaries is acceptable, so long as they obey every state rule, law and regulation, no matter how unjust. Once any reference is made to promote their national group interests, then, their participation in governmental processes collides with state political ideology and is silenced.

The three main points of contention between the state government and the Kurds are: 1) the Kurdish right to exercise political control over the internal affairs of their own region and communities; 2) the ability to control and benefit from the development of the region's resources; 3) the freedom to protect and promote their own culture and language.[139]

Just three days prior to the Iran-Iraq War, on September 19, 1980, elections were held to select representatives to the Kurdish Legislative Council. The event, at first blush, appeared historically momentous; for the first time the Kurds voted for their own delegates to the assembly. A closer look into the elections prove them to be a farce, the Iraqi government holds firm control over the military, political and economic resources, furthermore the list of nominees was drafted and approved by the Iraqi regime. The election was nothing more than a ploy to gain Kurdish support for the approaching war with Iran.

Two years later, a Kurd, Taha Muhyadeen Ma'aruf, was appointed vice-president of Iraq. He was appointed to this post shortly after the first popular Kurdish uprising. His position was devoid of any real power. He was the "token Kurd" and his duties were merely superficial,

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[139] Ted Robert Gurr & Barbara Harff. Ethnic Conflict in World Politics.(Westview Press: Boulder, 1994), p.98.

at best ceremonial. He was given this position to placate the Kurds and to fortify ambivalent world opinion.[140]

According to Article 7 of the Ba'ath Party Platform

> The Arab world constitutes that part of the globe inhabited by the Arab nation, which stretches from the Taurus Mountains (Iraqi-Turkish border), the Pusht-i Kuh Mountains (Iraqi-Iranian border), the Gulf of Basra (i.e. the Arab Gulf), the Arab Ocean, the Ethiopian Mountains, the Sahara, the Atlantic Ocean and the Mediterranean.[141]

Clearly the Iraqis include Kurdistan within their state, the Ba'ath party constitution has no policy to deal with minority issues of any kind. The party strategy is to absorb minorities into the Arab population.[142] There is no room within Iraqi political thought for preservation or maintenance of minority cultures within state boundaries. The Iraqi objective is to perpetuate and safeguard Arab nationalism, not to protect the liberty of the Kurds.

Arabs from other countries settling in Iraq are not to be considered "foreigners," rather they are accepted as Iraqi citizen. This is known as Iraqi Law 36 and was enacted in 1961.[143] The policy that applies to Arabs from other countries does not apply to the Kurds who have lived within the confines of the Iraqi state for generations. In fact in 1980 Iraq deported 80 000

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[140] Ofra Bengio. "The Iraqi Kurds: The Struggle for Autonomy in the Shadow of the Iran-Iraqi Conflict," Immigrants and Minorities. vol 9, no.3, (November 1990), pp.258-259.

[141] Khosrowshahi. p.133.

[142] Khosrowshahi. p.133.

[143] Gerard Chaliand.(ed) I.S. Vanly. "Kurdistan in Iraq," People Without a Country: The Kurds and Kurdistan. (Zed Press: London, 1980), p.174.

Kurds on the grounds that were of Iranian-Kurdish origins. This policy began in 1971 with the expulsion of tens of thousands of Kurds to Iran.[144]

The Iraqi government attempts to increase the Arab population of Iraq while decreasing Kurdish numbers destroys the safety and protection of Kurdish liberty. The policies of Arabization and deportation works to the Iraqi governments advantage and denies the Kurdish sector the liberty to live freely in their homeland.

The Iraqi policy of educational discrimination and civil service employment inequities are prevalent and are the main contributors to the endangerment of the Kurdish culture and human rights. Out of 500 high ranking Ministry of Foreign Affairs officers only 10 positions were filled by Kurds.[145] In 1970, Erbil, the richest of the Kurdish provinces had only 70 schools per 100 000 people, while Basra, an Arab province in Southern Iraq had 120 schools per 100 000 people. As well, in 1970 more than 110 schools were closed in the Kurdish province of Dahok and in the Kurdish regions of the province of Nineveh, at any rate classes were taught only in Arabic.

A Kurdish school established in the Kurdish city of Khanaqin, an oil rich area, lost 400 students after the administration pressured and intimidated parents into having their children attend Arabic schools.[146] This tactic is a form of Arabization, the children speak Kurdish,

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[144] Middle East Watch. Human Rights in Iraq. (Yale University Press: New Haven, 1990), p.71.

[145] R.D. McLaurin. The Political Role of Minority Groups in the Middle East. (Praeger: New York, 1979), pp. 62-63.

[146] Vanly. p.174.

however inevitably Arabic becomes their first language because that is the language that they speak, read and write; the Kurdish language becomes secondary.

The ratio of Kurdish university students to Iraqi students is very low, even at the university in the Kurdish city of Suleymanieh, which was up until the Gulf War the only university in all of Kurdistan.[147] In 1972, 6.1% of all university students were Kurdish. Only 3 to 4% of grants went to Kurdish scholars. Kurdish students represented less than 2% of the pupils registered at the Iraqi Military Academy, and Police College where army and police officers are trained. No Kurdish applicants were accepted at the Air Force Training School, "with good reason seeing as Kurdish villages and towns were the Iraqi pilots' main targets.[148]

Sham elections, superficial appointments of Kurdish government officials, Arabization, Kurdish deportations, educational and government employment discrimination, are the true policies of the Iraqi government. Rather than protected as a national group within the state of Iraq, the Kurds are an endangered group. Given the nature of these practices, there is no foundation for the protection of Kurdish liberty under the domination of the Iraqi government. The Kurds must either assimilate into the Arab culture or be victimized by the Iraqi destruction

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[147] Since the Gulf War ended in 1991, the Kurdish government in the safe haven area has established new colleges and universities in the Kurdish provinces. It is worth noting that, prior to the Gulf War, Kurdish Literature was the only subject offered for study in the Kurdish language at the university of Baghdad. In the Kurdish University of Salahadien in Erbil classes were taught in Arabic, with the exception of engineering and medicine which were taught in English. Consequently, students who wished to pursue a higher education were "encouraged" by this policy to attend Arabic schools. This was not a complete necessity due to the fact that the study of the Arabic language is mandatory in all schools in Kurdistan of Iraq.

[148] Vanly. p.174.

of their identity. There are no alternatives for the Kurds within the Iraqi state. In order to protect their liberty the Kurds must secede from Iraq.

Escaping Discriminatory Redistribution

This argument is based on biased economic policies of the government in power. Other rights need not be violated or denied for this case to legitimize secession. Discriminatory redistribution on its own supports secession.[149]

Economic discrimination is a pervasive and pernicious element of Iraqi policy towards the Kurds. Despite the fact the Kurds are the rightful owners of the rich natural resources found in and on their territory, the Iraqis control the wealth accrued from these resources and use it to the advantage of the dominant group.

Many oil fields are located in the Kurdish region of Iraq, yet the Iraqi government refuses to distribute a portion of the oil revenues back to the Kurdish region, where it is originally found.[150] In 1961 Kurdish revenues from oil fields in Kurdistan provided Iraq with 53.6% of its total income and 72% if its total imports. In 1975 Kurdistan contributed 75% of Iraq's oil production. In the same year the oil profits for Iraqi treasury amounted to $7 178 billion. Oil refineries, for Kurdish oil, are built in Arab Iraq. "Arab oil for the Arabs," was the motto of the Ba'ath Party during the 1973 Arab-Israeli War. It was never mentioned that much of that valuable "Arab oil" came from Kurdish soil.

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[149] See pages 11-13 of this thesis and pages 40 to 45 of Buchanan's text for more information on *escaping discriminatory redistribution.*

[150] Gurr & Harff. p.99.

Out of 150 Iraqi industrial projects only four were planned for Kurdistan. Steel mills are all located in Arab Iraq, although iron ore deposits are only located in Kurdistan. Tobacco, an important cash crop, is grown only in Kurdistan. Severe restrictions are placed on Kurdish tobacco farmers, by the Iraqi government. The government dictates to the farmers how much of their land can be used to grow tobacco and then sets the price the farmers can receive for their crop. The Kurds smoke only about 15% of the tobacco grown; the rest is consumed by Arabs in Iraq, Kuwait and Saudi Arabia.[151]

> ...Economic development is planned in terms of the enrichment of Arab Iraq, especially Baghdad, at the expense of the Kurdish people. The Darband and Dokan dams built in the Kurdish territories are mainly used to supply Baghdad with electricity. The list of achievements on projects in the `Autonomous Region' is very far from impressive: a couple of cigarette factories at Suleymanieh and Arbil, a cement factory, a carpet factory, a chicken farm and a cattle ranch, a sugar refinery and a marble quarry.[152]

The Kurds contest the Iraqi control of their natural resources. It is this challenge to Iraqi authority that provides the basis for the brutal actions of the Iraqi government against the Kurds.

> Despite the Kurdish region's abundance of natural resources, such as oil, iron ore, and fertile land, the budget allocation for this has traditionally been very low, ranging from 7 to 12 % of the total Iraqi budget. Until the US -led Gulf War in 1991, Kurdish areas had provided much of the raw material for the iron and steel industries in Iraq, but these industries have been located elsewhere in the country. Tobacco, traditionally a major cash crop in Kurdish regions, has not benefitted the Kurds because the government has used its monopoly over the tobacco industry to exert economic pressure on the Kurds. All in all, internal colonialism and unequal center-periphery relations have permeated the economic dimensions of Kurdish-Arab relations in recent decades.[153]

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[151] Chaliand. pp.160-161.

[152] Chaliand (ed). Vanly. p.201.

[153] Entessar. p.8.

The Iraqi governments program to forcibly relocate thousands of villagers crushed the Kurdish economy.[154] Farmers from the fertile plains of Kurdistan were relocated to cities or worse the desert of southern Iraq.[155]

The state's legitimacy over the territory is nullified, in the argument for *Escaping Discriminatory Redistribution*, when the state resorts to unjust practices of economic redistribution programs. The Iraqi government has used economically discriminatory methods to the advantage of the Arab majority while depriving the Kurdish minority of its natural wealth. At the time of secession the Kurds would benefit only from the natural resources situated in their territory. Iraq would continue on as an economically viable entity proceeding to function and prosper in the absence of the newly established Kurdish state.

Preserving Cultures

A series of criteria must be met by the secessionist group in order to legitimately implement this argument. The group must prove that they are an endangered culture. Iraqi state policies have not provided adequate measures to protect the Kurdish culture, rather the governments utmost aim has been to destroy the Kurds and their identity. Through repressive and brutal actions the Iraqi government operates with the constant objective of oppressing the Kurdish people and their culture.

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[154] Gurr & Harff. p.99.

[155] Middle East Watch. Human Rights in Iraq, p.90.

In an effort to fully establish the case for cultural endangerment two Iraqi laws must be stated prior to discussing the crimes committed against the Kurdish people. According to Iraq's interim constitution of 1970: "The people of Iraq is formed of two principal nationalities, the Arab nationality and the Kurdish nationality. This constitution shall recognize the national rights of the Kurdish people and the legitimate rights of all minorities within the unity of Iraq." As well, Iraq's Law for Autonomy in the Area of Kurdistan, March 11, 1974: the law of 1974, stipulates that "the Kurdish language shall be the official language, besides the Arabic language, in the area" and that "Kurdish shall be the language of education for Kurds."[156]

Since 1975 and the collapse of the Kurdish Rebellion, Iraqi attempts to assimilate the Kurds and their territory into Arab control, has taken on a number of different methods. The government terminated the Ministry of Northern Affairs and banned the teaching of Kurdish history and geography in schools, no mention of these subjects was permitted in text books. In school books the proper noun "Kurdistan" was replaced by the phrase "the autonomous region." The Kurdish Academy was abolished. Kurdish as the official second language of Iraq was eliminated, and the department of Kurdish Studies at Baghdad University was closed.[157]

In an effort to reduce Kurdish territory, the Iraqi government renamed cities, districts and mountains. The Kurdish names of these locations were replaced with Arabic names, such as Kirkuk being renamed Al-Ta'mim (nationalization), Rawanduz to Al-Sedeeq (righteous) and Haji Omaran to Al-Nasser (victory). In addition, land from Kurdish provinces was annexed by

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[156] Middle East Watch. ibid. p.70.

[157] Khosroshahi. p.155.

the Iraqis into Arab provinces.[158] The effect of all these efforts is to minimize Kurdish influence in the region and gradually absorb all of Kurdistan into the state of Iraq.

Prior to the Gulf War and the creation of the Allied safe haven the Iraqi government participated in an active relocation program of such magnitude that it threatens the very existence of Kurdish identity and culture. The overall goal of this despicable strategy was to redraw the map of the Kurdish region in Iraq's favour. In order to accomplish this, Kurds had to be removed from their ancestral homeland and relocated to areas under the military control of Baghdad.

The Kurdish relocation program began in 1963 when the Ba'ath party offered incentives to Iraqi Arabs to settle on the fringes of Kurdish territory. More ambitious efforts at Arabization soon followed to areas inhabited by the Kurds.[159] These transfers included over

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[158] Entessar. p.9
Khosrowshahi. p.155.

[159] Middle East Watch. p.86.
After the collapse of the 1974-1975 Kurdish uprising, the Iraqi government declared an amnesty in which the government would consent to the safe return of *peshmerga* (Kurdish freedom fighters) and their families to their homes in the Kurdish region. Once the *peshmerga* and their families returned, they were rounded up by Iraqi soldiers and deported to the south. All deportees were referred to as "returnees" (al-haiedoon) and as such were required to carry identification cards indicating that they were returnees, enabling the government to monitor their movements. Most of the deportees were allowed to come back to Kurdistan after a few years, however they were prohibited from returning to their villages.

On a personal note these events are not abstract events, my sister and her family were deported to the city of Kut (Wassit) in the south of Iraq from Erbil.

500,000 Kurds taken from their lands and placed in isolated areas near the Jordanian and Saudi borders.[160]

The Iraqi government has created a 30 kilometre wide depopulated strip of land along the 1200 kilometre boundaries of Iran and Turkey in 1989. The official Iraqi explanation for this manoeuvre was that it was employed as a protective measure for the Kurds who had suffered the trauma of the eight year Iranian aggression and that the Kurds would benefit from modernization found in urban areas.[161]

The truth of this policy is that it was a calculated strategy perpetrated by the Iraqi government to isolate Kurds in Iraq from Kurds located in neighbouring countries. The move worked to effectively cut-off any communication with the *peshmerga* who operated out of remote mountain terrain and the villages in the north. However, the major Iraqi objective was to establish three main cities, within the provinces of Erbil, Dahok and Suleimanieh. The Iraqis envisioned three large cities with smaller towns scattered around them, which could be easily monitored and controlled by Iraqi forces.

An American Senate staff report provides an illustrative example of the ruthless reality of the Iraqi depopulation offense.

> [T]he Iraqi army has, over the past few months [September 1988], been dynamiting the evacuated Kurdish villages. In at least one case the army requisitioned earth-moving equipment from a foreign engineering firm so as to eliminate any traces of previous habitation. With hundreds of villages levelled the Kurdish countryside has an eery, deserted quality to it. Fruit trees, graveyards, and cemeteries stand as reminders of the absent people and

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[160] Bengio. p.261.

[161] Middle East Watch. Human Rights in Iraq, p.87.

> livestock. The Iraqi army conducts itself in Kurdistan as if it were a foreign occupying army.[162]

The democratic process has begun in Kurdistan. Free and just elections for a regional parliament were held in Kurdistan in 1992, under the protection of the ally-enforced safe haven.

> Unlike in Kuwait, where only a tiny minority of male Kuwaitis may vote, all men and women over 18 are eligible to vote in the Kurdish election. Jordan had parliamentary elections in 1991 but prohibited political parties from campaigning, which the Kurdish parties are doing with gusto. Algeria's military stepped in and halted an election when it appeared that Islamic fundamentalists might win, but the Islamic Movement of Kurdistan, with its green-and-white banners, is running hard.[163]

The Kurds are in the early stage of establishing a democratic government. However, the scope of Iraqi repression over the past seventy years has impeded the development of democracy in Kurdistan. One cannot expect a western style liberal democratic system to appear within a short period of time. It is an evolutionary process, one to which the Kurds are committed and struggle to achieve.

Iraqi assimilation techniques, Arabization policy, depopulation programs and the educational inequalities, discussed in *Protecting Liberty*, demonstrate that the Kurds are indeed an endangered culture. Given the corrupt nature of Iraqi state policy the Kurds have no recourse other than to secede from Iraq in order to preserve their cultural identity. Sadly, the Kurds fulfil Buchanan's criteria for *Preserving Culture*, only through secession will this culture survive the brutalities and injustice inflicted upon them by Iraqi totalitarian regimes.

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[162] Middle East Watch. ibid. p.88.

[163] Louise Lief. "An Odd Place for Democracy," U.S. News and World Report. vol.112, no.20. (May 25, 1992), p.52.

Self-Defense

Based on Buchanan's *Self-Defense* argument a national group has the right to secede in order to protect itself from extermination.[164] Since the creation of the Iraq, Iraqi governments have systematically denied the Kurds their rights. From 1958 and the fall of the Iraqi monarchy, the five successive governments have used brutal force against the Kurds in order to achieve their own ends. Iraqi regimes have committed every kind of oppressive and ruthless act known to man, in fact they perpetrated some crimes that had never been committed before..."the Iraqi regime became the first in history to attack its own civilian population with chemical weapons."[165] This crime occurred despite the 1925 Geneva Protocol which prohibits the use of chemical weapons.

The crimes carried out by the Iraqi government against the Kurds are as varied as they are barbarous, they include: mass executions and mass disappearances of thousands of Kurdish civilians, sometimes the entire population of villages; the use of chemical weapons; rampant destruction of Kurdish villages, estimates run between 80 and 85% of all Kurdish villages have been demolished; destruction of Kurdish schools, mosques, wells, churches and other non-residential buildings; arbitrary arrests of captured people in "prohibited areas," otherwise known as their homes; illegal jail terms of alleged rebel sympathizers in conditions of extreme deprivation, which led to the deaths of hundreds of women, children and elderly Kurds; forced displacement of hundreds of thousands of villagers upon destruction of their homes, release

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[164] See thesis page 15 and Buchanan's text pp.64-67, for further information on *Self-Defense*.

[165] Middle East Watch. Genocide in Iraq. p.9.

from prison or return from exile and the destruction of the Kurdish economy and infrastructure.[166]

The Iraqi government occasionally refers to the Kurds as partners in the Iraqi state. "The Kurds and the Arabs are brothers, not because we want this today, but because it is a historical fact. Brotherhood includes rights and status to all the partners."[167] The "shared brotherhood" of the Arabs and the Kurds is expounded upon by officers of the Iraqi government when it benefits their needs. In truth, there is no shared brotherhood between the Kurds and the Arabs, the only thing shared is misery at the hands of the Iraqi government.

> Like Nazi Germany, the Iraqi regime concealed its actions in euphemisms. Where Nazi officials spoke of "executive measures," "special actions," and "resettlement in the east," Ba'athist bureaucrats spoke of "collective measures," "return to the national ranks" and "resettlement in the south." But beneath the euphemisms, Iraq's crimes against the Kurds amount to genocide, the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.[168]

Saddam Hussein's cousin and Iraqi Defense Minister, Ali Hassan al-Majid, described his methods for the promotion of relations between the Arabs and the Kurds, "Yes, I'll look after [the Kurds]. I'll do it by burying them with bulldozers. That's how I'll do it.[169] With approval from Baghdad al-Majid orchestrated the chemical weapons attacks and other forms of mass

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[166] Middle East Watch. Genocide in Iraq. pp.4-5.

[167] Edmund Ghareeb. The Kurdish Question in Iraq. (Syracuse University Press: New York, 1981), p.56.

[168] Middle East Watch. Genocide in Iraq. p.5.

[169] Middle East Watch. Unquiet Graves: The Search for the Disappeared in Iraqi Kurdistan. (Human Rights Watch & Physicians for Human Rights: New York, 1992). opening page, unnumbered.

killings. Even today al-Majid is known to the Kurds as "Ali Anfal" and "Ali Chemical."[170] Based on this common attitude of Iraqi government officials "it is not surprising that, to many Kurds, the Baghdad regime had lost its moral right to rule them."[171]

One of the most heinous and blatant violations of Kurdish rights was the Iraqi use of chemical weapons. In March 1988, the Iraqi regime used chemical weapons against the town of Halabja, killing over 6000 civilians. This outrage is known as the "Kurdish Hiroshima."[172] The Iraqi government's actions of destruction went under the code name Anfal.[173] The operation was carried out in four phases, beginning in February 1988 in the small, remote villages of Sergalou and Bergalou, the stronghold of the Patriotic Union of Kurdistan. The operation ended in September 1988 in the Badinan district, the nerve centre of the Kurdistan Democratic Party. This savage and indiscriminate process took the form of air raids, followed by ground assaults in which towns, villages and agricultural areas were methodically obliterated. As many as 100 000 Kurds died in the chemical attacks in 1988.

> Their deaths did not come out of the heat of battle -- "collateral damage" in the military euphemism. Nor were they acts of abberation by individual commanders whose excesses passed unnoticed, or unpunished by their superiors. Rather, these Kurds were systematically put to death in large numbers on the orders of the central government in Baghdad -- days, sometimes weeks, after

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[170] Middle East Watch. Genocide in Iraq. p.3.

[171] Michael M. Gunter. "A *de facto* Kurdish state in Northern Iraq," Third World Quarterly. vol.14, no.2, 1993, p.296.

[172] Bengio. p.262.

[173] Anfal is an Arabic word meaning "booty taken from infidels in war." The Kurds of Iraq are not "infidels," like the ruling government in Iraq they are Sunni Muslim. Anfal is the title of Surah 8 in the Qur'an. In this context the "Anfal" campaign symbolized a religiously-sanctioned attack against an alien people.

> being rounded-up in villages marked for destruction or else while fleeing from army assaults in "prohibited areas."[174]

Subsequently, secession for the Kurds of Iraq is the only option they have to protect themselves against the genocidal tendencies of the savage Iraqi regime. Buchanan states that secession for the Kurds based on the argument for *Self-Defense* makes for a most compelling case. The Kurds of Iraq will face complete eradication, if secession from their oppressor state does not become a reality.

Rectifying Past Injustice

Kurdistan was annexed into the Iraqi state without consent of the Kurdish people. Kurdistan was unjustly incorporated into the state of Iraq and therefore secession based on Buchanan's argument for *Rectifying Past Injustice* is morally legitimate.

When the British created the state of Iraq, it was their policy to balance the Kurdish and non-Arab population against the dominant Arab government. The Kurds were the British secret weapon that would ensure Arab submission. The threat of Kurdish nationalism, or worse independence, would assure acceptance of British imperial policies through out the Middle East.[175]

Prior to the signing of the Treaty of Lausanne, the British and Turks were squabbling over the vilayet of Mosul. The British needed Mosul and its oil fields in order for Iraq to

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[174] Middle East Watch. Genocide in Iraq. p.xiv.

[175] Robert Olson. "The Kurdish question in the aftermath of the Gulf War: geopolitical and geostrategic changes in the Middle East." Third World Quarterly. vol.13, no.3, (1992), p. 476.
Atarodi. p.276.

become a viable entity. In order to get Mosul, the British must win over the Kurds, in so doing in December 1922, the British and the newly instituted Iraqi government drafted a statement acknowledging "the right of the Kurds who live within the frontiers of Iraq to establish a Government within those frontiers." Iraq received its independence in 1930, the British and Iraqis failed to live up to their agreement. The Kurds revolted in protest and have been in a continuous state of rebellion since then.[176]

> ...everything which has been conceded to the Kurds of Iraq has been won by force. Autonomy and national rights had been officially promised by the League of Nations as far back as 1925, by the Iraqi government and the Mandate Power in 1922, and again in 1925. But the Kurds had to fight for half a century before they gained even a few rights that had been originally recognized as theirs.[177]

The Sevres Treaty states in Article 64 that Kurds would have an independent state within one year of ratification of the treaty. Turkey's refusal to sign the treaty invalidated its content and the treaty has been reduced to no more than historical importance. Therefore, the Kurds have no legitimate claim to independence from Iraq. The counter-argument which is equally valid claims that if the Sevres Treaty is, for all practical purposes, obsolete and irrelevant then other treaties, such as those instituted by the League of Nations which incorporated Kurdistan into Iraq and created the state of Iraq are invalid as well.

> When the allies were expelled from Turkey by Mustufa Kemal, they deserted the Kurds. The revised settlement of the Treaty of Lausanne does not even mention

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[176] Middle East Watch. Human Rights in Iraq. p.72-73.

[177] Chaliand. (ed.), Vanly. p.200.
On a personal note, when I met this Kurdish author and activist at a conference on Kurdish human rights in Washington D.C.in February 1991, he relayed to me the incident of an assassination attempt on him, by Iraqi "diplomats." Under the pretence of bringing him a gift of dates, Mr.Vanly was shot twice in the head by one of the "diplomats," as he made coffee for his guests. He spoke to me with in very slurred speech, the result of the attack.

> them. Britain used all her diplomatic skill, however, to ensure that the Vilayet of Mosul, where oil had been discovered was glued on to her artificial new client state Iraq. But if the Treaty of Sevres could be torn up after three years, the Treaty of Baghdad on January 1926, which determined the fate of the Mosul Kurds without any pretence at consultation, may be consigned to the waste paper basket after 65 years.[178]

The division and annexation of Kurdistan was implemented by military force and in contradiction to the wishes of the Kurdish people. Nowhere in civil, criminal or international law does it state that stolen property belongs to the thief. Once the stolen property is claimed it is returned to the rightful owner. The Kurdish claim to secession is based on illegal territorial annexation; neither Britain, the original thief and third party to the transaction, nor Iraq, the recipient of the hot property, has any valid claim to Kurdish territory. Thus, Kurdish secession is legitimate, from the "bastard state of Iraq."[179]

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[178] Lord Avebury. Staff Document, UK Parliamentary Human Rights Group. (House of Lords: London, 1991).

[179] Atarodi. p.281.

Chapter 6

Self-Determination in International Law

The definition of self-determination within the context of international law is ambiguous. Many minority groups within sovereign states perceive self-determination as a reasonable end to their political struggles. Sovereign states, on the other hand, perceive sovereignty as a legitimate principle in the international system. Thus, sovereign states are dubious about the principle of self-determination.

The United Nations recognizes both the principle of self-determination and the territorial integrity of sovereign states. The dichotomy of the United Nations stance contributes to the tensions between the opposing forces. It is this failure on the part of the United Nations to adopt a clear resolution on the self-determination issue that has resulted in world-wide conflict between national groups and sovereign states.

The purpose of this chapter is to examine and analyze the legal theory of self-determination within the context of international law. The concept of the self will be addressed in order to establish the foundation of the Kurdish claim as a separate and distinct nation. In defense of the Kurdish claim I will present United Nations Charters, Covenants and Resolutions to prove the legitimacy of Kurdish secession from the state of Iraq.

Evolution of Self-Determination

The origins of self-determination has been attributed to a variety of sources, from Greek city-states[180] to the American[181] and French Revolutions[182] to Lenin[183] and Woodrow Wilson[184]. A brief discussion on each derivation follows.

Greek city-states established laws and rights comparable to modern laws of freedom of speech, equality before the law and self-respect. Prior to the demise of the ancient Greek civilization, international laws had not been developed, however the modern concept of self-determination has roots in the intranational legal system of the Greeks.[185]

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[180] Umozurike Oji Umozurike. Self-Determination in International Law. (Shoe String Press: Hamden, 1972) p.4.
James E. Falkowski. "Secessionary Self-Determination: A Jeffersonian Perspective," Boston University International Law Journal. vol.9, (1991), p.212.

[181] Umozurike. ibid. pp. 6-7.
Alfred Cobban. National Self-Determination. (University of Chicago Press: Chicago), 1944, p.4.

[182] A. Rigo Sureda. The Evolution of the Right of Self-Determination. (A.W. Sijthoss: Leiden, 1973), pp.17-18.
Heather A. Wilson. International Law and the Use of Force by National Liberation Movements. (Clarendon Press: Oxford, 1988), p.55-56.
Cobban. ibid. p.4-5.

[183] V.I. Lenin. The Right of Nations to Self-Determination. (International Publishers: New York, 1951), pp.9-17.
Yonah Alexander & Robert A. Friedlander. Self-Determination: National, Regional, and Global Dimensions. (Westview Press: Boulder, 1980), p. 133-144.

[184] Michla Pomerance. "The United States and Self-Determination: Perspectives on the Wilsonian Conception," American Journal of International Law. vol.70, no.1, (1976), pp.1-27. Falkowski. pp.219-224. Cobban. pp.13-15.

[185] Umozurike. p.4.

Colonial American resentment toward the British, particularly due to taxation without representation, manifested itself in the American Revolution and the Declaration of Independence, composed by Thomas Jefferson. Jefferson was influenced by the writings of the political philosopher John Locke who espoused the view that just political societies are based on consent of the people, who then agree to comply with the majority.[186] Jefferson applied Locke's philosophy to the Declaration of Independence which created a foundation for the modern concept of self-determination.[187] The following excerpt from the Declaration of Independence clearly supports the principle of self-determination:

> When in the course of human events, it becomes necessary for one people to dissolve the bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.[188]

The French Revolution proclaimed that government should be based on the will of the people and that the monarch should not maintain complete control. People dissatisfied with their country's government should possess the right of secession in order that they may organize themselves in a just and equal manner.[189] The principle of the Divine Right of Kings was replaced by the Divine Right of the People.

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[186] Umozurike. pp.6-7.

[187] Falkowski. p.212.

[188] William F. Grover & Joseph G. Peschek. Voices of Dissent. (Harper Collins College Publishers: New York, 1993), p.285.

[189] Sureda. p. 17.

> The revolutionary theory that a people had the right to form its own constitution and choose its own government for itself easily passed into the claim that it had the right to decide whether to attach itself to one state or another, or constitute an independent state by itself.... The logical consequence of democratization of the idea of the state by the revolutionaries was the theory of national self-determination.[190]

The Soviet leaders of the October 1917 Revolution acquired a multinational empire, as a consequence the Bolsheviks took the issue of self-determination seriously. Lenin introduced the principle of national self-determination into Bolshevik political policy and since that time self-determination has taken a permanent place in Soviet political ideology.[191]

Lenin believed that Marxism could not avoid the issue of self-determination and that the over-riding objective of every national movement is to work toward the establishment of a national state. Lenin clearly states the Soviet attitude on self-determination when he states:

> Consequently, if we want to learn the meaning of self-determination of nations not by juggling with legal definitions, or "inventing" abstract definitions, but by examining the historical and economic conditions of the national movements, we shall inevitably reach the conclusion that self-determination of nations means the political separation of these nations from alien bodies, the formation of an independent national state.[192]

Woodrow Wilson's vision of self-determination, in spite of his much lauded Fourteen Points and Four Principles, was a response to the Bolshevik agenda and the pragmatics of post-World War One demands.[193]

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[190] Cobban. p.5.

[191] Alexander & Friedlander. p. 134.

[192] Lenin. p.11.

[193] Pomerance. p.2.

President Wilson defended the right of peoples to self-determination, in a familiar quote he indicates that "every people has a right to choose the sovereignty under which they shall live." Furthermore, he states in XII of his Fourteen Points:

> The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured undoubted security of life and an absolutely unmolested opportunity of autonomous development.[194]

The evolution of the concept of self-determination over the millennia has encompassed a progression from the most rudimentary rights of the people within a state to advancement for peoples in the international realm. The principles of self-determination remain open for interpretation between groups striving for rights and groups who aim to maintain the sovereign state status quo.

League of Nations

The League of Nations does not specifically mention self-determination, however, related aspects are discussed.[195] The sacred trust of civilizations ensured that "peoples not yet able to stand by themselves under the strenuous conditions of the modern world" would be held in a sacred trust to protect their well-being and development.[196] The League did recognize an accountability and responsibility for the treatment of people no matter where they were located. Some features of the League of Nations Covenants still retain their historical importance today. The decisions made by the League of Nations still affects some minority groups who struggle

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[194] Umozurike. p.19.

[195] Falkowski. p.220.

[196] Wilson. p.57.

for self-determination. Armenia and Kurdistan were to be placed under the mandate system, however neither of these mandates were instituted and both nations were forgotten.[197] It appears that the League of Nations approach to self-determination was based upon the principle of reward and punishment. The Allies rewarded faithful war time supporters such as the Poles, Czechoslovaks and Yugoslavs by granting them independence. Opponents of the Allies, such as the Turks and the Germans were punished by boundary revisions according to the aims of the Allied powers.[198] Only the states defeated by the Allies were charged with subjugation of their peoples and the application of self-determination never detrimentally affected the Allies.[199]

The United Nations

The right of peoples to self-determination has a prominent place in United Nations Charters and Resolutions. No mention was made of self-determination in UN Charters and Covenants prior to the Assembly's acceptance of the Soviet Union's amendment proposal[200] for Chapter I (2) and Chapter IX(I), which later became Article I(2) and Article 55. The Soviet amendment was composed of the phrase "based on respect for the principle of equal rights and self-determination of peoples."[201]

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[197] Falkowski. p.221.

[198] Sureda. pp.95-97.

[199] Sureda. p.96.
Falkowski. pp. 221-222.

[200] Umozurike. p.44.

[201] Umozurike. p.44

One of the United Nations four objectives is established in Article I(2): "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[202] Article 55 (c) states that the purpose of the United Nations shall create "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[203]

On the recommendation of the Commission on Human Rights in 1952 the Assembly accepted Resolution 545(VI),

> ...to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations. This article shall be drafted in the following terms: `All peoples shall have the right of self-determination', and shall stipulate that States, including those having responsibility for the adminstration of Non-Self-Governing Territories should promote the realization of that right...[204]

In 1967 Resolution 2160(XXI) prohibited the threat or use of force against groups seeking self-determination.

> Any forcible action, direct or indirect, which deprives peoples under foreign domination of their right to self-determination and freedom and independence and of their right to determine freely their political status and peruse their economic, social and cultural development constitutes a violation of the Charter of the United Nations. Accordingly, the use of force to deprive peoples of their natural identity as prohibited by the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their

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[202] A. LeRoy Bennett. International Organizations: Principles and Issues. (Prentice Hall: Englewood, 1988), p.456.

[203] Bennett. ibid. pp.467-468.

[204] Dusan Djonovich. "Resolution 545(VI) - Resolution 421 D (V) of 4 December 1950," United Nations Resolutions, series I, vol.III, 1950-1952, (Oceana Publications: New York, 1973), p.201.

> Independence and Sovereignty contained in General Assembly Resolution 2131(XX), constitutes a violation of their inalienable rights and the principles of nonintervention.[205]

In 1965 the UN Assembly accepted the Declaration on the Inadmissibility of Intervention in Domestic Affairs and Protection of Their Independence and Sovereignty:

> All States shall respect the rights of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for, human rights and fundamental freedoms. Consequently all states shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.[206]

The Declaration on Colonialism drafted by the Afro-Asian States was approved in 1960 and became Resolution 1514(XV). This Resolution greatly enhanced the acceptance of self-determination as a legal right.

> 1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.
>
> 2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely determine their economic, social, and cultural development.
>
> 3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
>
> 4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence and the integrity of their national territory shall be respected.

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[205] Djonovich. "Resolution 2160(XXI), 30 November 1966," United Nations Resolutions. series I, vol.XI, 1966-1968, (Oceana Publications: New York,1975), p.120.

[206] Djonovich. "Resolution 2131(XX), 21 December 1965," United Nations Resolutions. series I, vol.X, 1964-1965, (Oceana Publications: New York, 1974), p.106.

> **7. All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states and respect for the sovereign rights of all peoples and their territorial integrity.[207]**

The concept of self-determination has evolved, mainly over the last fifty years, from an idea, to a principle, to a right, to a recognized international law. The events that influenced the progression were not specifically revolutionary, instead the metamorphosis is a result of changes in the world order. In spite of the confusion over the ambiguous phraseology in international law, a general consensus has been reached globally agreeing that people do have the right to self-determination.

Defining the "Self"

The scholarly controversy over which groups are eligible for self-determination prevails amongst writers and academics. Many scholars believe that the people, the "self," should be defined prior to any rights being awarded. Ivor Jennings oft-quoted statement supplies an illustrative example regarding the lack of scholarly consensus on who receives rights of self-determination. He states "On the surface it seems reasonable; let the people decide. It [is] in fact ridiculous because the people cannot decide until somebody decides who are the people."[208] Therefore it seems that not only can academics not agree on who deserves rights of self-determination, they cannot determine who is the self.

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[207] Djonovich. "Resolution 1514(XV), 14 December 1960," United Nations Resolutions. series I, vol.VIII, 1960-1962, (Oceana Publications: New York, 1974), pp.188-189.

[208] William Ivor Jennings. The Approach to Self-Government. (Cambridge: Cambridge University Press, 1956), p.56.

The political thought related to self-determination is greatly conflictive. Rupert Emmerson believes that

> What emerges beyond dispute is that all peoples do *not* have the right of self-determination: they never had it and they never will have it. The changing content of natural law in the era of decolonization has brought no change in this basic proposition.[209]

Rosalyn Higgins acknowledges that the argument over which groups are deserving of self-determination has not been adequately resolved. She asserts..."that self-determination has developed into an international legal right, and is not an essentially domestic matter. The extent and scope of the right is still open to some debate."[210]

Other scholars question the legitimacy of what criteria defines a people. Margaret Moore claims that "One of the most serious objections raised to the principle of national self-determination is that the concept, in itself, does not tell us who the peoples are that are entitled to self-determination or the jurisdictional unit they are entitled to."[211] Moore contends that the problem is a result of the imposition of objective standards that the groups seeking self-determination must meet in order to be considered a nation.[212]

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[209] Rupert Emmerson. Self-Determination Revisited in the Era of Decolonization. (Center for International Affairs: Harvard, 1964), p.64.

[210] Roslyn Higgins. The Development of International Law Through the Political Organs of the United Nations. (London, 1963), p.103.

[211] Margaret Moore. On National Self-Determination. (Political Study forthcoming, 1996), p.8.

[212] Moore. ibid. p.8.

Yoram Dinstein supports Moore's contention that objective criteria may not present the best or only measure for deciding which peoples constitute a nation. In his essay on self-determination Dinstein contends that

> Peoplehood must be seen as contingent on two separate elements, one objective and the other subjective. The objective element is that there has to exist an ethnic group linked by common history. The strength of the ethnic-historical link is admittedly a matter of contention....there is also a subjective basis of peoplehood.... It is essential to have a present ethos or state of mind. A people is both entitled and required to identify itself as such... There is no place for a *Diktat* from outside in this respect: one people cannot decree that another group is not entitled to peoplehood.[213]

A people in R.S. Bhalla's view is loosely based on an objective norm. The foundation of peoplehood rests on a collective consciousness in which the group involved share an identity, culture and history. It is the essence of peoplehood that the group possess a desire to continue and perpetuate these bonds. These are the elements, according to Bhalla, that constitute a people.[214]

Bhalla's interpretation of a people is similar to the United Nations Report which defines indigenous people as follows

> ...peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies not prevailing in these territories or parts of them...are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[215]

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[213] Alexander & Friedlander (eds.) Yoram Dinstein. 246-247.

[214] William Twining (ed). R.S. Bhalla. "The Right of Self-Determination in International Law." Issues of Self-Determination in International Law. (Aberdeen University Press, 1991), p.99.

[215] Bhalla. p.99.

Daniel Philpott maintains that a subjective criteria is most suitable to define a people. He states that characteristics allocated by external sources to pigeonhole who is a people and who is not are irrelevant. He believes that..."it simply does not matter which traits define a seceding group; we know one when it announces, campaigns, or takes up arms for its dream of self-determination."[216] Philpott contends that the historical origins of a group is not a consideration for establishing the merit of self-determination, rather this scholarly endeavour is best left to academics who are experts in this area.

> Certainly every group that has ever fought for independence or autonomy has shared some trait, usually ethnicity. It is typically a "nation" - that is, a group of people, united by a cultural characteristic - that conceives of itself as a "nation" (the definition is subjective), and aspires to political autonomy. My point is only that neither ethnicity nor any other objective trait should be the criterion of identification.[217]

The controversy over who constitutes a people and merits the rights of self-determination continues. It is commonly accepted today that people who struggle for self-determination are defined as a people by their struggle. External definitions are superfluous. In some cases external definitions are a deliberate attempt to deny a groups rights to self-determination. External definitions, generally, do not work to assist groups in their cause, rather they work to maintain the status quo.

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[216] Daniel Philpott. "In Defense of Self-Determination." Ethics. (University of Chicago Press: Chicago, 1995), p.365.

[217] Philpott. ibid. pp.365-366.

The Claim to Self-Determination

International laws indicate that the Kurds of Iraq possess a clear right, not only to self-determination, but to independent statehood. According to the United Nations Report on defining indigenous people,[218] the Kurds met all the criteria to define them as a nation. They possess a territory on which a historical pre-colonised society flourished. The Kurds definitely consider themselves to be non-Arabs. Despite Iraqi occupation the Kurds have maintained their ethnic identity and wish to live celebrating their own "cultural patterns, social institutions and legal systems."

The Kurds have survived as an intact people for thousands of years, unquestionably the Kurds want future generations to know what it is to be a Kurd. There is no valid dispute; the Kurds are united by territory, history and culture.

Whether a objective definition or subjective definition is implemented, the Kurds are a people. The Iraqi government bears this out most compellingly. The Iraqi strategy of destruction perpetrated against the Kurds proves that this alien people is a thorn in the side of the dominant power group. In order to seize Kurdish territory there are no lengths to which Baghdad would not go to eliminate the Kurds.

At no time in history did the Kurds consent to the incorporation of Kurdistan into Iraq. The Kurds were not allowed to represent their own interests at the talks of the Treaty of Lausanne, the two great champions of the Kurds, the Turks and the British spoke on their behalf. Essentially the Kurds have been held hostage, first by the British and then the Iraqis for the last seventy years.

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[218] See page 83 of this thesis for UN Report definition on indigenous people.

Governments are only legitimate when the people consent to their power. The Universal Declaration of Human Rights "recognizes that the consent of the governed forms the basis of all just government."[219] This means "that the people reserve the inalienable right to alter or abolish any government that does not recognize this right ...."[220] Tyrannical Iraqi governments have ruled the Kurds with an iron fist, without respect for any sort of human rights; therefore the only realistic way for the Kurds to implement their "inalienable right to alter or abolish" unjust governments, given the nature of the Iraqi government oppression, is to secede out of the Iraqi reign of terror.

> Secession has been largely overlooked in international law. U Thant stated that the United Nations "has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State." Similarly, leaders of newly independent states have consistently taken the position that the right of self-determination does not include the right of secession.[221]

A quarter of a century after U Thants' vituperation, a series of secessions have occurred through out the world. New and different ideas on secession are emerging in contemporary political thought. New philosophies challenge U Thants' anti-secessionist pronouncement, as well the UN bias toward sovereign states.

> ...nations should be free, i.e. not oppressed by other nations, empires of polities; and, conversely, that nations should not oppress other nations or establish empires. It does not require all nations to seek independent statehood, but it does require that members of the nation must consent to the form of government under which they live and express themselves, because without such consent

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[219] Falkowski. p.228.

[220] Falkowski. p.228.

[221] Vernon Van Dyke. Human Rights: The United States and the World Community. (New York: Oxford University Press, 1970), p.87.

> they would not be free. Finally, it requires nations to have the presumptive right of secession from existing states....[222]

The argument that secession should become an openly acknowledged right and not the current cloud of confusion is taken a step further by Heraclides who contends that under the UN Friendly Relations Declaration of 1970, assessments for secession can be made on the basis of discrimination. "By following such a line we will also be tapping the realities of the separatist process...."[223]

There are inequities within the principles of the United Nations regarding self-determination. Based on Resolution 1514, people who are under alien subjugation are entitled to self-determination. The Kurds perceive themselves as alien as to Iraqis, yet this alienation is ignored by the United Nations, therefore the resolution is not implemented in the case of the Kurds.

> Why, for example, should a *majority* suffering racist discrimination (blacks in South Africa under apartheid) be entitled to self-determination but not *minorities* in a state who are suffering under racist or discriminatory policies (a much more common phenomenon)? And why are Palestinians the only people living under "alien" rule when there are many national groups which perceives the state as alien to them and hostile to their national identity?[224]

The inequality in application of these principles is clearly evident. There seems to be no valid or just reason for the United Nations to disregard the Kurdish claim to self-determination,

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[222] Brendan O'Leary. Determining Our Selves: On the Norm of National Self-Determination.(Paper presented to the International Political Science Association, Berlin 1994.), p.9.

[223] Alexis Heraclides. "Secession, Self-Determination and Nonintervention: In Quest of Normative Symbiosis," Journal of International Affairs. vol.45, no.2, (1991), pp.411-412.

[224] Moore. p.4

indeed to secession, based in their own principles and the precedent set by the validation of Palestinian self-determination.

Colonialism has been popularly viewed as the only basis for self-determination. It can be persuasively argued that this line of thought is not keeping up with the territorial changes in the world. Yugoslavia and Soviet Union provide forceful examples of why this thought is rapidly becoming out-dated and seriously detrimental to the lives of millions of people through out the world. This colonial principle, which has been the core of UN objections to secession, is outdated because nations are slowly beginning to form independent states regardless of UN principles. It is destructive because civil war and armed struggle may be the only option for oppressed people who must fight for their rights, due to the lack of any kind of consistent employment of UN principles stipulating the right to self-determination.

> International law still manages to convey the impression that the right of secession in pursuit of national self-determination is confined to peoples separated from their rulers' homeland by saltwater, or to people differentiated from their rulers by pigmentation. It sees a distinction between the historical subjugation of an alien population living in a different part of the globe and the historical subjugation of an alien population living on a piece of land abutting that of its oppressors.[225]

Recent territorial changes and the emergence of new states indicate that the colonial ruler argument for self-determination is growing weak; however it still prevails. Not only people under colonial rule, but people subjected to alien rule and discrimination are equally entitled to self-determination, whatever course that may take, under the principles of United Nations. The Kurds are, as has been discussed, ruled by an discriminatory, alien state. They are the victims of internal colonialism and as such have the right to secede.

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[225] O'Leary. p.4.

> It might be politically correct to describe only western powers controlling overseas territories as imperialists, but it is not factually correct: the term "imperialism" can be coherently and persuasively applied to any attempt by one people to dominate politically another people, especially if the later perceives the rule to be hostile to their national identity.[226]

The United Nations may not advocate secession, however there can be no question that the UN does not support human rights violations or genocide either. If sovereign states violate internationally agreed upon principles for just and fair treatment of minority groups within their borders, it naturally follows that minorities will reject the legitimacy of the sovereign state as their rulers. The denial of self-determination leads to genocide. Governments of sovereign states are free to conduct the affairs of the state any way that they choose, participating in gross human rights violations without concern of any reprisal from international bodies. True, there are laws prohibiting human rights abuses, it is also true that these laws are not enforced in any kind of meaningful way.

The blatant human rights violations enacted by the Iraqi government against the Kurds are overlooked by the United Nations. Only through legitimate secession recognized by the UN will the Kurds survive as an intact nation.

> If it was imperative that Kuwait should be freed from alien military occupation, is it not also important to put an end to the unwilling subjection of such other peoples as the Palestinians, the Kurds, the East Timorese, and the Tibetans?[227]

The Kurds under international law have the right to secede from the totalitarian state of Iraq. Claims that secession would destabilize the world order can be refuted by claims that

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[226] Moore. p.4.

[227] Kumar Rupesinghe.(ed.) Conflict Transformation. (St. Martin's Press: New York, 1995), p. 146.

peace would be encouraged by the laws and principles already on the books if they were enforced to protect the rights of all people.

> A long list of other peoples are demanding a right to self-determination. Rather than lump all terrorist activities and liberation struggles together, the validity of such claims could be determined by holding plebiscites. The legitimacy of a claim to self-determination ought to be based upon the will of the people and not the military power of a state to preserve itself. Self-determination is a revolutionary principle. It states that all just government is based on the consent of the governed, and not on the power of a new incarnation of self-determination, the failure of the United Nations to truly universalize the principle can be viewed as one of its greatest failures in promoting human rights. If the United Nations will not learn from the lessons of history, perhaps the next world organization will.[228]

The obligation is on the United Nations to live up to its laws and ensure that all people have the right to self-determination, as stipulated in Articles 1(2) and 55 of its charter. To end the atrocities committed against the Kurds, a genuine self-determination will enable them to control their territory, natural resources, freedoms and political rights. At present the UN is biased toward the sovereign state. It is at least unethical to favour sovereign states when the result is the demise of an entire people. Given the nature of Iraqi policies the Kurds have a legitimate right reject the Iraqi government and form their own independent state.

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[228] Falkowski. pp.239-240.

Conclusion

This thesis has been based on a central theme - secession of Kurdistan from the state of Iraq. Research has been conducted on two specific areas: moral theories of secession and international laws and principles on self-determination. In order to substantially examine these principles, an effort was made to analyze and apply the literature to the Kurdish claim for independent statehood.

The first principle discussed is the moral theory of justice based on Buchanans' argument for secession. Buchanan acknowledges the lack of a universally accepted theory of secession; to assist in filling the void Buchanan establishes a theory for secession based on moral principles. Five of Buchanan's arguments were analyzed to demonstrate that the Kurds possess a legitimate moral claim. In each argument considerable evidence is offered to make the Kurdish secessionist claim more solid and compelling. The application of Buchanan's arguments consistently prove in each case that the Kurds possess a moral right to secede from Iraq.

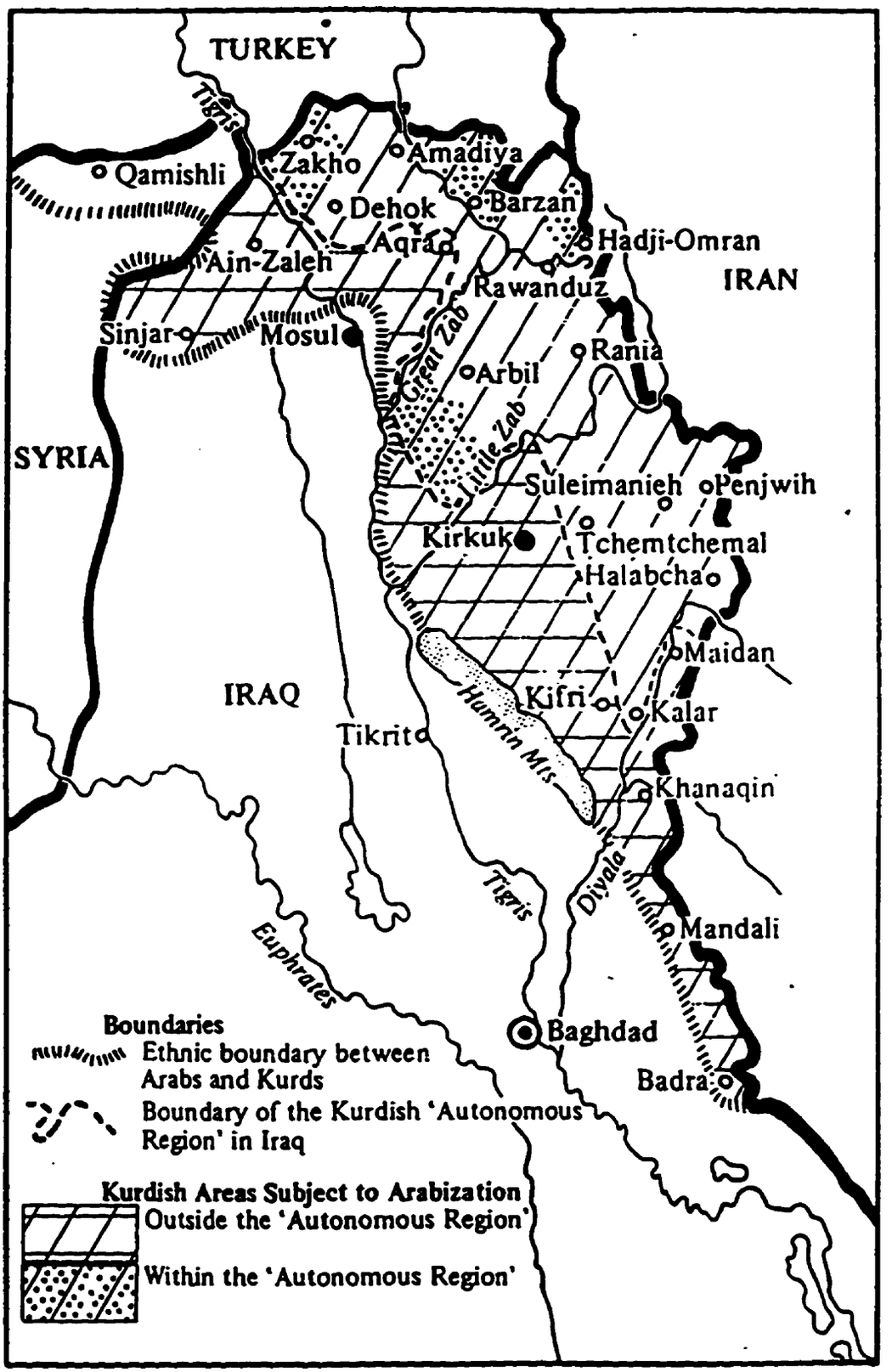
Brilmayer's interpretation of secession based on territorial claims is applied to the Kurdish situation. Brilmayer maintains that secession must be based on a territorial dispute, rather than an active conflict over the rights of a people. The violation of rights and a valid territorial claim work together to legitimize secessionist claims. The evidence gained by applying her principles to the historical perspective of the Kurds establishes a legitimate case for Kurdish secession based on historical grievance.

The second theme presented focuses on international law and the principles of self-determination. In spite of the bias of international law against secessionist movements numerous secessions have occurred. The Kurds like many other minorities have been ignored by international law-making bodies. The anti-secessionist bias should in no way detract from the Kurdish claim to self-determination. The evidence provided in the discussion on international law and the Kurdish quest for an independent state overwhelmingly concludes that neglect and the reticence on the part of international bodies maintains the sovereign state status quo at the expense of the Kurds, a price paid in human life.

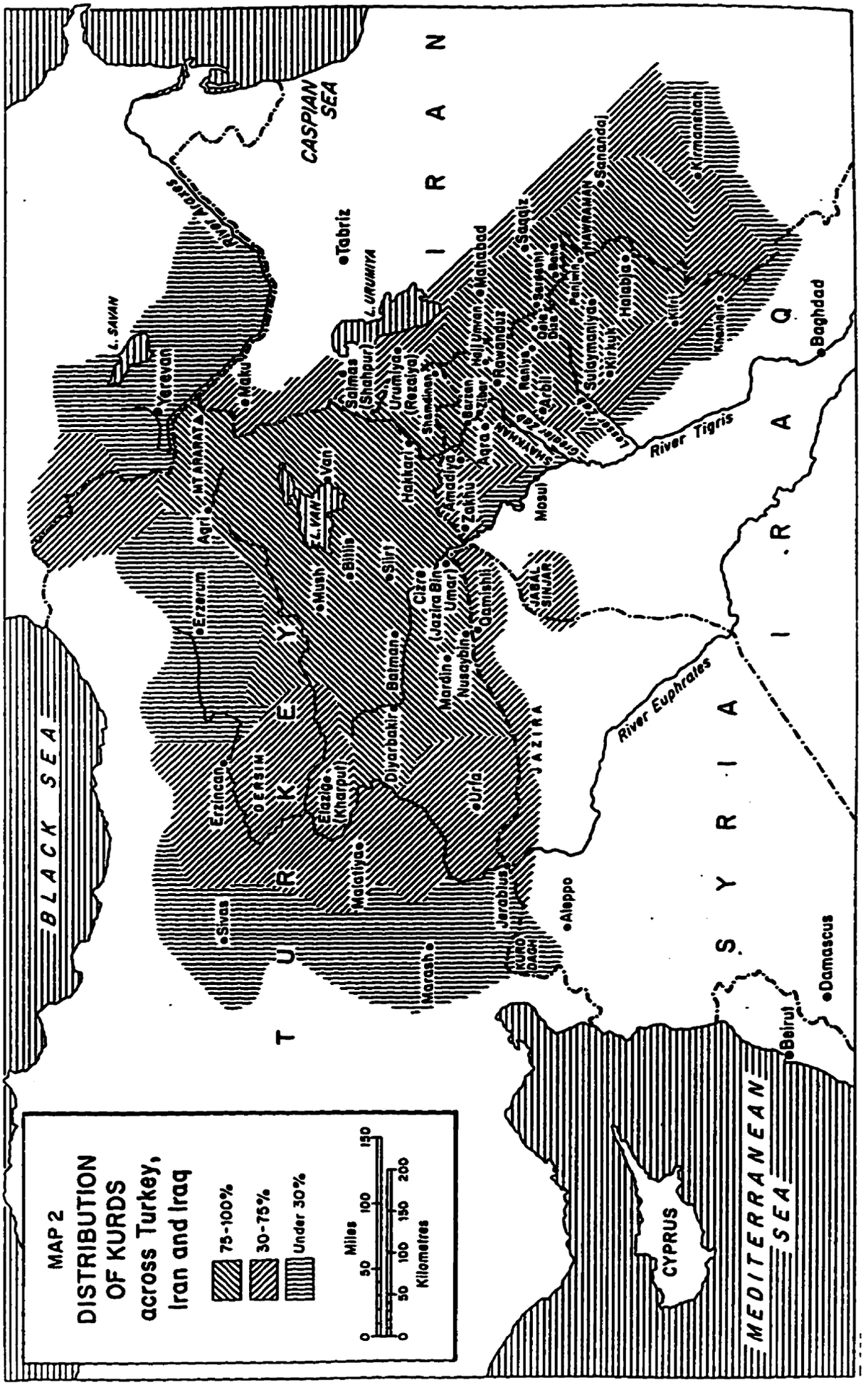
In an effort to demonstrate that the Kurds are a distinct nation occupying their own territory, Kurdish origins and the historical perspective was addressed. These aspects of the thesis prove that the Kurds are subjugated and that external powers such as the Iraqi state and colonial powers are the villains. The Kurds break no laws, they merely seek to reclaim their territory and to choose their destiny by their own free will.

Iraqi state policies implemented against the Kurds are obvious violations of human rights. Given the nature of such crimes, not only moral theory, but legal principles as well support the Kurdish claim to genuine self-determination. The Kurds relentlessly struggle for independent statehood, without support from the champions of democracy and freedom. International laws invoked to protect the rights of self-determination are unenforced. Sovereign states have free rein in the maltreatment of their minority groups. Yet, the Kurds determinedly fight for independence. The burden lies on the United Nations to adhere to their principles; groups like the Kurds can neither be wished away nor crushed into non-existence.

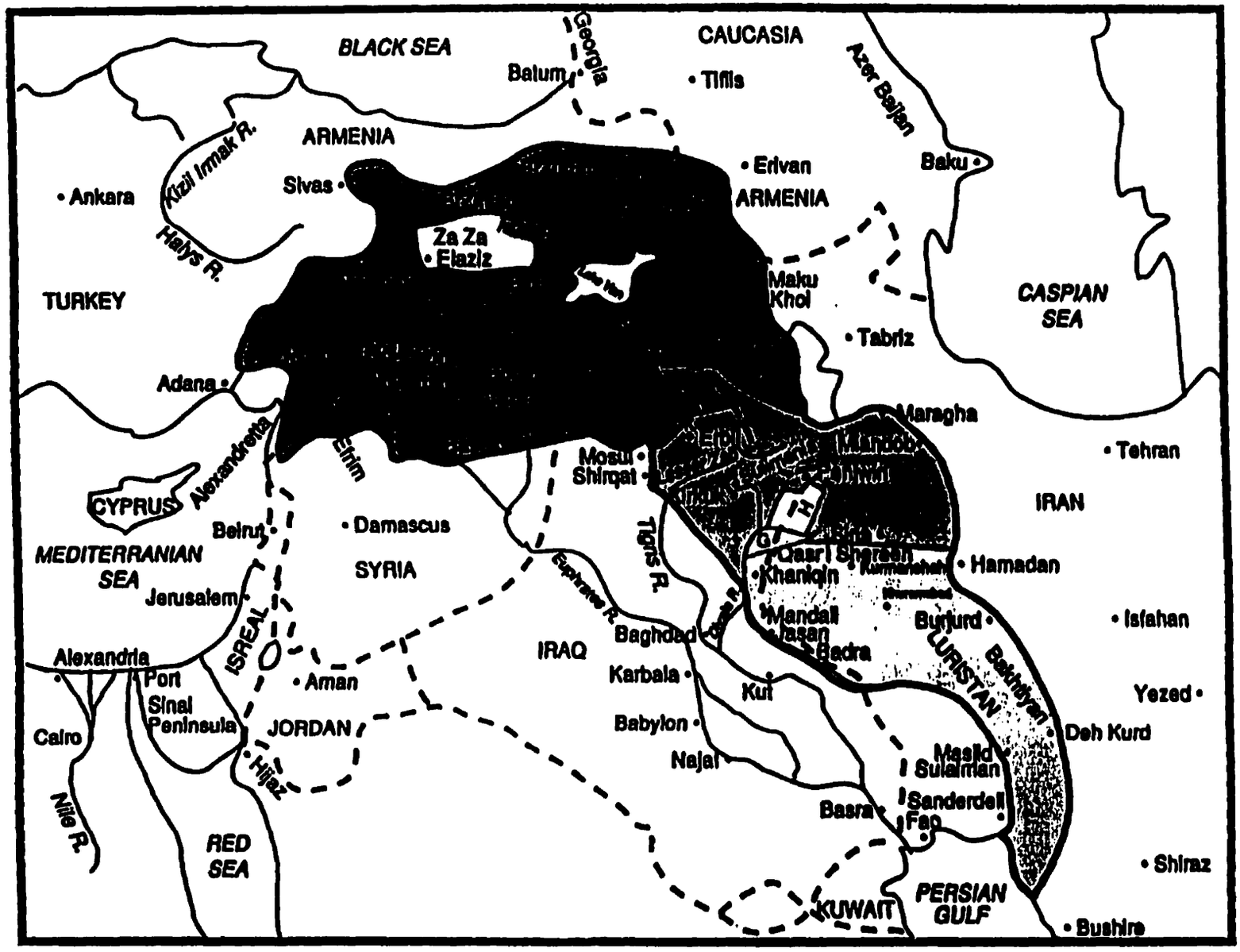
Iraqi Kurdistan



Map 1. Gerard Chaliand. A People Without a Country: The Kurds and Kurdistan. (New York: Olive Branch Press, 1993), p. 141.



Map 2. David McDowell. A Modern History of the Kurds. (New York: I.B. Tauris, 1996), Map 2.



Distribution of the Kurdish Dialects

Major Dialects

- Kurmanji
- Sorani
- Kurmanshahi or Luri

Minor Dialects

- ZaZa, H-Hawrami, G-Gorani.

SCALE = 1:400,000

Map 3. Mustafa Al-Karadaghi. Kurdistan Times. vol. 1, no. 2 (1992), p. 90.

Final Anfal: August 25 - September 6, 1988

Map 4. Middle East Watch. Genocide in Iraq. (New York: Human Rights Watch, 1993), p. 260.

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