CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

ISSN: 2036-5438

Independence in the European Union

by

Francisco Pereira Coutinho[1]

Perspectives on Federalism, Vol. 15, issue 1-2, 2023

Abstract

The dream of "independence in Europe" has been driving the very successful political action of nationalist movements in substate regions such as Catalonia, Flanders, Scotland or the Basque Country. After tracing this *telos* to the federal nature of the European Union, this essay analyses the legal arguments which support the claim to political independence of those regions, first and foremost the right to secede based on the principle of self-determination of peoples. It finishes by discussing the legal paths for the transformation of substate regions into Member States of the European Union within consensual and non-consensual secession processes.

Keywords

Enlargement, Nationalism, Secession, Self-determination, European Union

1. Separatism and European integration

> *(Nations and nationalism are) past its peak. The owl of Minerva which brings wisdom, said Hegel, flies out at dusk. It is a good sign that it is now circling round nations and nationalism.*
>
> Eric Hobsbawm[II]

1.1. It is not a coincidence that Hobsbawm's prophecy is being challenged right at the crib of modern nationalist movements in Western Europe. A referendum held on September 18, 2014, in Scotland, with the consent of the British parliament,[III] saw 44.7% of voters decide in favor of independence.[IV] Veneto's parliament enacted a law that same year to convene a referendum on independence,[V] which was later deemed unconstitutional by the Italian Constitutional Court for breaching the principles of the unity and indivisibility of the State.[VI] The Spanish Constitutional Court repeatably rejected referendum proposals regarding the right to decide of Catalonia and the Basque Country, as well as for Catalonia's right to self-determination, reasoning that the proposals exceeded the regional parliaments' powers that had adopted them.[VII]

The Catalan government (*Generalitat*) went ahead anyway with a referendum on October 1, 2017, which was partly disrupted by police forces dispatched from other Spanish regions by the Madrid central government.[VIII] On October 10, 2017, members of the Catalan government and a majority of deputies in the Catalan parliament, acting as "democratic representatives of Catalonia", signed a declaration proclaiming the establishment of the "Republic of Catalonia as an independent and sovereign State".[IX]

The Spanish State's response to the declaration of independence of Catalonia was swift and incisive. The Spanish Government was authorized by the Senate to dismiss the *Generalitat* and assume direct administration of Catalonia until regional elections could be held.[X] Key political figures of the Catalan independence movement (commonly referred to as the *procés*) who remained in Catalonia were detained and handed prison sentences ranging from 9 to 13 years for the crimes of insurgency and misuse of public funds.[XI] The sentences were later pardoned by a left-wing Spanish Government not surprisingly sustained by a Catalan nationalist party (Esquerra Republicana).[XII] Those who left Catalonia, including Carles Puigdemont, the ousted President of the Catalan government, have not yet been tried due to

the refusal by German, British and Belgian courts to enforce European arrest warrants on various grounds, such as the existence of a serious risk of fundamental rights breach.[XIII]

Nationalism is flourishing in substate regions vested with significant self-governing powers by the Italian Constitution (1948), by the Spanish Constitution (1978), and by the "devolution" carried out by the British parliament, which led to the re-establishment of the Scottish, Welsh, and Northern Irish parliaments, in 1997. This runs straight against the idea that "in regions where the classical aspiration for separate nation-states might be expected to be strong, effective devolution or regionalization ha(d) pre-empted it, or even reversed it".[XIV] Hobsbawm seems to have missed that when mixed with European integration, constitutional decentralization of powers does not neutralize nationalisms, but only fuels them.

1.2. The nation was famously depicted as "an imagined political community".[XV] Although the bulk of the members of a nation don't know each other personally, they subconsciously believe to share common traits – a "common (national) conscience" (Article 39, paragraph 5, of the Ethiopian Constitution) – that differentiate them from other national groups. The nation is also crucially imagined as limited and sovereign. This means that it can only be ideally expressed through the state, which ultimately defines who is a (national) citizen and who is a foreigner. Citizenship is thus the reification of an imagined political community based on a "deep horizontal comradeship" from which stems a fraternity that explains why, over the past centuries, so many people have willingly sacrificed their lives for such limited imaginings.[XVI]

As an ever-evolving social construct – a "cultural product"[XVII] subject to a "daily plebiscite"[XVIII] –, the nation was framed by nationalism through a symbiotic identification with a distinct form of the modern territorial state – the nation-state.

By nationalism I am referring to the political belief that nations are the building blocks of humankind, and that each nation or people – the concepts are intertwined – has the right to self-determination by establishing a state that will be a primary member of the international legal order, and as such can aspire to join the United Nations.

The nation-state is therefore a fusion of the Westphalian concept of state sovereignty (political independence) with the principle of national sovereignty (self-government of the nation), which in turn is based on the principle of popular sovereignty (the people as the

source of political power). The equation state = nation = people is perfectly reflected in Article 1, paragraph 2 ("National sovereignty resides with the Spanish people, from whom the powers of the State derive"), and in Article 2 of the Spanish Constitution ("The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards"). The equation was unsurprisingly the blueprint for the Spanish Constitutional Court's refusal to recognize legal meaning to the reference to the Catalan nation included in the preamble of Catalonia's Statute of Autonomy of 2006. The statute was adopted by the Spanish Parliament and approved by the Catalan people in a referendum.[XIX]

The idea of the nation as a primal and eternal reality, which "exists before everything and is at the origin of everything",[XX] and which stems from "natural" factors such as geographical diversity, race or language, is nothing but a myth:[XXI]

> "In fact, nations, like states, are a contingency, and not a universal necessity. Neither nations nor states exist at all times and in all circumstances. Moreover, nations and states are not the same contingency. [...] The state has certainly emerged without the help of the nation. Some nations have certainly emerged without the blessings of their own state. *It is more debatable whether the normative idea of the nation, in its modern sense, did not presuppose the prior existence of the state*."[XXII]

The modern nation was created by nationalism through the transformation of pre-existing cultures (nationalities) or by the invention of nations *ex nihilo*, often leading to the obliteration of pre-existing cultures.[XXIII] Since the last third of the nineteenth century, nationalism used the State – "(the) human community that (successfully) claims the *monopoly of the legitimate use of physical force*"[XXIV] – to disseminate, primarily through mass public education, a particular version of the nation's history,[XXV] and to instill in the population feelings of belonging and loyalty to the nation-state. These feelings are crucial to the achievement of the ultimate goal of nationalism of having the people regard the nation as the primary form of collective identification, and therefore recognize the primacy of the obligations towards the nation-state over all other public responsibilities, particularly whenever there is an armed conflict that threatens the existence of the nation-state.[XXVI]

Delayed massive public schooling was probably a decisive factor for the late emergence of a shared sense of national identity in countries such as Portugal. Although frequently portraited as one of the oldest nation-states in Europe,[XXVII] Portuguese national identity only came about after the establishment of the Republic in 1910,[XXVIII] thereby justifying the

plausibility of the apocryphal anecdote that recounts how King Luís I of Portugal, while on a yacht trip in the late nineteenth century, after having inquired some fishermen if they were Portuguese, received a puzzling answer: "Us, Portuguese? No, my Lord! We are from Póvoa do Varzim!".[XXIX]

Against the background of the nineteenth and early twentieth centuries experiences of having the state used as the vehicle by which nationalism sociologically constructed and insulated the nation from the effects of historical erosion,[XXX] it is no surprise that the territorial decentralization of competences challenged the unity and the cohesion of European nation-states, particularly when it included ceding powers in the realm of education to substate regions predominantly populated by national minorities.

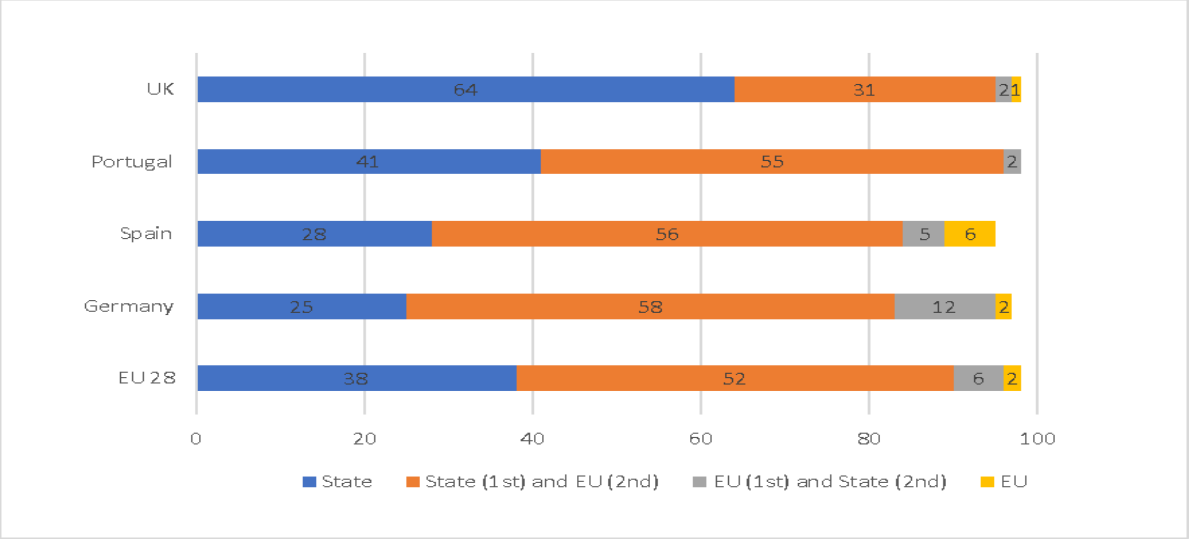
A good example is Spain, where the constitution grants the Autonomous Communities the power to establish "other Spanish languages as official languages" (Article 3, paragraph 2), and wields them authority in the field of education for matters not exclusively within the purview of the State (Article 148, paragraph 2). The Catalan Statute regards Catalan as "a language normally used as a vehicular and learning language in education" (Article 6, paragraph 1), and provides several competences to the *Generalitat* in the field of education, including the exclusive power "to determine the contents of the first cycle of early childhood education" [Article 131, paragraph 2(b)]. The regional competences in the education domain are detailed in Law 12/2009, of July 10. Its preamble describes Catalonia as "a nation with a culture and a language that shape its identity", and expresses the "desire to create a sense among all citizens of Catalonia of identifying with a shared culture, where the Catalan language plays a fundamental role in social integration". The implementation of an educational model of "linguistic immersion" in Catalan was deemed compatible with the Spanish Constitution by the Spanish Constitutional Court, as it did not prevented the attainment of proficiency in Castilian (Spanish) by the end of compulsory schooling.[XXXI]

An even more extreme case can be found in Belgium, where, as per the Flemish nationalist leader Bart de Wever, the ongoing process of decentralization of competences across regions and linguistic communities is making the Belgian nation-state to "be snuffed out slowly, […] like a candle, barely noticed by anyone".[XXXII]

It is rather paradoxical that states which have decentralized very relevant competences in the field of education have refused to transfer those same competences to the European Union. Such a refusal signals an implicit recognition of the importance of education in

preserving national identities.[XXXIII] It is not by chance that the "Erasmus" mobility program, which was established through a regulation adopted under a complementary competence (Article 165 of the Treaty on the Functioning of the European Union (TFEU)), has become one of the European Union's most popular policies, and one that have significantly contributed to the development of an (albeit still nascent) European identity (Chart I).[XXXIV]

Chart I – National Identity in the European Union



Source: Eurobarometer. 83 European Citizenship: Report 1 (2015), 22.

Of the resident population of the European Union in 2015, 2% identified exclusively as European (0% in Portugal and 6% in Spain), and 6% identified primarily as European (2% in Portugal and 12% in Germany). About 52% identified primarily as citizens of a Member State (58% in Germany and 31% in the United Kingdom (UK)), while 38% identified exclusively as citizens of a Member State (64% in the UK and 25% in Germany). Over two decades, the proportion of individuals who exclusively or primarily identify themselves with the European Union has remained unchanged in Germany, increased by 4% in Spain, and decreased by 2% in Portugal and 7% in the United Kingdom.[XXXV]

More than seventy years after the Schuman declaration, the prophecies of federalist and neo-functionalist integration theories have not been met. The expectation was that the deepening of European integration would imply a shift in national citizens' primary loyalty towards the European Union.[XXXVI] That did not happen. Nevertheless, approximately 40

million people, particularly young individuals who were "born in one member state, get their education in another, marry someone from yet another country, and work in multiple locations within the European Union",[XXXVII] identify themselves primarily as Europeans. The Eurobarometer data also suggests that most national citizens have developed a secondary loyalty towards the European Union. The exception was the UK, where 64% of the population identified themselves exclusively as British, and the consequence was – with insight not surprisingly – Brexit.

1.3. Secessionist movements aim at the establishment of a sovereign state from part of the territory and population of another state, while keeping the parent state's political and legal systems intact.[XXXVIII] The growing support they have been amassing in Western Europe was sharply influenced by two strategic choices. Firstly, the call for a civic nationalism,[XXXIX] which advocates for the creation of plural and tolerant national political communities that reject the use of violence as a legitimate mean of political expression.[XL] Secondly, the request for independence and automatic incorporation into a federation of states – the European Union – established by constitutional treaties that impose "a permanent limitation" on the "sovereign rights" of its members.[XLI] In other words, nationalist movements aspire the substate regions they represent to leave political communities in which they have thrived – Catalonia, Scotland, Flanders, the Basque Country, or Veneto are among the most developed regions of their states and even of the European Union itself –, to integrate into a "community of political communities" composed of devitalized states which have relinquished an essential part of their sovereign powers.[XLII]

One such power is arguably monetary policy. In 1992, the French Constitutional Council declared that monetary policy was "vital to the exercise of national sovereignty".[XLIII] France was thus prevented from joining the Economic and Monetary Union established by the Maastricht Treaty.[XLIV] Months later, however, the Constitutional Council made a dramatic U-turn. It stated that it lacked jurisdiction to review legislation adopted by referendum by the French people, considering that the ratification of the Maastricht Treaty represented a "direct expression of national sovereignty".[XLV] This episode illustrates the futility of the German Federal Constitutional Court's attempt to limit the scope of European integration. In the Lisbon Treaty judgment, the Karlsruhe court omitted monetary policy from the list

of domains the German State could not surrender to the European Union, which otherwise included criminal law and the use of force.[XLVI]

If the European Union is instrumental to the resolution of problems of its members, placing theoretical limits on the transfer of competences to the supranational level, except for those concerning the political existence of the states themselves, is useless. The powers of the European Union cannot be determined in abstract. They depend on the evolving needs of the Member States, as the decisions to create the European Stability Mechanism and the European Recovery and Resilience Mechanism during the Euro and pandemic crises clearly demonstrate.[XLVII] The rule of thumb is that Member States will only transfer competences to the Union, including in domains traditionally deemed vital to the exercise of national sovereignty, such as defense, foreign policy or monetary policy, "if, but only if, they have to in the attempt to survive". [XLVIII]

1.4. Why then argue for the exercise of a right to self-determination which ultimately will not lead to the establishment of a full fledge sovereign state? What is the point of discussing secession within a political space without physical borders which was conceived as an antidote to the aggressive ethno-nationalisms that sparked two world wars? And how to explain the paradox emerging from the federal polity created after the war to rescue the European nation-state being after all a catalyst for its demise?

Addressing these questions requires a contextualization of the existential threat European nation-states were facing at the end of the Second World War. Out of the twenty-six nation-states that remained in 1938 as pillars of a continental political order (partly) based on the "principle of nationalities" and supervised by the League of Nations,[XLIX] only six remained at the end of 1940. Three others were annexed, eleven occupied, four partially occupied or annexed, and two converted into satellites.[L]

European integration prevented the collapse of the nation-state, the dominant form of political, social, and economic organization in Europe since the French Revolution. Its origin and epicenter was undoubtedly France. Occupied during the Second World War, France engineered European integration primarily to permanently solve the existential security threat provoked by the establishment of a contiguous German nation-state in the nineteenth century.[LI] European integration also served as an instrument to re-establish itself as a leading power in international relations, by which it could aspire to assume once again the political

and economic leadership of Western Europe.[LII] French strategic initiatives included the creation of the European Coal and Steel Community (ECSC) to turn German coal into European coal (1951), the establishment of the European Defence Community to transform German soldiers into European soldiers (1952), and the adoption of the Maastricht Treaty to Europeanize the German currency (the Deutsche mark) (1992). These ideas were welcomed by Germany which perceived them as conditions for the end of Allied military occupation and its reestablishing as a sovereign state (1955), and to the exercise of the right of self-determination allowing for reunification after the fall of the Berlin Wall (1990).[LIII] For small and medium-sized European states, European integration represented a higher form of national interest as it ensured political independence from larger neighboring states.[LIV] Benelux emerged from the idea that the post-war nation-state should rely on more than just securing classical state functions, such as the physical security and the protection of the fundamental rights and freedoms of its citizens.[LV] It had also to provide for economic security and social protection, as the UK would come to realize during the 1950s,[LVI] which could only be fully attained through a transnational market governed by supranational institutions such as the those established, under Dutch initiative,[LVII] through the Treaty of Rome, in 1957.

There is thus no contradiction between the nation-state and the European Union. This conclusion directly contradicts federalist integration theories which tend to observe national diversity as a historical deviation that prevents the political expression of a common European culture founded on the Greco-Roman heritage and reshaped by the Christian tradition.[LVIII] The identification of European nation-states as historical anomalies is incompatible with the thought of the founding fathers of the European Union,[LIX] but it has been nurtured by supranational political institutions.[LX] The latter have been promoting a nation-building European identity strategy which included supporting the publication of a book that recounts the eschatological story of the moral victory of European unity over the harmful forces of division.[LXI] The consequence of this strategy is the persistent association of European integration with the *telos* of creating a "European superstate" that fuses nations together into a single European *demos*,[LXII] as well as with the cosmopolitan view that it represents the first step towards global peace and the beginning of a historical era characterized by the gradual withering away of the nation-state.[LXIII]

Such a perspective disregards the more plausible explanation according to which European integration is instrumental for building the allegiances that support national political communities.[LXIV] European integration has been pivotal in providing citizens with the high standards of prosperity and physical safety which secured the allegiances necessary to the post-war survival of the European nation-state.[LXV] The federal path was inevitable due to the inability of nation-states to address the internal challenges of the welfare state and the external challenges of globalization. The dialectical tension between federalism – perceived as a political and legal philosophy consistent with political contexts in which the search for unity goes hand in hand with the "genuine respect for the autonomy and legitimate interests of the participant entities"[LXVI] – and national sovereignty is however more apparent than real since "you cannot surrender something you have largely lost".[LXVII]

Brexit illustrates that political unification is not necessarily the end point of European integration.[LXVIII] It also demonstrates that the benefits of formalizing and regulating political and economic interdependencies can be rejected by a direct expression of national sovereignty. The UK left the European Union on January 31, 2020. The UK secession was perhaps the "Machiavellian moment" of European integration,[LXIX] marking the self-reflective moment in which the European Union realized its finite condition and definitively abandoned the founding neo-functionalist mythology, mirrored in the preamble of the Treaty on European Union (TEU), which sets out the irreversibility of the "foundation of an ever closer union among the peoples of Europe".[LXX]

1.5. The European Union is a federation (a federal union) of states. This is a form of political association established to preserve the political existence of its member (the nation-states), but which changes their political status in view of that common purpose.[LXXI-LXXII]

The European Union sets a new stage in the evolution of the European nation-states.[LXXIII] From isolated "nomad states", they were transformed into "sister states" (Member States) by treaties adopted by peoples organized as states. The Treaties establish a plural (federal) constitutional order based on the ideas of dual sovereignty, dual democracy, and dual citizenship.[LXXIV]

The political dualism of a federation is reflected in the belonging of each citizen to two political communities both democratically represented in parliament (national and European). Schütze argues that this dual citizenship presupposes the coexistence of national

demoi with a federal *demos* postulated by the constitution (the citizens of the Union), which gradually emerges as a political community through a dialectical process of collective self-constitution driven by the existence of an institution of collective representation (the European Parliament).[LXXV] As Jürgen Habermas points out:

> "The ethical-political self-understanding of citizens in a democratic community must not be taken as an historical-cultural *a priori* that makes democratic will-formation possible, but rather as the flowing contents of a circulatory process that is generated through the legal institutionalisation of citizens' communication. This is precisely how national identities were formed in modern Europe. Therefore it is to be expected that the political institutions to be created by a European constitution would have an inducing effect. […] (T)he requirement of a common language – English as a second first language – ought not be an insurmountable obstacle with the existing level of formal schooling. *European identity can in any case mean nothing other than unity in national diversity*".[LXXVI]

In fact, the Eurobarometer data shown in Chart I above illustrate the unlikelihood of the European emulation of the United States' nation (state) building, which was tragically beset by a conflict of allegiances that led to a civil war following an attempt at secession.

1.6. The Treaties governing the European Union grant Member States a predominant role in a *demoi*cracy where "the peoples of the Union govern together as many but also as one".[LXXVII] The peoples of the Member States are the "masters of the Treaties", and collectively exercise the amendment procedures set forth in Article 48 TEU.

Reaching member state status naturally became the prime aspiration of European substate nationalisms in the twenty-first century both for economic and political reasons. Upon achieving independence, prosperous substate regions retain the tax revenue they generate. Revenue is typically redistributed through the state budget to poorer regions, in accordance with the principle of national solidarity.[LXXVIII] However, the benefits of secession are frequently overshadowed by the risks of losing unrestricted access to the larger market of the parent state, where richer regions can freely sell goods and services, as well as allocate excess resources and workers.[LXXIX] Such drawbacks are absent if secession does not mean leaving the European Union. In such scenario, prosperous regions maintain access to the parent state's market and to the markets of other Member States. The economic risks usually associated with political independence are mitigated if not eliminated.[LXXX] When compared to federal states, the European Union has very limited financial resources for promoting

economic, social, and territorial cohesion. Budget transfers to poorer regions within the Union remain comparatively modest.[LXXXI]

The idea of "independence in Europe" is equally driven by strong political motivations. By joining the Union, the political existence of substate regions becomes shielded by the federal principle, which provides for the equality of states before the Treaties and the respect of national identities, as expressed in their fundamental political and constitutional structures (Article 4(2) TEU). Membership brings with it veto powers to ordinary treaty amendment procedures and to any further enlargement of the European Union (Articles 48 and 49 TEU), a seat at the tables of the European Council and the Council, the "Medusa-like" institution which plays a decisive role in the Union's most relevant decision-making procedures,[LXXXII] and the right to appoint a Commissioner (Article 244 TFEU) and judges to the Court of Justice of the European Union (Articles 253 and 254 TFEU). The application of the principle of degressive proportionality determines an increase in the number of representatives to the European Parliament elected in the territory of the substate region elevated to the rank of a Member State (Article 14(2) TEU).

Substate regions can only aspire to hold significant sway over the European Union's political system by achieving membership. They currently play a secondary role as members of the Committee of the Regions, where they advise and oversee compliance with the principle of subsidiarity alongside many other local and regional authorities.[LXXXIII] The importance of substate regions vis-à-vis national governments, which represent the Member States in the European Council and in the Council, has only been diminishing over the years with the increase in the transfer of competences to the Union.[LXXXIV] To mitigate this effect, the Lisbon Treaty meddled with the dogma of non-intervention into the Member State's territorial distribution of competences by granting regional parliaments powers to intervene in the early warning mechanism that monitors compliance with the principle of subsidiarity.[LXXXV] But even this institutional innovation was said to open a "Pandora's box"[LXXXVI] which may one day lead to the creation of a "Europe of a hundred flags".[LXXXVII] Secessionist aspirations are further encouraged by the financial resources provided by Brussels to substate regions through cohesion funds.[LXXXVIII] This is rather ironic given that regional policy was originally created in the ECSC to reinforce Belgian national cohesion by rescuing the mining activity in a small region of Wallonia.[LXXXIX]

1.7. "Independence in Europe" gives substate regions such as Scotland,[XC] Catalonia, or Flanders the best of both worlds. On the one hand, full autonomy and increased economic resources at the national (internal) level to develop and carry out policies that reflect their people's desires. On the other hand, political independence and direct representation in the decision-making bodies of the European Union, including veto power, at the supranational (federal) level. It is thus crucial to determine whether this objective, which not surprisingly seems to be a prerequisite for achieving mass popular support for secession,[XCI] is legally sound. I will begin by examining the legal arguments that nationalist movements put forward to achieve political independence for the people they represent, focusing on the right of secession based on the principle of self-determination of peoples (section 2). I will afterwards discuss whether substate regions can transform themselves into Member States of the European Union, by analyzing how European Union constitutional law addresses enlargements stemming from consensual and non-consensual secession processes in the Member States (section 3).

2. Self-determination and secession

Secession is at once the most revolutionary and the most institutionally conservative of political constructs.
Susanna Mancini[XCII]

2.1. The cardinal argument articulated by nationalist movements to justify unilateral secession leading to the creation of a sovereign state is based on the exercise of the right to self-determination of peoples.

Self-determination is one of the "essential principles of contemporary international law".[XCIII] It consists in the right of a people to determine its political status without external interference, and to freely pursue its economic, social and cultural development. States have accordingly the duty to respect the exercise of such a right in accordance with the provisions of the Charter of the United Nations.[XCIV] Self-determination is a collective "fundamental human right",[XCV] and a prerequisite for the effectiveness of individual human rights in general.[XCVI] By no chance it was chosen as the first right listed in the Human Rights International Covenant of 1966.[XCVII]

Self-determination is acknowledged as a peremptory norm of general public international law upholding the right to political independence (right of secession) of peoples living under colonization or foreign domination.[XCVIII] External self-determination (political independence) is recognized to peoples living in certain non-self-governing territories (e.g. Western Sahara),[XCIX] or in occupied territories (e.g. Palestine).[C] The legal nature of self-determination is disputed in other factual circumstances.

The United Nations Charter refers to the principle of self-determination (Articles 1(2) and 55) but does not elaborate on it or explain in what terms it may be exercised. The Declaration on Friendly Relations states that self-determination consists of the acquisition of any political status "freely determined by a people", but it cannot be understood as authorizing or encouraging actions that would undermine the territorial and political unity of sovereign and independent states.[CI] Crucially, self-determination requires the existence of a "government representing the whole people belonging to the territory without distinction of any kind".[CII] This formulation suggests that self-determination has a "broad scope of application"[CIII] that goes well beyond pathological situations of colonization or military occupation.[CIV] It requires vesting a national group with collective rights of political participation, particularly the procedural right to be heard regarding decisions that affect it ("internal self-determination"),[CV] and the recognition to the individuals who belong to the national group of non-discrimination guarantees and the communal enjoyment of rights.[CVI] When there is a severe and systematic violation of these collective and individual rights, self-determination logically implies the (largely hypothetical) recognition of the ultimate right of secession ("external self-determination").[CVII] The state of the art regarding self-determination was brilliantly summarized by the Supreme Court of Canada in the following terms:

> "The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination – a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises *in only* the most extreme of cases and, even then, under carefully defined circumstances […] of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination".[CVIII]

Alongside the principles of the sovereign equality of states, the territorial integrity of states, and the prohibition of interference in the internal affairs of other states, self-determination forms a "Gordian knot at the core of public international law".[CIX] The international community untied such knot by restricting self-determination to an internal constitutional dimension, which is clearly secured in Member States such as Belgium, Spain, or Italy, where the very form of the state has been transformed in the last decades by a process of territorial political decentralization induced, but certainly not imposed, by international law.

2.2. Granting political autonomy to substate regions, regardless of the degree of decentralization of competences associated with it, will hardly be enough to accommodate the aspirations of nationalist movements. This phenomenon, according to Isaiah Berlin, has the following philosophical explanation:

> "(What nations demand is not) a place in a frictionless, organic State devised by the rational lawgiver. What they want […] is simply recognition […] as an independent source of human activity, as an entity with a will of its own, intending to act in accordance with it (whether it is good or legitimate, or not), and not to be ruled, educated, guided, with however light a hand, as being not quite fully human, and therefore not quite fully free."[CX]

It is this concept of freedom that explains the paradoxical preference of a people to be governed by a despot who belongs to their own national group, rather than by a "cautious, just, gentle, and well-meaning administrator from outside".[CXI] It also explains why "self-determination is inextricable from democracy"[CXII] – the "government *of* the people, by the people, for the people".[CXIII] According to the democratic theory of secession, it is this correlation that ultimately justifies granting the population of a substate region the right to freely decide its political status, preferably through a referendum that allows for the choice of political independence. Secession would then be the ultimate result of a majoritarian expression of will by a people.[CXIV]

The admissibility of secession based on the exercise of a (democratic) right to decide was doctrinally inferred from the reasoning of the International Court of Justice's advisory opinion on the unilateral declaration of independence of Kosovo, adopted unanimously on

February 17, 2008, by 109 out of the 120 members of the parliament of Kosovo.[CXV] But even if the court in the Hague declared then that there is no rule of international law prohibiting unilateral declarations of independence, except when connected with the breach of *ius cogens* norms,[CXVI] it also clarified that "it is entirely possible for a particular act – such as a unilateral declaration of independence – not to be in violation of international law without necessarily constituting the exercise of a right conferred by it".[CXVII] It follows that the absence of a breach of international law does not *ipso facto* create any right to ignore or violate the domestic legal order based on a hypothetical right to decide. The *Lotus* principle (*permissum videtur id omne quod non reperitur prohibitum*) does not apply to non-state actors.[CXVIII]

In light of contemporary international law, and in particular the principle of non-interference in the domestic affairs of States, sovereignty protects political autonomy, enabling the state to resist attempts at unilateral secession and prohibiting "premature recognitions" by other states,[CXIX] except when the exercise of sovereign powers grossly breaches fundamental human rights.[CXX] Such violations are obviously absent in the European Union, where Member States are required to ensure high standards of protection of national minorities' political rights.[CXXI]

What is not excluded – and remain implicit from the Kosovo advisory opinion of the International Court of Justice – are the legal consequences stemming from a factual situation (the creation of a sovereign state)[CXXII] not emerging from the exercise of any right recognized by international law. Secession, as a rule, is "neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated internationally".[CXXIII] The principle of effectiveness may theoretically become the legal basis for unilateral secessionist claims in the European Union. However, as the Spanish state muscular reaction to the 2017 Catalonia's unilateral declaration of independence illustrates, it is not likely that a Member State would tacitly consent to the stabilization of the de facto independence of one of its regions. Moreover, it is very unlikely that other States would ever recognize a State created under such circumstances.

No state formed since 1945 outside the colonial context was admitted to the United Nations against the opposition of the state from which it seceded.[CXXIV] Bangladesh entered the United Nations (September 17, 1974) only after having been recognized by Pakistan (February 22, 1974), from which it had unilaterally seceded by exercising the right of remedial

secession.[CXXV] The widespread non-recognition of Somaliland, a substate territory which has enjoyed de facto political independence for decades, is a telling example of the international community's preference for the stability stemming from the respect for national unity and territorial integrity of states, even concerning failed states such as Somalia.[CXXVI] Several of the Member States of the European Union that recognized Kosovo submitted written allegations to the International Court of Justice in which they qualify the Kosovar self-determination as an exceptional case of remedial secession justified by a exceptionally serious violation of human rights.[CXXVII] Non-recognition remains "the minimum of resistance which an insufficiently organized but law-abiding (international) community offers to illegality; it is a continuous challenge to a legal wrong".[CXXVIII]

The democratic will of the people is thus not enough to overcome the principles of state sovereignty and territorial integrity, two pillars of the Westphalian international legal system which are part of the genetic code of contemporary international law.[CXXIX] A legal order based on states and still largely founded on their will cannot recognize a right which would ultimately bring about its own collapse.[CXXX]

2.3. The only viable legal pathway for European Union membership is consensual secession. However, cases in which secession is not taboo, and national groups are recognized a right to secede, are very rare.[CXXXI] This is not surprising given the disruptive effect of secession on the creation of cohesive national political communities that every constitution aspires to achieve. As Cass R. Sunstein points out, constitutionalizing the right to secede:

> "Increase the risks of ethnic and factional struggle; reduce the prospects for compromise and deliberation in government; raise dramatically the stakes of day-to-day political decisions; introduce irrelevant and illegitimate considerations into those decisions; create dangers of blackmail, strategic behavior, and exploitation; and, most generally, endanger the prospects for long-term self-governance".[CXXXII]

The constitutional taboo was broken by the Supreme Court of Canada in the landmark opinion on Quebec's secession from Canada. The Ottawa court declared that "a clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation

would have to recognize".[CXXXIII] Although the Canadian constitution does not provide for the possibility of a province (federated state) to secede, it is not a "straitjacket".[CXXXIV] In light of the articulation between the federal principle and the democratic principle, the "clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession" by the *québécois* requires the federal government and the other provinces of the Canadian federation to negotiate constitutional changes that could eventually lead to Quebec's independence.[CXXXV] Negotiations are an obligation of means and not of result,[CXXXVI] and can naturally fail.[CXXXVII] In such a case, an unilateral declaration of independence by Quebec would breach the constitution.[CXXXVIII] Negotiating in good faith, with a view to accommodating the rights and obligations of "two legitimate majorities", both in Quebec and in Canada, would ultimately provide the legitimacy for the "ultimate acceptance of the result by the international community".[CXXXIX] The violation of the constitutional obligation to negotiate by federal or by other provincial governments could in fact have "important ramifications at the international level", making Quebec, if faced with "unreasonable intransigence", more likely to be recognized by other states after declaring independence.[CXL]

The Supreme Court of Canada introduced a significant normative shift to the traditional approach, embodied in the post-bellum case-law of the Supreme Court of the United States,[CXLI] on how constitutional orders accommodate secessionist claims.[CXLII] The new perspective is based on the idea that demonizing secession, turning it into a constitutional taboo, only fuels separatist claims that undermine national cohesion in multiethnic societies.[CXLIII] It has been implemented in the United Kingdom, making it possible to find a compromise between Westminster (the British parliament) and Holyrood (the Scottish parliament) on calling a referendum on Scottish independence (and on its consequences) in 2014.[CXLIV] It was also taken by the Spanish Constitutional Court when it acknowledged, as a corollary of the democratic principle, that the "right to decide" its political future through a referendum on self-determination claimed by the Basque and Catalan parliaments was a legitimate aspiration which could be pursued through the appropriate constitutional channels.[CXLV] The desire for independence of these substate regions was found not to breach the primacy of the constitution; Spain is not a "«militant democracy»", in which "not only

respect but positive adherence to the legal order and, primarily, to the Constitution, is required".[CXLVI]

The mere procedural possibility of substate peoples, through their representatives, to request a constitutional change of the political status of territories with which they have a particular connection represents the core of the cogent internal dimension of the principle of self-determination. Contrary to what Neil Walker suggests,[CXLVII] I do not find it possible to subsume from the right of those peoples "to be taken seriously" any further obligation of the state to negotiate secession in good faith in terms similar to those required by Canadian constitutional federalism, and even less any obligation to convene a referendum on the independence of the substate regions they inhabit.

In any case, as the decision of the Italian Constitutional Court on Veneto´s independence referendum showcases,[CXLVIII] a more tolerant approach to secession finds its limits in constitutional settings, such as the Portuguese or the Italian, where the unity of the State is listed as an explicit substantial limit of constitutional change.[CXLIX]

3. Secession and incorporation as a Member State of the European Union

Europe should not seem like a Nirvana for that form of irredentist Euro-tribalism which contradicts the deep values and needs of the Union.

Joseph H. H. Weiler[CL]

3.1. The Treaties governing the European Union are silent on the political fate of a region that separates from a Member State. The "independence in Europe" slogan of nationalist movements presupposes a seamlessness transition into membership upon independence. According to the then Vice-President of the Government of Catalonia, Oriol Junqueras: "If a majority of Catalans wants to have a state to better fulfill their needs, Catalonia should become an independent state and automatically a member state of the European Union".[CLI] The acting First Minister of Scotland, Nicola Sturgeon, not surprisingly agreed: "(a newly independent Scotland) would automatically be (a) member of the European Union". This position was not in doubt.[CLII]

Such a hypothesis of an "automatic internal enlargement" was categorically rejected in Brussels:

> "The European Union has been established by the relevant treaties among the Member States. The treaties apply to the Member States. If a part of the territory of a Member State ceases to be a part of that state because that territory becomes a new independent state, the treaties will no longer apply to that territory. In other words, a new independent state would […] become a third country".[CLIII]

Does secession trigger the creation of a third state which must request accession to the European Union following the Article 49 TEU "external" enlargement procedure? Or does it merely imply the establishment of a new member state? And is such an "internal" enlargement automatic, or is it dependent on the approval of treaty amendments in accordance with the Article 48 TEU procedure? And if not automatic, what sort of enlargement criterion must be complied with, and what discretion Member States have in assessing compliance thereto? Can they veto an "internal enlargement" resulting from an agreed (non-unilateral) secession in a Member State?

One thing is certainly beyond doubt. The principle of autonomy requires that any answer to questions related to the admissibility and transformation of substate regions into member states needs to be found within the constitutional order of the European Union.

3.2. In *Van Gend en Loos*, the Court of Justice declared that the Treaty of Rome (Treaty of the European Economic Community) is not only an agreement between States, but also between European peoples.[CLIV] Unlike ordinary international treaties, it established its own legal order which is integrated into the legal system of the Member States.[CLV] The "declaration of independence"[CLVI] of European Union law *vis-á-vis* the authority of the Member States inaugurated a praetorian process of construction of "a municipal legal order of trans-national dimensions",[CLVII] from which rights can be directly invoked by individuals before the judicial and administrative authorities of the Member States,[CLVIII] and in which the Treaties are the «basic constitutional charter».[CLIX]

The constitutional case-law of the Court of Justice mirrors the legal and political nature of the European Union. The Union is neither a state nor an international organization. It is a federation (a federal union) of States governed by constitutional Treaties that establish the principles and values on which the Union is based (Article 2 TEU), recognize citizenship and

fundamental rights (Articles 6 and 9 TEU), and organize the political power of a "Community (Union) based on the rule of law",[CLX] and in the principles of democracy and separation of powers.

The Treaties are also "a part *of the constitution of every Member State*"[CLXI]; they transform the "external" into "internal",[CLXII] establishing an autonomous constitutional order within which the Member States relate to each another and peacefully resolve conflicts through law.[CLXIII]

The federal nature of the Union determines that the question of the incorporation as a member of a state born out of a process of secession in a Member State must be settled within the framework of a multi-level constitutional system, in which the legal systems of the Union and the Member States interact autonomously and interdependently. The incorporation of that State into the Union depends on the process of secession having respected (i) the national identity of the parent Member State, as reflected in its fundamental political and constitutional structures (Article 4(2) TEU), and (ii) the principles and fundamental values of the European Union, which stem from the constitutional traditions common to the Member States and reflect the normative core of European integration (Article 6(3) TEU), setting both the conditions for full membership (Article 7 TEU) and accession to the Union (Article 49 TEU).[CLXIV]

The consensual or non-consensual nature of secession, and particularly the respect for the constitutional order of the parent Member State, are thus decisive factors in determining whether the breakaway substate region can aspire to become a member of the Union.

3.3. The case for remedial secession and the (hypothetical) exercise of the right to external self-determination is a non-starter in the European Union. A substate region of a Member State that unilaterally achieves independence cannot become a member of the Union. The non-consensual (unilateral) nature of secession disrespects the territorial integrity and national identity of the parent Member State (Article 4(2) and Article 6(3) TEU) and breaches the principle of the rule of law (Article 2 TEU).[CLXV]

Against this assertion the argument that the democratic principle (Article 2 TEU) and the protection of European citizenship rights (Article 20 TFEU) require the respect for the will of the European citizens residing in the breakaway substate territory of remaining in the European Union is often raised.[CLXVI] No breach of European Union constitutional law is said to stem from a peaceful and democratic unilateral declaration of independence adopted

after unsuccessful attempts at negotiation with the parent Member State.[CLXVII] The latter's rejection to accept the majoritarian will for independence of Union citizens residing in the substate region is considered to be in itself a violation of the democratic values on which both the Union and the Member States are founded (Article 2 TEU). The refusal to negotiate in such circumstances should even be sanctioned by the Court of Justice through infringement proceedings (Articles 258 and 260 TFEU), and politically by the Member States through the rule of law mechanism (Article 7 TEU).[CLXVIII]

This application of the theory of (liberal) democratic secession to a federation of states is inadmissible. On the one hand, it is implicitly based on a flawed identification of secession as a fundamental right of European citizens,[CLXIX] ignoring the inherent limitations of the derived (secondary) nature of European citizenship (Article 9 TFEU and Article 20(1) TFEU). On the other, it engages on a fallacious interpretation of the democratic principle (Article 2 TEU); it is simply not possible, in purely democratic terms (*i.e.*, a decision taken by majority), to differentiate between the democratic claims of the decision to secede taken by the substate *demos* from the decision to reject that same secession taken by the broader Member State *demos*.[CLXX]

In practice, and unless secession implies the dissolution of the state, the parent Member State will surely obstruct any attempt at membership by preventing the necessary consensus for the amendment of the Treaties that inevitably have to be carried out (Article 48(1) TEU),[CLXXI] or by blocking any application for accession as a third State in the Council (Article 49(1) TEU).[CLXXII] The rump Member State can also expect widespread solidarity across the Union. In December 1991, the Member States pledge to condition state recognition on the respect for the rule of law, democracy, human rights, and minority rights,[CLXXIII] as well as to compliance with the customary rule of international law that prohibits, except in the exceptional case of remedial secession, the recognition of states that have not obtained prior recognition from the parent state.[CLXXIV]

3.4. The legal landscape changes dramatically if secession proceeds in accordance with the constitutional order of the parent Member State. The democratic principle, envisioned in its republican dimension, requires the respect for the popular will expressed by majoritarian decisions adopted in accordance with the appropriate constitutional procedures both in the parent Member State and in the substate region. Horizontal and vertical

obligations of solidarity and sincere cooperation between the European institutions and the Member States will then emerge. They materialize in the duty to negotiate in good faith the possibility of aligning the moment of independence with that of the incorporation of the substate region as a member of the European Union.[CLXXV] This is an obligation of means (and not of result) analogous to the duty to negotiate imposed on federal and provincial governments by the Supreme Court of Canada in the event of an unequivocal democratic decision to secede by the people of Quebec.[CLXXVI]

The institutions of the Union and the governments of the Member States are not obliged to accept any conditions in the negotiations, including those concerning the maintenance of special legal regimes and derogations applicable to the parent Member State.[CLXXVII] But Member States cannot simply refuse, for purely domestic "realpolitik" reasons,[CLXXVIII] the adoption of the legal instrument allowing for the incorporation into the Union of the substate region, provided that the latter is European[CLXXIX], respects the values outlined in Article 2 TEU and is committed to promoting them (Article 49 TEU), and meets the Copenhagen criteria.[CLXXX] Such a refusal would be tantamount to a breach of the principles of democracy, sincere cooperation, tolerance, and solidarity that form the normative backbone of European integration. It would also threaten the objective of promoting the well-being of the peoples of the Union (Article 3(1) TEU), if it implies the population of the substate region losing European citizenship after independence.

This, of course, does not mean that the preservation of European citizenship – the "fundamental status of nationals of the Member States"[CLXXXI] – can be used as an argument to justify the automatic incorporation into the Union of the substate region which intends to secede from a Member State.[CLXXXII] National law may provide for the loss of citizenship of those who voluntarily obtain another nationality.[CLXXXIII] European Union citizenship is a derived citizenship which may be lost if the substate region becomes a third state.[CLXXXIV] Tens millions of British citizens lost European citizenship after the United Kingdom left the European Union on January 31, 2020. From *Rottman*, where the Court of Justice declared that the withdrawal of a Member State's nationality can deprive Union citizens of the enjoyment of rights attached to that status, and therefore must comply with the principle of proportionality concerning the consequences it entails for the person concerned,[CLXXXV] one can only eventually infer (at most) the inadmissibility of an arbitrary mass deprivation of the nationality of the rump Member State.[CLXXXVI]

3.5. Transforming a substate region into a member of the Union does not compromise the membership of the parent state. According to the principle of continuity, the separation of a portion of territory does not, as a rule, impacts on the identity of the rump Member State[CLXXXVII-CLXXXVIII]. France's status in the Union (then Communities) remained unchanged after it ceased to exercise sovereignty over the Saarland, following the integration of the protectorate into Germany, in 1957,[CLXXXIX] and over Algeria, after the unilateral secession of the metropolitan territory based on the exercise of the right to external self-determination, in 1962.

The hypothetical unilateral secession of Flanders raises however thorny issues of state succession. Flanders has the majority of the population and resources of the Belgian state, meeting two of the criteria (the other is territory) that established Russia as the continuing state of the Soviet Union (U.S.S.R.).[CXC] According to the Vienna Convention on Succession of States in Respect of Treaties, which codifies customary international law provisions subsidiarily applicable in federal contexts,[CXCI] the succession of states in international organizations – i.e. "the replacement of one state by another in the responsibility for international relations of [a] territory" (Article 2(1)(b)) – is determined by the "relevant rules" of each international organization (Article 4(1)(a)). In light of the Union's values set forth in Article 2, and particularly the principle of the rule of law, in order to prevent Flanders from expelling Wallonia from the Union, the institutions of the Union and the Member States would have no alternative but to recognize Wallonia as the continuing state of Belgium or, if the latter were to dissolve, its successor state in the Union.[CXCII]

The European Union is an "open federation".[CXCIII] Member States retain international legal personality and the exclusive competence to determine the extent of their national territory (Article 4(1) and (2) and Article 5(2) TEU). The most relevant exercise of this competence happened on October 3, 1990, when the Federal Republic of Germany annexed the *Länder* of the former German Democratic Republic. The annexation was based on a bilateral treaty that provided for the applicability of European Union law to the territory of the former German Democratic Republic.[CXCIV] Member State's territorial changes, if compatible with international law, automatically reconfigure the territory of the European Union,[CXCV] but the same does hold true regarding the decision to withdraw part of their territory from the Union.[CXCVI]

3.6. The nationalist pledge that independence, even after consensual secession, automatically transforms the breakaway substate region into a Member State of the Union is not legally sound. Only in the case of the Member State's dismemberment, it is possible that one of its substate regions, and only one, automatically become a successor state and take the position of that Member State – e. g. Wallonia in the event of Flanders unilaterally seceding and Belgium dissolving. Since it is not possible for the Union "to comprise a greater number of Member States than the number of States between which (it was) established",[CXCVII] the hypothesis of dual succession, and the consequent recognition of two Member States, as a possible result of a Member State's dismemberment, is necessarily excluded.[CXCVIII]

Consensual secession in a Member State will likely trigger an internal (Article 48 TEU) or external (Article 49 TEU) enlargement process. The choice of "the appropriate legal basis of a European Union act has constitutional significance".[CXCIX] It must rest on "objective factors amenable to judicial review, which include in particular the aim and the content of the measure".[CC] Only the ordinary revision procedure provided for in Articles 48(2) to (5) TEU allows for the independence of the breakaway substate region to coincide with its incorporation as a member of the Union.[CCI] The Article 49 TEU accession procedure is the legal path for membership only *after* independence.[CCII] In other words, a treaty amendment is the appropriate legal instrument for the integration of states created from other Member States (internal enlargement), while the accession treaty is solely directed at the incorporation of third countries (external enlargement).

Transforming a substate region into a Member State will never be an easy task. The Treaty amendment procedure is likely to be triggered by the government of the parent Member State (Article 48(2) TEU). Its length will mostly depend on an agreement between the European Council and the European Parliament that avoids convening a constitutional convention, and on a Council's decision to limit the mandate of the intergovernmental conference to incorporating the substate region as a member of the European Union (Article 48(3), para. 2 TEU). During the conference, representatives of the government of the parent Member State, alongside representatives of the breakaway substate region and from governments of other Member States, will negotiate the necessary amendments to the Treaties.

An agreement in the intergovernmental conference is a necessary, albeit not sufficient, requirement to elevate a breakaway substate region to the status of a Member State of the European Union. The expansion of the "constituent base" of a European *demoi*cracy also requires the consent of the peoples of the Members States.[CCIII] The incorporation as a unit of a federal body politic such as the European Union requires the decision to secede based on the right to decide of a substate people to be approved by the people of the parent Member State and by the people of every other Member State.[CCIV]

The dream of "independence in Europe" may thus be ironically defeated by an always unforeseeable manifestation of popular sovereignty. The veto may arise from one of the seven (!) Belgian parliaments, replicating the episode of the "Walloon veto" to the "new generation" free trade agreement adopted between the Union (and its Member States) and Canada, in 2016.[CCV] Given the virulency of Basque and Catalan nationalism, it will likely be exercised by the Spanish parliament. But it could also stem from the French people, which will probably be requested to vote on it in a referendum.[CCVI] It would not be the first time that the fate of an enlargement is made dependent on a sovereign decision of the French people; General Charles de Gaulle's veto to the UK's accession into the European Communities was only overcome in a referendum called by President Georges Pompidou.[CCVII]

4. Conclusion

Small European nations, says Hroch, are born out of a small number of intellectuals' passionate and apolitical interest in studying the language, culture, and history of an oppressed nationality (phase A). A group of patriots take up next the spread of "national consciousness" as their life mission (phase B). Nation-building is complete when the "national idea" achieves broad support among the people whom the patriots (nationalist movements) claim to represent (phase C).[CCVIII]

The transition to phase C appears to be completed in European substate regions such as Catalonia, Scotland, Flanders, or the Basque Country. This was, to a large extent, the result of a perfect storm affecting the national cohesion of some Member States caused by the combined effect of the centrifugal (internal) process of political decentralization and the centripetal (external) process of European integration. The most successful nationalist

movements were not surprisingly those that thrived in constitutional orders that politically decentralized powers, particularly in the field of education, to substate regions that correspond to "historical nationalities" (Article 2 of the Spanish Constitution). The subsequent integration of the State to which they belong into the European Union offered them free access to a cosmopolitan space based on democratic principles and the protection of national minorities (Article 2 TEU). Beyond establishing a new level of political collective identity (including a new citizenship) that has become the focal point for interpreting national identities,[CCIX] the Union eradicated most of the risks associated with political independence, paving the way for the realignment of nationalist sovereign imagination towards the political slogan of "independence in Europe". European integration may have prevented the post-war collapse of European nation-states, but ironically is fueling their dismemberment in the twenty-first century.[CCX]

The federal principle stands out as the ultimate barrier to the fulfillment of the nationalist dream of "independence in Europe". The European Union protects the political existence of its Member States, and thus cannot accept a portion of their territory to be withdrawn from them without consent.[CCXI] There remains the remote possibility of an internal or external enlargement which, apart from being confined to consensual secession processes vertebrated in accordance with national constitutions, ultimately relies on a unanimous expression of will by each of the peoples that compose the European *demoi*cracy.

I Associate Professor at NOVA School of Law (Faculdade de Direito da Universidade Nova de Lisboa). Member of CEDIS – I & D Research Center for Law and Society. This article builds upon Pereira Coutinho, Francisco. Independência na União Europeia (Almedina, 2021), which was translated with the assistance of Rafael Rebelo. All websites accessed on August 1, 2023. The usual disclaimers apply.

II Hobsbawm Eric, 1992, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 2nd Ed. Cambridge University Press, 192.

III The referendum was held in accordance with the Scottish Independence Referendum Act 2013 and the Scottish Independence Referendum (Franchise) Act 2013 adopted under the authority ceded to the Scottish Parliament by the British Crown through the Scotland Act 1998 (Modification of Schedule 5) Order 2013 No. 242, of February 12. This authority was granted following the adoption of the Edinburgh Agreement on October 15, 2013, signed by both the Scottish Government and the UK Government.

IV Piris, Jean-Claude, 2017, 'Political and Legal Aspects of Recent Regional Secessionist Trends in some EU Member States (I)', in C. Closa ed., *Secession from a Member State and Withdrawal from the European Union: Troubled Membership*, 240-264, Cambridge University Press, 73.

V Regional Law 16/2014, June 19, on the convening of a consultative referendum on the independence of Veneto.

VI Italian Constitutional Court, Judgment No. 118/2015, June 25, 7.2.

VII See Judgment No. 103/2008, of September 11, ECLI:ES:TC:2008:103, Judgment No. 32/2015, of February

25, ECLI:ES:TC:2015:32, Judgment No. 138/2015, of July 6, ECLI:ES:TC:2015:138, and Judgment No. 122/2017, of November 16, ECLI:ES:TC:2017:122.

[VIII] Caplan Richard, Vermeer Zachary, 2018, 'The European Union and Unilateral Secession: The Case of Catalonia', 73 *Zeitschrift für öffentliches Recht* 747, 751, and Guidi Mattia, Casula Mattia, 2020, 'The Europeanization of the Catalan Debate: A «War of Attrition»?', in Closa C., Margiotta C., Martinico G. (eds.), *The Amorality of Secession*, 173-192, Routledge, 186-187.

[IX] The complete wording of the declaration of independence can be read at https://www.lavanguardia.com/politica/20171010/431970027817/declaracion-de-independencia-catalunya.html.

[X] Order PRA/1034/2017, of October 27, adopted under Article 155 of the Spanish constitution, which authorizes the adoption of sanctioning measures against an Autonomous Community that fails to fulfil constitutional or legal obligations or that seriously undermines the general interest of the Spanish State.

[XI] Judgment of the Supreme Court of October 14, 2019, case No. 459/2019, ECLI:ES:TS:2019:2997, 488. This was the case of Oriol Junqueras, vice-president of the Catalan government at the time of the declaration of independence. While in detention, Junqueras was unlawfully prevented from taking office as a Member of the European Parliament after the European elections held in May 2019 – see Court of Justice (of the European Union), judgment of December 19, 2019, C-502/19, Oriol Junqueras, ECLI:EU:C:2019:1115, para. 92: "[The] existence of the immunity provided for in the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union entails that the measure of provisional detention imposed on the person who enjoys that immunity must be lifted, in order to allow that person to travel to the European Parliament and complete the necessary formalities there."

[XII] Statement from the Presidency of the Spanish Government, "Concesión de indultos a condenados en el juicio del procés" (June 22, 2021).

[XIII] Sarmiento Daniel, 2018, 'The Strange (German) Case of Mr. Puigdemont's European Arrest Warrant', *Verfblog*; Carrel Severin, 2020, 'Extradition Case against Catalan MEP suspended in Scotland', *The Guardian*; Pinelli Lucas, Weyembergh Anne, 2020, 'La Justice belge refuse de renvoyer un responsible politique Catalan en Espagne: explications sur le mandate d'arrêt européen', *Justice en ligne*; Alba Domingo, 2021, 'Belgium again rejects Spain's extradition demand for Catalan politician Lluís Puig', *El National.cat*. The immunity of several Catalan European Parliament's members (including Puigdemont) against whom European arrest warrants were issued was waived by decisions of the European Parliament adopted on March 9, 2021. The General Court of the Court of Justice of the European Union dismissed on July 5, 2023, actions brought against those decisions and against the refusal of the President of the European Parliament to defend the parliamentary immunity of those parliamentarians (Cases T-115/20 and T-272/21).

[XIV] Hobsbawm Eric J., *Nations and Nationalism*, 187.

[XV] Anderson Benedict, 2006, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Verso, 6.

[XVI] Id., 6-7.

[XVII] Moreira Adriano, 1986, 'Nação', in 4 Polis 492, Verbo, 501.

[XVIII] Renan Ernest, 1882, 'Qu'est ce que c'est une nation? Conference faite en Sorbonne, le 11 mars 1882', 2nd Ed., CL, 27: "The existence of a nation is (…) a daily plebiscite, as much as the existence of an individual is a perpetual affirmation of life."

[XIX] According to Section 12 of Judgment No. 31/2010, of June 28, ECLI:ES:TC:2010:31, the Spanish Constitution solely recognizes the "Spanish Nation, which is referred to at the start of its preamble (Article 2), and in which the Spanish Constitution is based (Article 2), and with which it specifically qualifies sovereignty, which, having been exercised by the Spanish people as its only recognized holder (Article 1, paragraph 2), manifested itself as a constitutive will in the Constitution's provisions". Similarly, the French Constitutional Council declared the legislative reference to the Corsican people as an integrant part of the French people, included in Corsica's statute of territorial unity, unconstitutional (91 Judgment No. 91-290 DC, May 1991, paras. 12 and 13). The French Constitution recognizes "only the French people, comprised of all French citizens", and therefore only the legal concept of "the French people" holds constitutional relevance (ibid.).

[XX] Sieyès Emmanuel Joseph, 1833, 'Qu'est-ce que le Tiers État?', *Chez Alexandre Correard*, 159, for whom nations should be conceived as individuals in the "state of nature", existing only in the "natural order" (id., 164).

[XXI] Gellner Ernest, 1983, *Nations and Nationalism*, Cornell University Press, 8-49, or Hobsbawm Eric, *Nations and Nationalism*, 9 and 14.

[XXII] Gellner Ernest, *Nations and Nationalism*, 6 (italics added).

[xxiii] Id., 48-49.

[xxiv] Weber Max, 1946, *Essays on Sociology*, Oxford University Press, 78 (italics in the original).

[xxv] Hobsbawm Eric, 1962, *Age of Revolutions: 1789-1848*, Vintage Books, 135: "The progress of schools and universities measures that of nationalism, just as schools and especially universities became its most conscious champions".

[xxvi] Id., 9.

[xxvii] Wheeler Douglas L., Opello Jr. Walter C., 2010, *Historical Dictionary of Portugal*, 3rd ed., The Scarecrow Press, 1.

[xxviii] According to Ramos Rui, 1994, *História de Portugal: A segunda fundação (1890-1926) VI*, Editorial Estampa, 420: "In schools, the republicans required the Portuguese to learn more than just to read and write. […] Republican education (as defined by João Barros) ought to be a «patriotic education», a «citizens' course». Its aim was to turn children into fanatics of the motherland, letting them know Portugal and instilling in them «love for the land, the landscape, its products, its noble traditions, its thought, its art»". The "«objectification» of a «collective [national] consciousness», which *republicanization* sought to create", "was the aim of the work of the Republic" (id., 419) (italics in the original).

[xxix] Mattoso José, 1998, *A Identidade Nacional*, Fundação Mário Soares, 14. Póvoa do Varzim was back then a small fisherman's village located north of Porto.

[xxx] Hobsbawm Eric, *Nations and Nationalism*, 96.

[xxxi] Spanish Constitutional Court, Judgment No. 51/2019, of April 11, 5, b)..

[xxxii] Buruma Ian, 2011, 'Le Divorce', in *New Yorker,* 36.

[xxxiii] Garben Sacha, 2010, 'The Bologna Process and the Lisbon Strategy: Commercialisation of Higher Education Through the Back Door?', in 6 *CYELP* 1, 210.

[xxxiv] Eco Umberto, 2012, 'Interview', in *The Guardian* ("Erasmus has created the first generation of young Europeans"), Striebeck Jennifer, 2012, 'A Matter of Belonging and Trust: The Creation of an European Identity through the ERASMUS Programme?', in Feyen B., E. Krzaklewska (eds.), *The ERASMUS Phenomenon: Symbol of a New European Generation?*, 204 ("The Erasmus programme is claimed to be the Communities' best known initiative and has been regarded as a kind of identity programme"), and Feyen Benjamin, Kzaklewska Ewa, 2012, '«Generation ERASMUS»: The New Europeans? A Reflection', in Feyen B., E. Krzaklewska (eds.), *The ERASMUS Phenomenon: Symbol of a New European Generation?*, Peter Lang, 237 ("«The Generation Erasmus» is characterized (…) (by) a (s)upranational identification"). See, however Emmanuel Sigalas' empirical study (Sigalas Emmanuel, 2009, 'Does ERASMUS Student Mobility promote a European Identity?', in 2 *Webpapers on Constitucionalism & Governance beyond the State 1*, University of Hamburg, 19, which concluded that, although Erasmus students substantially improve their language skills and become acquainted with the culture of the host Member States, they do not become "archetypal European citizens with a strong sense of European identity").

[xxxv] European Commission, 1996, 44 'Eurobarometer: Public Opinion in the European Union' 1, 36.

[xxxvi] Van Gerven Walter, 2005, *The European Union: A Polity of States and Peoples*, Stanford University Press, 48: "(I)n the long term, public opinion in Europe is moving in a more internationalist and European direction".

[xxxvii] Fukuyama Francis, 2014, *Identity: The Demand for Dignity and the Politics of Resentment*, Farrar, 118.

[xxxviii] Secession differs from dissolution and expulsion. Dissolution refers to the creation of two or more states from the extinction of single parent state (such as the dissolution of Czechoslovakia, in January 1993), while expulsion involves the coercive removal of part of a state's population and territory by the parent state (as occurred with the expulsion of Singapore by Malaysia, in 1965). Secession can be either consensual (e.g. Montenegro's secession from Serbia and Montenegro, in 2006) or non-consensual (e.g. Bangladesh's secession from Pakistan, in 1971), depending on whether the parent state agreed to it or not.

[xxxix] The division between "civic" and "ethnic" nationalism can be traced back to two key distinctions. The first was made by Meinecke, Friedrich. Cosmopolitanism and the Nation State (Princeton University Press, 1970), 10-18, who differentiated between "cultural nations" and "political nations". Meinecke characterized the former as nations founded primarily on a shared cultural heritage, and the latter as nations emerging primarily from a common political and constitutional history. The second distinction was made by-Kohn Hans, 1946, *The Idea of Nationalism: A Study on its Origins and Background*, MacMillan, 329-331, who identified the Rhine as the geographical boundary between "Eastern nationalisms" and "Western nationalisms". The former are organic and stem from a shared ethno-linguistic origin, while the latter are characterized by their voluntarist and

rationalist nature stemming from a social contract. Ethnic nationalism observes the nation as an original communion of cultural characteristics, such as language, religion, or traditions, whereas civic nationalism views the nation as an open and diverse community of citizens who are "united in patriotic attachment to a shared set of political practices and values." (Ignatieff Michael, 1993, *Blood and Belonging: Journeys into the New Nationalism*, Penguin Canada, 7-8).

[XL] Connolly Christopher K., 2014, 'Independence in Europe: Secession, Sovereignty, and the European Union', in 24 *Duke Journal of Comparative and International Law* 51, 98, and Requejo Ferran, Nagel Klaus-Jürgen, 2017, 'Democracy and Borders: External and Internal Secession in the EU, in 14 *EU Borders Working Paper Series* 1, 1.

[XLI] ECJ, Case C-6/64, *Costa*, 1964 ECR I-00585, 594. Such limitation of "sovereign rights" ceases with secession from the European Union. Article 50 of the TEU allows Member States to regain the competences transferred to the Union after signing an agreement to leave the Union or after a maximum period of two years following notification to the European Council of their intention to leave the Union.

[XLII] According to empirical studies, the extent of European Union law is estimated to fall within the range of 10% to 20% of the law applicable in the Member States (Moravcsik Andrew, 2008, 'The Myth of Europe's «Democratic Deficit»', in 43 *Intereconomics* 331, 333).

[XLIII] Judgment No. 92-308 DC, of April 9, 1992, Treaty on European Union (Maastricht I), para. 43.

[XLIV] Id., para. 44.

[XLV] Judgment No. 92-313 DC, of September 23, 1992, Treaty on European Union (Maastricht II), para. 2

[XLVI] Judgment of June 30, 2009, Treaty of Lisbon, 2 BvE 2/08, para. 252.

[XLVII] See Treaty Establishing the European Stability Mechanism, signed on February 2, 2012 (entered into force on October 27, 2012), and Regulation (EU) 2021/241 of the European Parliament and of the Council of February 12, 2021, establishing the European Recovery and Resilience Mechanism.

[XLVIII] Milward Alan S., 1993, *The European Rescue of the Nation State*, University of California Press, 383. Blanco de Morais Carlos, 2010, 'A Sindicabilidade do Direito da União Europeia pelo Tribunal Constitucional Português', in *Estudos em Homenagem ao Professor Sérvulo Correia* I 221-255, Almedina, 250, considers that the transfer of "sovereign powers" to the European Union cannot "compromise the essential core of the exercise of sovereignty, either internally or externally, in a way that the state power becomes so meaningless that the actual meaning of national independence is reduced to a semantic figure and loses its practical meaning". Such would be the case of European Union regulations that abolish the diplomatic representations of the Member States or that require the extinction of national armed forces, the latter of which was however already outlined in Article 9 of the Treaty on the European Defence Community, signed by the ECSC Member States in Paris on May 27, 1952. The French Senate's refusal to ratify the Treaty on the European Defence Community on August 30, 1954, put an end to the interconnected venture of establishing a European Political Community, and ultimately led to the European Defence Community's collapse. Brexit and, particularly, Putin's aggression against Ukraine in February 2022, revived the Member State's ambition to progressively adopt a common European defence (Article 24(1), 1st paragraph, of the TEU).

[XLIX] The Covenant of the League of Nations was signed on June 28, 1919. This agreement was inspired on President Wilson's fourteen points delivered in his speech to Congress on January 8, 1918, which included the establishment of "clearly recognizable lines of nationality" (point 9) to define European borders, and the creation of a "general association of nations" for the "purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike" (point 14).

[L] Milward Alan S., *The European Rescue of the Nation State,* 3-4.

[LI] See the declaration of May 9, 1950, delivered by Robert Schuman: "In taking upon herself for more than 20 years the role of champion of a united Europe, France has always had as her essential aim the service of peace. A united Europe was not achieved and we had war. Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe *requires* the elimination of the age-old opposition of France and Germany" (italics added).

[LII] This idea is implicit in the prescient speech of Maurice Faure, the then French Secretary of State for Foreign Affairs, during the debate that preceded the ratification of the Treaties of Rome by the French National Assembly: "There are not four great powers; only two, America and Russia. There will be a third at the end of the century, China. The emergence of a fourth, Europe, depends on you" (Débats (July 5, 1957) Journal Officiel de la République Française (June 6, 1957) at 3305).

[LIII] van Middelaar Luuk, 2013, *The Passage to Europe: How a Continent Became a Union*, Yale University Press, 185-

186.

[LIV] Id., 169. From the Portuguese State's perspective, "the ghost of an Iberian Union, which in the nineteenth century filled so many of the brightest Portuguese minds (Almeida Garrett, Oliveira Martins and Antero de Quental), who dreaded it or chose it as an alternative to the inadequacy of the state in the face of the ambitions of its citizens or the changes in the «balance of Europe», has finally disappeared (through European integration). I believe that it will be completely dissipated with the implementation of the political union that the Maastricht Treaty has already envisioned" (Lucas Pires Francisco, 2008, 'A Europa (O que é)', in *A Revolução Europeia: antologia de textos*, Gabinete em Portugal do Parlamento Europeu, 339-340.

[LV] The Treaty establishing the Benelux Economic Union was signed on February 3, 1958, by Belgium, Luxembourg and the Netherlands ((381 *UNTS* 165 (it entered into force on November 1, 1960)).

[LVI] Milward Alan S., *The European Rescue of the Nation State*, 304-373.

[LVII] Id., 162-171, 367.

[LVIII] Id., 4. Populist radical right political parties have been recently pursuing an ethno-nationalist Pan-Europeanism, which observes the European nation as an embodiment of the European culture of the "white race with roots in classical antiquity and Christianity" (Coudenhouve-Karlegy Richard, 1997, *Pan-Europa: Un grande Progetto per l'Europa unita*, Il Cerchio, 27 and 116-117). They view the European Union as a bundle of ethnic communities united by a shared European civilization and reject the cosmopolitan civic Pan-Europeanism that arises from the shared values set out in Article 2 TEU (Fligstein Neil, Polyakova Alina, Sandholz Wayne, 2012, 'European Integration, Nationalism and European identity', 50 *Journal of Common Market Studies* 106, 111-115).

[LIX] Schuman Robert, 2005, *Pour l'Europe 4th Edition*, Nagel, 26: "The European states are a historical reality; it would be psychologically impossible to make them disappear. Their diversity is a boon that we do not want to eliminate."

[LX] van Middelaar Luuk, *The Passage to Europe*, 226-251.

[LXI] The book was harshly criticized for its Soviet-style historiography (id., at 231), and even deemed an attempt to construct the historical pedigree of an "imagined community" (Kitromilides Paschalis M., 1994, 'Reviews. Jean Baptiste Duroselle, Europe: A History of its Peoples (translated by Richard Mayne), London, Viking, 1990', in 24 *European History Quarterly* 123, 123).

[LXII] Duverger Maurice, 1995, *L'Europe dans tout ses États*, PUF, 48.

[LXIII]-Habermas Jürgen, 2012, *The Crisis of the European Union: A Response*, Polity Press, 54 ff.

[LXIV] According to Haas Ernst B., 1968, *The Uniting of Europe: Political, Social and Economic Forces (1950-1957)*, Stanford University Press, 5, a political community exists when "specific groups and individuals show more loyalty to their central political institutions than to any other political authority, in a specific period of lime and in a definable geographic space".

[LXV] Milward, Alan S., *The European Rescue of the Nation State*, 2.

[LXVI] Pescatore Pierre, 1982, 'Foreword', in Sandalow T., Stein E. (eds.), *Courts and Free Markets, Perspectives from the United States and Europe*, I 7-10, Clarendon, ix-x. Federalism is not limited to the political organization of states, as it does not conflate with the federal state, and it can refer to methods of dividing (dual federalism) or sharing power (cooperative federalism), and exhibit either centralizing (integrative federalism) or decentralizing trends (devolutionary federalism) (see also Lenaerts Koen, 2009, 'Constitutionalism and the Many Faces of Federalism', in 38 *The American Journal of Comparative Law* 205, 206-207, or Schütze Robert, 2009, *From Dual to Cooperative Federalism*, Oxford University Press, 4-6).

[LXVII] Giddens Anthony, 2014, *Turbulent and Mighty Continent: What Future for Europe?*, Polity, 10, which adds that "to have any meaning, sovereignty must refer to real control over the affairs of the nation".

[LXVIII] Neo-federalist integration theories thus differ from federalist integration theories as they do not envision the establishment of a federal state-like entity as the ultimate purpose of European integration.

[LXIX] Pocock, J. G. A., 1975, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition,* Princeton University Press.

[LXX] van Middelaar Luuk, 2019, *Alarums & Exclusions: Improvising Politics on the European Stage*, Agenda Publishing, 123.

[LXXI] According to Schmitt Carl, 1992, 'The Constitutional Theory of the Federation', in 91 *Telos* 26, 28, 29, 33 and 55-56, a federation differs from an international organization because the latter lacks "political existence". Consequently, it does not affect the political existence of the state as a whole. The federation should also not

be confused with the state (whether unitary or "federal without a federal foundation"). The state is a "sovereign political unit" representing the political expression of a people's will, and whose specific type and form of political existence is based on that people's exercise of the constituent power. The federal *telos* of permanently uniting states and peoples by establishing a new political unit (the federation) whose purpose is to preserve the political existence of its members is absent from international organizations, which strive at improving cooperation between states without attempting to unite them politically (Beaud Olivier, 2007, *Théorie de la Fédération*, Presses Universitaires de France, 30, 268-272 and 278). The federation is thus characterized by a political dualism – two political entities (the federation and the member states) coexist within the same political space (the federation) – incompatible with the idea of state sovereignty (ibid.). It is a "half-way house" between a nation-state and an intergovernmental organization (Forsyth Murray, 1982, *Unions of States: The Theory and Practice of Confederation*, Leicester University Press, 6 and 16).

[LXXII] The proposition that the European Union is a federation of states finds strong doctrinal support. See Beaud Olivier, 1995, 'Déficit politique ou déficit de la pensée politique?', in 87 *Le Debat* 32, 33 ("The current state of European integration is best described by the concept of federation –the implementation of the political idea of federalism."), Lucas Pires Francisco, 1997, *Introdução ao Direito Constitucional Europeu*, Almedina, 95 ("This option (federation) is more in line with the legal framework (of the Union)."), Dashwood Alan, 2004, 'The Relationship between the Member States and the European Union', in 41 *Common Market Law Review* 355, 356 ("(The European Union) is a federation of sovereign states."), Schönberger Christopher, 2007, 'European Citizenship as Federal Citizenship: Some Citizenship Lessons of Comparative Federalism', in 19 *Europe Review of Public Law 61*, 64 ("The European Union is uniquely European in the same sense that other federalisms are uniquely American, German or Swiss. It is not less a federal Union for that uniqueness."), Schütze Robert, 2009, 'On «Federal» Ground: the European Union as an (Inter)national Phenomenon', in 46 *Common Market Law Review* 1069, 1105 ("The European Union is a federation of states"), Constantinesco Vlad, 2010/1, 'Le fédéralisme? D'un anti-étatisme à un a-étatisme?', 355 L'Europe en Formation 41, 51 ("The European Union (is) the political entity that most closely resembles a federation"), Habermas Jürgen, *The Crisis of the European Union*, 13 ("(The European Union is a federation beyond the nation state"), von Bogdandy Armin, 2012, 'Neither an International Organization nor a Nation State: The European Union as a Supranational Federation', in Jones E., Menon A., Weatherill S. (eds.), *The Oxford Handbook of the European Union* 761-776, Oxford University Press, 761 ("The European Union (…) is a supranational federation"), Nicolaïdis Kalypso, 2014, 'We, the Peoples of Europe', in 83 *Foreign Affairs* 97, 102 ("The European Union is a federal union"), or Rehling Larsen Signe, 2021, *The Constitutional Theory of the Federation and the European Union*, Oxford University Press, vii ("(T)he constitutional nature of the European Union, shrouded with mystery in the literature, is that of a federation").

[LXXIII] Bickerton Chris J., 2012, *European Integration: From Nation-States to Member States*, Oxford University Press.

[LXXIV] Schütze Robert, 2020/8, 'Models of Demoicracy: Some Preliminary Thought', in *EUI Working Papers*, 44-45.

[LXXV] Id., 23 and 44. The advent of a federal (European) *demos* was implicitly admitted by the German Federal Constitutional Court in its judgment on the Maastricht Treaty of October 12, 1993, 2 BvR 2134/92, 2 BvR 2159/92, 2, b1), when it declared that the citizenship of the Union, "although not characterized by an intensity comparable to that which follows from common membership in a single state", it "does lend legally binding expression to that level of existential community *which already exists*" (italics added).

[LXXVI] Habermas Jürgen, 1995, 'Remarks on Dieter Grimm's «Does Europe Need a Constitution?»', in 1 *European Law Review*, 303, 306-307 (italics added).

[LXXVII] Schütze Robert, 'Models of Demoicracy: Some Preliminary Thoughts', 50.

[LXXVIII] Vaubel Roland, 2013, 'Secession in the European Union', in 33 *Economic Affairs* 288, 292: "In the majority of cases, the seceding region has a higher per capita income than the rest of the country. This is no coincidence. The most prosperous regions are net contributors. They subsidise the other regions through the tax–transfer system. Thus, they develop a strong interest in secession.". González Richard, Clotet Jaume, 2012, 'Spanish Prisoners', in *New York Times*, describe the financial relationship between the Spanish substate regions of Catalonia and Madrid as "fiscal looting". In Scotland, exclusive control of oil resources in the North Sea is a key argument of independence movements, while in Flanders separatists have grown as the disparity between the Flemish and Walloon economies widened (Connolly Christopher K., 'Independence in Europe: Secession, Sovereignty, and the European Union', 60 and 64).

[LXXIX] Horowitz Donald. L., 2000, *Ethnic Groups in Conflict* 2nd Edition, University of California Press, 250-251, and Connolly Christopher K., 'Independence in Europe: Secession, Sovereignty, and the European Union', 94.

[LXXX] Bongardt Annette, Torres Francisco, 2017, 'On States, Regions and European Integration – Editorial', in 52 *Intereconomics* 326, 326-327.

[LXXXI] The European Union budget amounts to around 1% of Member States' GDP, which contrasts with the 17% of the federal government of the United States of America (D'Apice Pasquale, 2016, 'Budget-related cross-border flows: EU versus US', VOX).

[LXXXII] Weiler Joseph H. H., 2001, 'Federalism without Constitutionalism: Europe's *Sonderweg*', in Nicolaïdis K., Howse. R. (eds.), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* 54-71, Oxford University Press, 55.

[LXXXIII] Article 300(1) and (3) of the TFEU, Article 6, para. 1, and Article 8, paragraph 1, of the Protocol 2 on the application of the principles of subsidiarity and proportionality.

[LXXXIV] de Witte, Bruno, 1991-1992, 'Community Law and National Constitutional Values', in 18 *Legal Issues of Economic Integration* 1, 13.

[LXXXV] Article 6 of Protocol 2 on the application of the principles of subsidiarity and proportionality.

[LXXXVI] Fasone Cristina, 2017, 'Secession and the Ambiguous Place of Regions Under EU Law', in Closa C. (ed.), *Secession from a Member State and Withdrawal from the European Union: Troubled Membership* 48-68, Cambridge University Press, 59-60.

[LXXXVII] Fouéré Yann, 1968, *L'Europe aux cent drapeaux: essay pour server à la construction de l'Europe*, Presses d'Europe.

[LXXXVIII] van Middelaar Luuk, *The Passage to Europe*, 265, or Walker Neil, 2017, 'Internal Enlargement in the European Union', in Closa C. (ed.), *Secession and Withdrawal from the EU: Troubled Membership* 32-47, Cambridge University Press, 40.

[LXXXIX] Milward, Alan S., *The European Rescue of the Nation State*, 100-101.

[XC] "Independence in Europe" has been a political slogan used by the Scottish National Party on numerous occasions since the latter part of the 1980s.

(Gowland David, 2017, *Britain and the European Union*, Routledge, 188).

[XCI] Guirao Fernando, 2015, 'An Independent Catalonia as a Member State of the European Union', in Cuadras-Morató X. (ed.), *Catalonia: A New Independent State in Europe? A Debate on Secession Within the European Union*, 189-223, Routledge, 190.

[XCII] Mancini Susanna, 2012, 'Secession and Self-Determination', in Rosenfeld M., Sajó A. (eds.), *The Oxford Handbook of Comparative Constitutional Law* 481-500, Oxford University Press, 2012), 481.

[XCIII] International Court of Justice, Judgment of June 30, 1995, East Timor (Portugal v. Australia), 1995 I.C.J. Collected Documents 90, para. 29.

[XCIV] Principle 5 ("Equal Rights and Self-determination of Peoples"), para. 1, of the United Nations General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations ("Declaration on Friendly Relations") of October 24, 1970. Adopted by consensus, this resolution is an expression of *opinio juris* thereby reflecting customary international law (Blanco de Morais Carlos, 1998, *A Autodeterminação dos Povos no Direito Internacional Público: o caso do estatuto jurídico do enclave de Cabinda*, Universidade Lusíada Editora, 174-183).

[XCV] International Court of Justice, Advisory Opinion of February 25, 2019, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, 2019 I.C.J. Collected Documents 95, para. 144.

[XCVI] Para. 1 of UN General Assembly Resolution 73/160, Universal Realization of the Right of Peoples to Self-Determination, December 17, 2018: "Reaffirms that the universal realization of the right of all peoples [...] to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights".

[XCVII]Article 1(1) of the International Covenant on Civil and Political Rights, 999 UNTS 171 (entered into force March 23, 1976), and the International Covenant on Economic, Social and Cultural Rights, 999 UNTS 3 (entered into force January 3, 1976), adopted by the United Nations General Assembly on December 23, 1966: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

[XCVIII] The *jus cogens* nature of self-determination is widely recognized by legal doctrine (e. g. Cassese Antonio, 1995, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 140; Blanco de Morais Carlos, *A Autodeterminação dos Povos no Direito Internacional Público*, 283; Brito Wladimir, 2014, *Direito Internacional Público* 2nd Ed, Coimbra Editora, 220; Maia Catherine, Kolb Robert, 2016, *O Estatuto Internacional da Província Angolana*

de Cabinda à Luz do Direito Internacional Público, Almedina, 118; or Escudero Espinosa, Juan Francisco, 2017, *Self-Determination and Humanitarian Secession in Internacional Law of a Globalized World: Kosovo v. Crimea*, Springer, 28) and by international entities (e. g. International Law Commission, 1996, *Yearbook of the International Law Commission II*, United Nations, 248, and 2022, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)*, United Nations, Annex, h), 6; Arbitration Commission of the European Conference on Yugoslavia ('Badinter Arbitration Committee'), 1991, Opinion No. 1 of November 29, para. 1(e); or United Nations Human Rights Committee, 1994, CCPR General Comment No. 24 of November 4, para. 8). There is also broad consensus regarding the imperative nature of the corollary right to political emancipation of colonized peoples and, for similar reasons, of peoples under foreign occupation or domination. This consensus perdures at least since the adoption of the United Nations General Assembly Resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, on December 14, 1960, which called on administering powers of trust territories or non-self-governing territories to transfer all powers to the respective peoples in accordance with their will and desires, without distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom (id., para. 5). However, the concurrent application of the *uti possidetis* principle meant that the "people" entitled to self-determination had to be identified with the (multi-ethnic) population of the territory under colonial administration, whose territorial integrity had to be preserved against any attempt at disruption arising from "fratricidal struggles" (id., para. 6; and International Court of Justice, Judgment of December 22, 1986, Border Dispute (Burkina Faso v. Mali), 1986 I.C.J. Rep. 554, para. 20).

[XCIX] Pereira Coutinho Francisco, 2019, 'You Can't Have Your Cake and Eat it Too: Portugal and the Self-determination of Western Sahara', in 5 *UNIO – EU Law Journal* 103, 109-110.

[C] International Court of Justice, Advisory Opinion of July 9, 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. Collected Documents 136, para. 122: "[The] construction [of a Wall] [...] severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right".

[CI] Principle 5 (Equality of Rights and Self-determination of Peoples), paras. 4 and 7 of the United Nations General Assembly Resolution 2625 (XXV).

[CII] Declaration on the occasion of the Fiftieth Anniversary of the United Nations, adopted by United Nations General Assembly Resolution No. 50/6 of November 9, 1995, para. 1, which reproduces the main thrust of para. 7 of principle 5 of the Declaration on Friendly Relations.

[CIII] International Court of Justice, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, para. 144.

[CIV] According to principle VIII of the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, included in the Final Act of the Conference on Security and Co-operation in Europe, signed in Helsinki on August 1, 1975, the principle of self-determination recognizes the right of peoples to determine "*their internal and external political status*, without external interference, and to pursue as they wish their political, economic, social and cultural development", in conformity with "the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to the territorial integrity of States" (italics added).

[CV] Klabbers Jan, 2006, 'The Right to be Taken Seriously: Self-Determination in International Law', in 28 *Human Rights Quarterly* 186, 189. The possibility of (internal) self-determination supporting also substantive rights claims cannot be excluded, as demonstrated by the judgment of the African Court on Human and Peoples' Rights of May 27, 2017, Complaint No. 006/2012, African Commission on Human and Peoples' Rights v. Republic of Kenya, para. 201, that recognized the right of access to traditional food resources to an indigenous people. By evicting the Ogiek people from their ancestral lands in the Mau forest, Kenya was found to have breached Article 21(1) of the African Charter on Human and Peoples' Rights, adopted on June 26, 1981, 1520 UNTS 217 (entered into force on October 21, 1986), which provides for the right of "peoples to freely dispose of their wealth and natural resources". The Arusha court broadly interpreted the concept of "people" for the purpose of applying rights provided for in the Banjul Charter – in which it is not included the right to secede – encompassing within its scope "ethnic groups and substate communities" that are part of the population of the States Parties (id., paras. 198-199).

[CVI] The subsistence of the people (nation) depends on an identity-sharing that forbids the deprivation (of the individuals who belong to it) of the right to, "in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language" (Article 27 of the

International Covenant on Civil and Political Rights). The exercise of these rights presupposes the legal recognition of the existence of the national group. That is why international legal frameworks related to the protection of national minorities (e.g., the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly Resolution No. 47/135 of December 18, 1992, or the Council of Europe Framework Convention for the Protection of National Minorities, ETS 157, signed on February 1, 1995 (entered into force on February 1, 1998)), and to the protection of indigenous peoples (e.g., the United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution No. 61/295 on September 13, 2007) are expressions of the right to internal self-determination of peoples, covering between 12,000 and 14,000 groups globally, and around 1.5 billion people (Alfredsson Gudmundur, 2005, 'Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law', in Ghanea N., A. Xanthaki A., *Minorities, Peoples and Self-Determination*, Martinus Nijhoff Publishers, 164). See also Barten Ulrike, 2015, *Minorities, Minority Rights and Internal Self-Determination*, Springer, 211-214, and Azeredo Lopes José Alberto, 2020, 'Direito de Autodeterminação dos Povos', in Azeredo Lopes, J. A. (ed.), *Regimes Jurídicos Internacionais I*, Universidade Católica Editora Porto, 585-608.

[CVII] The so-called remedial secession theory is admitted as a measure of last resort whenever very serious and systematic violations of internal self-determination occur – for example, the attempt to destroy a national group qualified as a crime of genocide by Article 6 of the Rome Statute of the International Criminal Court, signed on July 17, 1998, 2187 UNTS 3 (entered into force on July 1, 2002) – making it impossible for a national minority, majoritarian in a part of the State's territory, to coexist politically with their oppressors within the same state (Cassese Antonio, *Self-Determination of Peoples,* 118, Raič David, 2002, *Statehood and the Law of Self-Determination*, Kluwer, 312-313; Tomuschat Christian, 2006, 'Secession and Self-Determination«, in M. Kohen (ed.), *Secession: International Perspectives*, Cambridge University Press, 38-42; Machado Jónatas E. M., 2013, *Direito Internacional* 4th Ed., Coimbra Editora, 298-299; or Azeredo Lopes José Alberto, *Direito de Autodeterminação dos Povos*, 625-628). However, there is no lack of scholars who reject the admissibility of remedial secession in international law (Kohen Marcelo, 2006, 'Introduction', in M. Kohen (ed.), *Secession: International Perspectives*, Cambridge University Press, 10; Maia Catherine, Kolb Robert, *O Estatuto Internacional da Província Angolana de Cabinda à Luz do Direito Internacional Público*, 134 and 155-156; Del Mal Katherine, 2013, 'The Myth of Remedial Secession', in *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, D. French (ed.) Cambridge University Press, 79-108; Medina Ortega Manuel, 2014, *El derecho de secesión en la Unión Europea*, Marcial Pons, 207; Hilpold Peter, 2017, 'Self-determination and Autonomy: Between Secession and Internal Self-Determination', in 4 *International Journal on Minority and Group Rights* 302, 317-326; or Escudero Espinosa Juan Francisco, *Self-Determination and Humanitarian Secession in International Law of a Globalized World*, 165-166). The idea that when a "state lacks either the will or the power to enact and apply just and effective guarantees" to national minorities ("internal self-determination"), unilateral secession ("external self-determination") emerges "as an altogether exceptional solution, a last resort" against oppression, was mentioned as early as in the Report submitted to the Council of the League of Nations by the Committee of Rapporteurs on the Question of the Åland Islands on April 16, 1921 (League of Nations Doc. B7/21/68/106, 28 ("Report on the Åland Islands").

[CVIII] Supreme Court of Canada, opinion of August 20, 1998, Case No. 25506, Secession of Quebec, (1998) SCR 217, paras. 126 and 138 (italics added). The Supreme Court of Canada considered also "clear" that the concept of "people" for the purposes of self-determination can only logically include a portion of the population of an existing state (id., para. 124).

[CIX] Borgen Christopher J., 2009, in 'Imagining Sovereignty, Managing Secession: The Legal Geography of Eurasia's «Frozen Conflicts»', 9 *Oregon Review of International Law* 477, 477.

[CX] Berlin Isaiah, 2002, 'Two Concepts of Liberty', in *Liberty*, H. Hardy (ed.), Oxford University Press, 202-203.

[CXI] Id., p. 204.

[CXII] Philpott Daniel, 1995, 'In Defense of Self-Determination', in 102 *Ethics* 352, 353.

[CXIII]Lincoln Abraham, 2009, 'The Gettysburg Address', in *Abraham Lincoln: Quotes, Quips, and Speeches*, Leidner, G. (ed.), Cumberland House, 128 (italics added).

[CXIV] See, for example, Beran Harry, 1998, 'A Democratic Theory of Political Self-Determination for a New World Order, in *Theories of Secession* 32-59, Lehning, P. (ed.), Routledge, who, however, does not recognize a right to secede when its exercise is immoral (e.g., whenever it does not respect the rights of minorities) or when it is impractical (e.g., whenever it leads to the creation of a failed state) (Beran Harry, 1984, 'A Liberal Theory of Secession', in XXXII *Political Studies* 32, 30-31, or Philpott Daniel, 'In Defense of Self-Determination', 352-385, and Philpott Daniel, 1998, 'Self-Determination in Practice', in *National Self-Determination and Secession* 79-

102, Moore M. (ed.), Oxford University Press), who restricts the recognition of external self-determination to national groups which are at least as liberal, democratic, and protective of minorities as the states they intend to leave.

[CXV] López Jaume, 2015, 'A Right to Decide? On the Normative Basis of a Political Principle and its Application in the Catalan Case', in Nagel K., Rixen S. (ed.), *Catalonia in Spain and Europe: Is There a Way to Independence?* 27-40, Nomos, 37-40, Levrat Nicolas et al.., 2017, *Catalonia's Legitimate Right to Decide: Paths to Self-Determination*, University of Geneva, 63-79, or Turp Daniel, 2017, 'Catalonia's «Right to Decide» under International, European, Spanish, Catalan and Comparative Law', in *The Catalan Independence Referendum: An Assessment of the Process of Self-Determination* 55-74, IRAI, 57-58.

[CXVI] International Court of Justice, Advisory Opinion of July 22, 2010, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, 2010 I.C.J. Collected Documents 403, paras. 79-81. Examples of unlawful secessions stemming from unilateral declarations of independence include the cases of Southern Rhodesia (1965), the Turkish Republic of Northern Cyprus (1983), and the Republika Srpska (Bosnia) (1992) (id., para. 81).

[CXVII] Id., para. 56.

[CXVIII] Permanent Court of International Justice, Judgment of September 7, 1927, Lotus (France v. Turkey), Series A No. 10, p. 18: "International law governs relations between independent States. […] Restrictions upon the independence of States cannot therefore be presumed".

[CXIX] Oeter Stefan, 2014, 'Recognition and Non-Recognition with Regard to Secession', in Walter C., von Ungern-Sternberg A., Abushov K. (eds.), *Self-Determination and Secession in International Law* 45-67, Oxford University Press, 51.

[CXX] Samantha Besson, 2011, 'Sovereignty', in Wolfrum R. (ed.), *Max Planck Encyclopedia of Public International La*, Oxford University Press, paras. 34-35.

[CXXI] The protection of human rights, including the rights of persons belonging to minorities, is a founding value (Article 2 of the Treaty of the European Union) that conditions States' incorporation (Article 49 of the Treaty of the European Union) and full membership in the European Union (Article 7 of the Treaty of the European Union).

[CXXII] The classic international law requirements for statehood are established in Article 1 of the Montevideo Convention on the Rights and Duties of States, adopted on December 26, 1933, 165 LNTS 19 (entered into force on December 26, 1934), and include the coexistence of a permanent population, a defined territory, and a sovereign government with effective control over the territory and with the capacity to establish relations with other states.

[CXXIII] Crawford James, 2006, *The Creation of States in International Law* 2nd Ed., Clarendon, 390. See also Thürer, Daniel, and Burri, Thomas, 2009, "Secession". In *Max Planck Encyclopedia of Public International Law*, para. 42: "International law remains neutral vis-à-vis secession and neither prohibits nor permits it".

[CXXIV] Crawford James, *The Creation of States in International Law*, 415; Thürer Daniel, Burri Thomas, 'Secession", paras. 2 and 41; and Medina Ortega Manuel, *El derecho de secesión en la Unión Europea,* 157. At a press conference held in Dakar on January 4, 1970, that addressed the armed conflict between the separatist region of Biafra and Nigeria, the Secretary-General of the United Nations, U Thant, summarized the UN's stance on secession: "As far as the question of secession of a particular section of a Member State is concerned, the United Nations attitude is unequivocal. As an international organization, 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" ('Secretary-General's Press Conferences', 1970, 7 United Nations Monthly Chronicle 34, 36).

[CXXV] Dugard John, Raič David, 'The Role of Recognition in the Law and Practice of Secession', 120-123; or van der Driest Simone, 2014, 'Secession within the Union: Some Thoughts on the Viability of EU Membership', in C. Brölmann et al. (ed.), *Secession Within the Union: Intersection Points of International and European Law* 26-33, ACELG/ACIL, 30

[CXXVI] Farley Benjamin R., 2010, 'Calling a State a State: Somaliland and International Recognition', in 24 *Emory International Law Review* 777, 819, identifies Somaliland as "a *state* that merely lacks recognition" (italics added). Although the creation of a state is a "matter of fact" and, consequently, the effects of recognition are "purely declaratory" [Badinter Commission, Opinion No. 1, para. 1 (a)], the absence of recognition or a residual recognition hinders the demonstration of the requirement of statehood concerning an entity's ability to establish relations with other states (Article 1 (d)), Montevideo Convention on the Rights and Duties of States). This means that an unrecognized or marginally recognized entity like Somaliland cannot be functionally

described as a state (Dugard John, Raič David, 'The Role of Recognition in the Law and Practice of Secession', 98).

[CXXVII] See, for example, the pleadings of Germany (April 15, 2009), paras. 35-37, of Estonia (April 13, 2009), paras. 4-12, of Finland (April 16, 2009), paras. 11-12, of Ireland (April 17, 2009), para. 32-24, of the Netherlands (April 17, 2009), paras. 9-13, or of Poland (April 17, 2009), paras. 25-27 and 31.

[CXXVIII] Lauterpacht Hersch, 1947, *Recognition in International Law*, Cambridge University Press, 431.

[CXXIX] Besson Samantha, 'Sovereignty', para. 1.

[CXXX] Report submitted to the Council of the League of Nations by the Committee of Rapporteurs on the Question of the Åland Islands, cit., 28 ("To concede to […] any fractions of a population the right of withdrawing from the community to which they belong […] would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the state as a territorial and political unity") or Margiotta Costanza, 2020, 'An Update on Secession as the «Ultimate Right»', in Closa C., Margiotta C., Martinico G. (ed.), *Between Democracy and Law: The Amorality of Secession* 9-28, Routledge, 12 ("Secession, if brought to its extreme consequences, can result in the end of the state itself").

[CXXXI] Three exceptions are: (i) the Constitution of St. Kitts and Nevis (1983), which recognizes the island of Nevis' the right to secede conditioned to the approval of a law sanctioned by two-thirds of the sitting members of the Nevis parliament and confirmed in referendum by two-thirds of the population of Nevis (Articles 113 and 115) – a majority that was nearly achieved in a referendum held in 1998 (61,6%) (Requejo, Ferran, and Nagel, Klaus-Jürgen. "Democracy and Borders: External and Internal Secession in the EU", 2, footnote 7); (ii) the Constitution of Uzbekistan (1992), which recognizes the region of Karakalpakstan the right to secede following a national referendum limited to the people of Karakalpakstan (Article 71); and (iii) the Constitution of Liechtenstein (2003), which grants the right to secede to the population of each of the eleven municipalities into which the territory of the Alpine microstate is divided (Article 4). Another very relevant exception is the Constitution of Ethiopia (1994), whose Article 39, para. 1, determines that "every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secede". The right of internal secession – that is, of creating a federated state from part of the territory and population of another federated state which will remain as a territorial unit of the federal state – was exercised by the Sidama ethnic group – one of the eighty (!) plus officially recognized in Ethiopia – through a regional referendum held in November 2019, which led to the establishment of the tenth Ethiopian federated state in June 2020 (Kefale Asnake, Kamusella Tomasz, and Van der Beken Christophe, 2021, *Eurasian Empires as Blueprints for Ethiopia*, Routledge, 43). The dissolution of the state of Serbia and Montenegro was triggered by the exercise of the right of secession by Montenegro provided for in Article 60 of the Constitution of Serbia and Montenegro, following a referendum held on May 21, 2006, where 55,5% of Montenegrins voted for independence (Krause Rolf Friedrich, 2012, 'Popular Votes and Independence for Montenegro", in Marxer W. (ed.), *Direct Democracy and Minorities* 22-32, Springer, 28).

[CXXXII] Sunstein Cass J., 1991, 'Constitutionalism and Secession', in 58 *University of Chicago Law Review* 633, 634. Sunstein's assertions were empirically tested by Ginsburg Tom, Versteeg Mila, 2019, 'From Catalonia to California: Secession in Constitutional Law', in 70 *Alabama Law Review* 923, 957-980

[CXXXIII] Supreme Court of Canada, opinion of August 20, 1998, para. 150. Among these participants are the Indigenous peoples who have traditionally inhabited the northern territory of Quebec, whose interests had also to be considered (id., paras. 96 and 139). The so-called "onion problem" of nationalism (Koskenniemi Martti, 1994, 'National Self-Determination Today: Problems of Legal Theory and Practice", in 43 *The International and Comparative Law Quarterly* 241, 260) – secession gives birth to a state which, like the parent state, is also not ethnically homogeneous (Thürer Daniel, Burri Thomas, 'Secession', para. 12) – became clear after the Cree Indigenous people of Quebec invoked, during the supreme court's proceedings, its own right to secede – and further reintegrate into the Canadian federation – if it were to be included, against its will, in the territory of an independent Quebec (Sterio Milena, 2018, *Secession in International Law: A New Framework*, Edward Elgar Publishing, 12, footnote 10).

[CXXXIV] Supreme Court of Canada, opinion of August 20, 1998, para. 150.

[CXXXV] Id., paras. 88, 92 and 151.

[CXXXVI] Gaudreault-DesBiens Jean-François, 2019, 'The Law and Politics: From the Political Contingency of Secession to a «Right to Decide»? Can Lessons Be Learned from the Quebec Case?', in Delledonne G., Martinico G. (ed.), *The Canadian Contribution to a Comparative Law of Secession* 33-68, Palgrave Macmillan, 54.

[CXXXVII] Supreme Court of Canada, opinion of August 20, 1998, para. 97. Accomplishing secession is necessarily complex, as demonstrated by the analogous process of dissolution of Czechoslovakia (1992), which required the adoption of thirty-one treaties and approximately one thousand agreements between the Czech Republic and Slovakia (McCann Philip, 2016, *The UK Regional-National Economic Problem: Geography, Globalisation and Governance*, Routledge, 457, footnote 25), or, also impressively, although in a non-state context, by the tortuous process of withdrawal of the United Kingdom from the European Union (Brexit), which took more than three and a half years (and several British governments) to be finalized.

[CXXXVIII] Supreme Court of Canada, opinion of August 20, 1998, paras. 84, 104 and 149.

[CXXXIX] Id., para. 152.

[CXL] Id., para. 103. Haljan David P., 1998, 'Negotiating Quebec Secession', in 1 *Revue Belge de Droit International*, 191, 214, suggests that international recognition would be the necessary corollary of the exercise of a right to secede based on the violation of Quebec's (constitutional) right to self-determination by Canada. Dumberry Patrick, 2006, 'Lessons learned from the Quebec Secession Reference before the Supreme Court of Canada', in Cohen M. G. (ed.), *Secession: International Law Perspectives* 415-452, Cambridge University Press, 440-441, disagrees, arguing that the breach of the constitutional obligation to negotiate in good faith would not *per se* have any direct impact on the international recognition of Quebec by other states.

[CXLI] The unilateral secession of the Southern states of the United States of America triggered the American Civil War (War of Secession) (1861-1865), which ended with the victory of the federal government. The indivisible nature of the Union was shortly thereafter declared by the Supreme Court of the United States of America: "(By the Articles of Confederation) the Union was solemnly declared to «be perpetual». And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained «to form a more perfect Union». It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not? […] The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States" (Judgment of April 12, 1869, Texas v. White, 74 US 700, 725).

[CXLII] López Basaguren Alberto, 2013, 'La secesión de territorios en la Constitución española', in 25 *Revista de Derecho de la Unión Europea* 87, 90.

[CXLIII] Mancini Susanna, 'Secession and Self-Determination', 382: "Secessionist claims are often loaded with emotions and passions, but, if secession is «normalized», and subject to legal rules, if it is rationalized, it is likely to lose its evocative power, and thus to prompt secessionist movements to redirect their agenda towards less disruptive objectives."

[CXLIV] MacIver Alastair, 2019, 'Metaconstitutionalising Secession: the *Reference* and Scotland (in Europe)', in Delledonne G., Martinico G. (ed.), *The Canadian Contribution to a Comparative Law of Secession* 111-134, Palgrave Macmillan, 112, mentions, however, that the adoption of an agreement "*on that occasion* should not nonetheless be mistaken for a standing embrace by the British Constitution of *all* possible referendums on secession" (italic in the original).

[CXLV] Innerarity Daniel, Errasti Ander, 2020, 'Decide on What? Addressing Secessionist Claims in an Interdependent Europe', in Closa C., Margiotta C., Martinico G. (ed.), *The Amorality of Secession* 62-83, Routledge, 63, conceptualize this "right to decide" as a corollary of the principle of equality in a democratic context: "(Insofar as) secession claims are raised by citizens within a democratic regime, we have the duty of considering them in the same way as we consider any other political claims: neither accepting or rejecting them *a priori*. Refusing a priori to even consider them will violate these citizens' political equality, which is, by definition, incompatible with a democratic regime".

[CXLVI] Judgment No. 48/2003 of March 12, section 7, ECLI:ES:TC:2003:48, and Judgment No. 42/2014 of March 25, ECLI:ES:TC:2014:42, sections 3 (b), and 4.

[CXLVII] Walker Neil, *Internal Enlargement in the European Union*, 39.

[CXLVIII] Italian Constitutional Court, Judgment No. 118/2015 of June 25, section 7.2.

[CXLIX] See Articles 5 and 288(a) of the Portuguese Constitution, and Articles 5 and 139 of the Italian Constitution. Miranda Jorge, 2007, *Manual de Direito Constitucional II* 6th Ed., Coimbra Editora, 241, qualifies the unity of the state as an immanent limit of constitutional amendment concerning the form of the Portuguese state. Such restriction is absent in the Spanish constitution, which allows for its full revision (Article 168 of the Spanish Constitution).

[CL] Weiler Joseph H. H., 2012, 'Catalonian Independence and the European Union', in 23 *European Journal of International Law* 910, 911.

[CLI] Castle Stephen, 2012, 'Scots' Referendum Raises a Slew of Legal Issues', in *New York Times*.

[CLII] Ibid.

[CLIII] European Council, 2013, 'Remarks by the President of the European Council on Catalonia', in EUCO 267/13, *PRESS* 576, which reproduces verbatim a written answer of the President of the European Commission to a Member of the European Parliament ("Answer given by Mr Prodi on Behalf of the Commission (March 1, 2004)", in C84 OJ E/422 (April 3, 2004).

[CLIV] ECJ, Case C-26/62, *Van Gend en Loos*, 1963 ECLI:EU:C:1963:1, 210

[CLV] ECJ, Case C-6/64, Costa, 1964 ECR I-00585, 555.

[CLVI] Poiares Maduro Miguel, 2003, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action', in Neil Walker (ed.), S*overeignty in Transition*, 502-537, Hart, 504.

[CLVII] ECJ, Case C-402/05 P., *Kadi v council and commission*, and C-415/05 P., *Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, ECR 2008 I-06351, Opinion of AG Miguel Poiares Maduro, para. 21.

[CLVIII] See ECJ, Case C-106/77, *Amministrazione delle Finanze dello Stato v Simmenthal SpA*, 1978 ECR I-00629, para. 22, and ECJ Case C-103/88, *Fratelli Costanzo SpA v Comune di Milano*, 1989 ECR-01839, para. 31.

[CLIX] ECJ, Case C-294/83, *Parti écologiste "Les Verts" v European Parliament*, 1986 ECR I-01339, para. 23.

[CLX] ECJ, Case C-294/83, *Parti écologiste "Les Verts" v European Parliament*, 1986 ECR I-01339, or ECJ, Case C-64/16, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas*, 2018 ECLI:EU:C:2018:117, para. 31.

[CLXI] Schmitt Carl, *The Constitutional Theory of the Federation*, 30 (italic in the original).

[CLXII] The federation "internalises" international relations without turning them into intra-state relations. Member States do not relate to each other neither as foreign states nor as local or territorial collectivities of a sovereign state (Beaud Olivier, *Théorie de la Fédération*, 206, 213, 230, 269).

[CLXIII] Cohen Jean L., 2012, *Globalization and Sovereignty. Rethinking Legality, Legitimacy and Constitutionalism*, Cambridge University Press, 124.

[CLXIV] Article 2 of the TEU states that the Union is "founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". These "universal values" originate "from the cultural, religious and humanist inheritance of Europe" (2nd paragraph of the Preamble of the TEU) and are the cornerstone of the legal orders of the Union and the Member States. For this reason, they are recognized by both as constitutional, making it possible for their coexistence and, consequently, for the functioning of a plural and multi-level legal system (see also MacIver Alastair, 'Metaconstitutionalising Secession', 114).

[CLXV] López Castillo António, 'Autodeterminación soberanista e integración europea: España 2014', 2013, in 46/47 *Cuadernos de Alzate* 141, 156, and, 2019, 'State Integration and Disintegration Within the European Union: Regarding the Purported Secession of Catalonia and its Hypothetical Membership of the EU', in López-Basaguren A., Escajedo San-Epifanio L. (eds.), *Claims for Secession and Federalism* 563-573, Springer, 568 and 571; Medina Ortega Manuel, *El derecho de secesión en la Unión Europea*, 109 and 200; Closa Carlos, 2016, 'Secession from a Member State and EU Membership: The View from the Union', in 12 *European Constitutional Law Review* 240, 248-250; Piris Jean-Claude, 2017, 'Political and Legal Aspects of Recent Regional Secessionist Trends in some EU Member States (II)', in Closa C. (ed.) *Secession from a Member State and Withdrawal from the European Union: Troubled Membership 88-105*, Cambridge University Press, 89; Caplan Richard, Vermeer Zachary, 'The European Union and Unilateral Secession', 762-764; or Galera Victoria Adoración, 2019, 'The Catalan Independence Movement in the Political and Constitutional Debate in the European Union', in López-Basaguren A., Escajedo San-Epifanio L. (eds.), *Claims for Secession and Federalism* 575-588, Springer, 586.

[CLXVI] Jordi Matas i Dalmases et al., 2011, *The Internal Enlargement of the European Union: An Analysis of the Legal and Political Consequences for the European Union in the Event of Secession from or Dissolution of a Member State*, Centre Maurits Coppieters, 6.

[CLXVII] Pau Bossacoma I Busquets, 2017, *Secesión e integración en la Unión Europea: Catalunha ¿nuevo Estado de la Unión?*, Institut d'Estudis de l'Autogovern, Catalunya, 28.

[CLXVIII] Joan Ridao Martín, Alfonso González Bondía, 2014, 'La Unión Europea ante la eventual creación de nuevos Estados surgidos de la secesión de Estados miembros', *Revista de Derecho de la Unión Europea*, 27, 376-377, 381-382, 386.

[CLXIX] Medina Ortega Manuel, 2017, 'The Political Rights of EU citizens', in Closa C. (ed.), *Secession from a Member State and Withdrawal from the European Union: Troubled Membership* 134-152, Cambridge University Press, 146-147.

[CLXX] Closa Carlos, 2020, 'A critique of the theory of democratic secession', in Closa C., Margiotta C, Martinico G. (ed.), *Between Democracy and Law: The Amorality of Secession* 49-61, Routledge, 55.

[CLXXI] Any "internal enlargement" requires at least an amendment to Article 52 TEU, which lists in alphabetical order the states in which the Treaties are applicable.

[CLXXII] Athanassiou Phoebus, Laulhé Shaelou Stéphanie, 2014, 'EU Accession from Within? An Introduction', in 33 *Yearbook of European Law* 335, 345, footnote 48; López Castillo António, 'Autodeterminación soberanista e integración europea', 157; Mangas Martin Araceli, 2013, 'La secesión de territorios en un Estado miembro: efectos en el derecho de la Unión Europea', in 25 *Revista de Derecho de la Unión Europea* 66, 57 ("[The] veto [on accession] can be «eternal»".); or Charmon Merijn, Van der Loo Guilaume, 2014, 'The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation Issues versus Widening and Deepening', in 20 *European Law Journal* 613, 624.

[CLXXIII] "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", adopted at a ministerial meeting of the European Political Cooperation on December 16, 1991 (Press Release No. 128/91).

[CLXXIV] Dugard John, Raič David. 'The Role of Recognition in the Law and Practice of Secession', 95 and 136-137.

[CLXXV] Edward David, 2013, 'EU Law and the Separation of Member States', in 36 *Fordham International Law Journal* 1151, 1167; Gounin Yves, 2013, 'Les dynamiques d'éclatements d'États dans l'Union Européenne: case tête juridique, défi politique', in 4 *Politique étrangère* 11, 22; Kenealy Daniel, MacLennan Stuart S., 'Sincere Cooperation, Respect for Democracy and EU Citizenship: Sufficient to Guarantee Scotland's Future in the European Union?', 2014, in 20 *European Law Journal*, 591, 598-601; Tierney Stephen, Boyle Katie, 2014, 'An Independent Scotland: The Road to Membership of the European Union', in *ESRC Scottish Centre on Constitutional Change Briefing Papers*, ESRC Scottish Centre on Constitutional Change, 15-16; Hillion Christophe, 2014, 'Scotland and the EU: Comment by Christophe Hillion', in *VerfBlog*, and Douglas Scott Sionaidh, 2019, 'Scotland, Secession, and the EU', in *Queen Mary University of London, School of Law*, Legal Studies Research Paper No. 301/2019, 7-9. See, however, Closa C., 'Secession from a Member State and EU Membership', 260, which derives from the duty of sincere cooperation merely an obligation to find solutions to mitigate the effects of secession.

[CLXXVI] Supreme Court of Canada, opinion of August 20, 1998, para. 151.

[CLXXVII] E.g. Scotland was not entitled to join the European Union on the same conditions held by the United Kingdom, particularly in what regards the free movement of persons (Schengen), the "British rebate", or the single currency (Euro).

[CLXXVIII] A textbook example of such reasoning was given by the then acting Spanish Foreign Minister when it addressed the consequences of a Scottish independence referendum before the United Kingdom left the European Union. After declaring that secessionist movements in the European Union should not be encouraged, Alfonso Dastis bluntly stated that, if Scotland were to achieve independence before Brexit in accordance with the British constitution and through an agreement with the British state, Spain would acknowledge such a decision, but it would never *allow an independent Scotland to retain membership in the European Union* (González Miguel, 2017, 'Escocia no es Cataluña ni Irlanda del Norte es Gibraltar', in *El País*). This position is aligned with Spain's staunch refusal to recognize Kosovo, despite the dissenting stance taken by twenty-two other Member States, and the pledge for recognition included in a resolution of the European Parliament adopted on July 8, 2010.

[CLXXIX] Only European states, including micro-states (Kochenov Dimitry, 2008, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, Kluwer, 26), are eligible for accession to the European Union (Article 49 TEU). Although the term "European" is not officially defined, it is considered to combine "geographical, historical, and cultural elements" (Commission of the European Communities, 1992, 'Europe and the challenge of enlargement', in *Commission Report 3*, 11). These criteria were applied to reject Morocco's application to join the European Communities in 1987 (Kochenov Dimitry, *EU Enlargement and the Failure of Conditionality*, 23; Medina Ortega Manuel, *El derecho de secesión en la Unión Europea*, 96).

[CLXXX] The European Council of Copenhagen, held on June 21 and 22, 1993, SN 180/1/93 REV 1, 13, set out that membership to the European Union requires the candidate country to meet the following criteria: (i) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities (political criterion); (ii) the existence of a functioning market economy with the ability to cope with competitive pressure and market forces within the Union (economic criterion); (iii) the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies

that make up the body of EU law (the *acquis*), including adherence to the aims of political, economic and monetary union (criterion of institutional and administrative capacity for the implementation of the *acquis*).

[CLXXXI] ECJ, Case C-221/17, *M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*, ECR 2019 ECLI:EU:C:2019:189, para. 31

[CLXXXII] García Andrade Paula, 2014, 'State Succession and EU Citizenship', in Brölmann, C. et. al., *Secession Within the Union: Intersection Points of International and European Law* 48-57, ACELG/ACIL, 55-56, Medina Ortega Manuel, *El derecho de secesión en la Unión Euro*pea, 108, 135, 137, or Crawford James, Boyle Alan, 'Referendum on the Independence of Scotland: International Law Aspects', 107-108.

[CLXXXIII] The loss of nationality *ex lege* is explicitly recognized by Article 7(1) of the European Convention on Nationality, signed in Strasbourg on November 6, 1997 (entered into force on March 1, 2000). See also Article 10(1) of the Articles on the Nationality of Natural Persons in relation to the Succession of States, drafted by the International Law Commission and published as an annex to United Nations General Assembly Resolution No. 55/153 on December 12, 2000, UN doc. A/55/610.

[CLXXXIV] Pursuant to Article 9 TEU and Article 20(1) TFEU: "Every person who holds the nationality of Member State shall be considered a citizen of the Union. Union citizenship shall be additional to and not replace national citizenship".

[CLXXXV] ECJ, Case C-135/08, *Janko Rottman v Freistaat Bayern*, 2010 ECR I-01449, paras. 46, 55 and 59.

[CLXXXVI] Kenealy Daniel, MacLennan Stuart S., 'Sincere Cooperation, Respect for Democracy and EU Citizenship', 611; de Waele Henri, 2014, 'Secession and Succesion in the EU: Fuzzy Logic, Granular Outcomes?', in Brölmann C. et. al., *Secession Within the Union: Intersection Points of International and European Law* 34-39, ACELG/ACIL, 36, or Armstrong Kenneth, 2017, 'The Reach and Resources of European Law in the Scottish Independence Referendum', in Closa C. (ed.), *Secession and Withdrawal from the EU: Troubled Membership* 106-133, Cambridge University Press, 129-131).

[CLXXXVII] Happold Matthew, 2000, 'Independence: In or Out of Europe? An Independent Scotland and the European Union', in *49 International and Comparative Law Quaterly* 15, 32-33; Zimmermann Mathew Andreas, 'Continuity of States', in Wolfrum, R. (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, para. 13; Galán Galán Alfredo, 2013, 'Secesión de Estados y pertenencia a la Unión Europea: Cataluña en la encrucijada', in 1 *Istituzioni del Federalismo: rivista di studi giuridici e politici* 95, 134; Crawford James, Boyle Alan, 2013, 'Referendum on the Independence of Scotland: International Law Aspects', in *Scotland Analysis: Devolution and the Implications of Scottish Independence,* 66-108, HM Government Crown, 68; Gounin Yves. 'Les dynamiques d'éclatements d'États dans l'Union Européenne', 14; Shaw Malcolm, 2017, *International Law* 8th Ed., Cambridge University Press, 938; Mangas Martín Araceli, 'La secesión de territorios en un Estado miembro', 59; Athanassiou Phoebus, Laulhé Shaelou Stéphanie, 'EU Accession from Within? An Introduction', 341-342 and 362; Bossacoma i Busquets Pau, *Secesión e integración en la Unión Europea*, 21 and 41-47; or Radoslavov Yordanov Yoveslav, 2017-2018, 'La secesión de territorios en un Estado Miembro de la Unión Europea y sus consecuencias en relación com las minorias resultantes', in 23 *Anuario Hispano-Luso-Americano de Derecho Internacional* 385, 397-398

[CLXXXVIII] Concerning the admission of Pakistan as a member of the United Nations in 1947, the Sixth Committee of the United Nations General Assembly declared that, as a general principle, it is assumed (i) that a state does not cease to be a member of the United Nations simply because its constitution or its frontier have been subjected to changes, and (ii) that extinction of the state as a legal personality recognized in the international order must be shown before its rights and obligations can be considered to have ceased to exist (First Committee. Admission of New Members: Letter from the Chairman of the Sixth Committee Addressed to the Chairman of the First Committee, Dated October 8, 1947, A/C.1/212 (October 11, 1947), para. 1).

[CLXXXIX] The population of Saarland rejected a proposal for self-governance in a referendum held in 1955. The referendum was organized under the Paris agreement of October 23, 1954 between France and Germany on the status of Saarland. The proposal envisioned a region with the "status of a European territory within the enlarged framework of Western European Union" (article I), wherein its external policy and defense was assigned to a European Commissioner appointed by the Council of Ministers of the Western European Union. On October 27, 1956, France recognized Germany's sovereignty over the Saarland in a bilateral treaty, 1053 UNTS 337 (entered into force on January 1, 1957). Simultaneously, the Member States of the ECSC recognized the transfer of the territory to Germany by annulling the final section of Article 21 ECSC, which provided for the representation of the people of Saarland by French members of the ECSC Assembly (Article 1 of the Treaty amending the ECSC Treaty, signed on October 27, 1956, 535 UNTS 417 (entered into force on October 9, 1958)).

[CXC] Crawford James, *The Creation of States in International Law*, 676-678; Happold Matthew, 'Independence: In or Out of Europe? An Independent Scotland and the European Union', 23; Tancredi Antonello, 2007, 'Dismemberment of States', in Wolfrum R. (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, para. 14; Crawford James, Boyle Alan., 'Referendum on the Independence of Scotland: International Law Aspects', 79-80.

[CXCI] The Vienna Convention on Succession of States in Respect of Treaties Signed was signed on August 23, 1978, 1946 UNTS 3 (entered into force on November 6, 1996). Several of its provisions were analogically applied, as "supplementary federal law", in the process of (internal) secession of the Swiss canton (a federated state) of Jura (Dominicé Christian, 2006, 'The Secession of the Canton of Jura in Switzerland', in Cohen (ed.) M. G., *Secession: International Law Perspectives* 453-476, Cambridge University Press, 455 and 468). Another example of subsidiary application of public international law, concerning the rules for retracting a notification of withdrawal from a convention set forth in the Vienna Convention on the Law of Treaties, signed on May 23, 1969, 1155 *UNTS* 331 (entered into force on January 27, 1980), is the Wightman judgment of the Court of Justice, which addressed the issue of whether a Member State's notification of its intention to exit the Union under Article 50 TEU could be revoked (judgment of December 10, 2018, C-621/18, ECLI:EU:C:2018:999, paras. 70 and 71).

[CXCII] Connolly Christopher K., 'Independence in Europe: Secession, Sovereignty, and the European Union', 89, and Bossacoma I Busquets Pau, *Secesión e integración en la Unión Europea,* 46, footnote 95.

[CXCIII] Schütze Robert, 2014, 'Federalism and Foreign Affairs: Mixity as an (Inter)national Phenomenon', in *Foreign Affairs and the EU Constitution: Selected Essays*, 175-208 Cambridge University Press, 175-208, differentiates two constitutional traditions concerning the external sovereignty of federal unions of states : (i) the American tradition ("closed federation"), where the Union takes exclusive control over external sovereignty; (ii) the German tradition ("open federation"), where both the Union and the member states have international legal personality and hence must coordinate their individual participation in international relations.

[CXCIV] Article 10 of the Treaty on the Establishment of German Unity between the Federal Republic of Germany and the German Democratic Republic, signed on August 31, 1990. This territorial enlargement of the Union was not a German *fait accompli*. On April 28, 1990, the European Council, after expressing satisfaction for the fact that "German unification (was) taking place under a European roof", declared that no "revision of the Treaties" was necessary (Special Meeting of the European Council, Conclusion of the Presidency (Dublin, April 28, 1990), para. 4). Furthermore, the possibility of reunification was implicitly recognized by the Member States in the Protocol on German internal trade and connected problems annexed to the Treaty of the European Economic Community (1957). The protocol declares that trade between German territories, including those not subject to the application of the Basic Law of 1949, is part of the German internal trade. The European dimension of the self-determination of the German people was also symbolically recognized by Germany, by limiting the presence of foreign dignitaries at the official reunification ceremony on October 3, 1990, to the Presidents of the European Commission and the European Parliament (van Middelaar Luuk, *The Passage to Europe*, 197).

[CXCV] Ziller Jacques, 2007, 'The European Union and the Territorial Scope of the European Treaties', in 38 *Victoria University of Wellington Law Review* 51, 52 ("The territorial scope of application of EU law can be changed unilaterally by a member state giving independence (decolonisation) to a territory or incorporating a territory"). Miguel Bárcena Josu de, 2014, 'La cuestión de la secession en la Unión Europea: una visión constitucional', in 165 *Revista de Estudos Políticos* 211, 243, identified a breach of the principle of sincere cooperation in the decision of a Member State allowing for the unilateral secession of a part of its territory, considering that the principle of national institutional autonomy (Article 4(2) TEU) cannot justify the rupture of the unity of the internal market and the Euro, the suspension of the application of European Union law, and the withdrawal of European citizenship. However, such an argument is not applicable to a federation of states which recognizes the exclusive sovereign power of each member to determine their own territory and, ultimately, a right to withdraw from the Union (Article 50 TEU). It also does stand when confronted with the possibility of consensual secession having membership coinciding with the independence of the breakaway substate region.

[CXCVI] Denmark's decision to withdraw Greenland from the European Communities was taken after a referendum held on February 23, 1982, but only completed on January 1, 1985, after a surgical amendment to the Treaties which stated that they were no longer applicable in Greenland (Treaty amending, with regard to Greenland, the Treaties establishing the European Communities, OJ L29, February 1, 1985, p. 1). After the Lisbon Treaty, the scope of application of the Treaties with respect to certain territories of the Member States can be amended by a unanimous decision of the European Council (Article 355(6) TFEU). Such a path was

followed concerning the French island of Saint Barthélemy, which achieved the status of an overseas country and territory on January 1, 2012 (Article 1 of the European Council Decision 2010/718/EU of October 29, 2010, amending the status with regard to the European Union of the island of Saint-Barthélemy).

[CXCVII] ECJ, Case C-95/97, *Région Wallonne*, 1997 ECR I-1789

[CXCVIII] See, with a different opinion, O'Neill Aidan, 2011, 'A Quarrel in a Faraway Country? Scotland, Independence and the EU', in *Eutopia Law Blog*, and Vaubel Roland, 'Secession in the European Union', 297.

[CXCIX] ECJ, Case C-263/14, *Parliament v. Council*, 2016 ECR , ECLI:EU:C:2016:435, para. 42.

[CC] ECJ, Case C-281/01, *Commission v. Council*, 2002 I-12049, para. 33.

[CCI] de Witte Bruno, 2014, 'Scotland and the EU: Comment by Bruno de Witte', Verfassungsblog ("The Article 48 [TEU] route has major advantages over the Article 49 [TEU] route"), and Kochenov Dimitry, van den Brink Martij, 'Secessions from EU Member States', 90 ("(T)he Article 48 TEU route clearly appears to be the preferable option. It would allow for internal enlargement and thus prevent that a territory has to leave the EU, even for a very brief period").

[CCII] Achieving independence (and automatically becoming a third state) seems to be the reason why some legal literature rejects the application of the Article 48 TEU amendment procedure to consensual secession processes, thereby neglecting the legal possibility of having independence coinciding with incorporation into the Union. See Galán Galán Alfredo, 'Secesión de Estados y pertenencia a la Unión Europea', 110-115, Dermine Paul, 2014, 'Succession and EU Treaty Obligations', in Brölmann C. et al., *Secession Within the Union: Intersection Points of International and European Law*, 40-47, ACELG/ACIL, 44-46, Closa Carlos, 'Secession From a Member State and EU Membership', 260-263, Piris Jean-Claude, 'Political and Legal Aspects of Recent Regional Secessionist Trends in some EU Member States (I)', 80-87, Yordanov Yoveslav Radoslavov, 'La secesión de territorios en un Estado Miembro de la Unión Europea y sus consecuencias en relación com las minorias resultantes', 399-401, or Galera Victoria Adoración, 'The Catalan Independence Movement in the Political and Constitutional Debate in the European Union', 580.

[CCIII] Amendments to the Treaties enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements (Article 48(4), para. 2, TEU). Third countries accession furthermore requires prior consent of the Union conveyed by the unanimous vote of the Member States in the Council, and by a majority of the composing members of the European Parliament (Article 49, para. 1, TEU).

[CCIV] Two examples of comparative federal constitutional law directly contradict the claim that the incorporation of a new state stemming from a process of (internal) secession in a Member State *solely* requires a majoritarian approval in the federal institutions and from a majority of Member States (see Bossacoma i Busquets Pau, 2015, *Justícia i legalitat de la secessió: Una teoria de l'autodeterminació nacional des de Catalunya,* Institut d'Estudis Autonòmics, Catalunya, 431-432, *Secesión e integración en la Unión Europea*, 67, and Palgrave Macmillan, 2020, *Morality and Legality of Self-Determination: A Theory of National Self-Determination*, 342): (i) the creation of a Canton in Switzerland, beyond "the consent of the citizens and the cantons concerned", requires a constitutional amendment approved in referendum by the Swiss people and by a majority of cantons (Article 53(2) of the Federal Constitution of the Swiss Confederation of April 18, 1999) – on the intricate process that led to the secession of the Catholic francophone Canton of Jura on January 1, 1979, see Dominicé, Christian. "The Secession fo the Canton of Jura in Switzerland", 453-476); (ii) the Constitution of the United States of America secures the political existence and territorial integrity of the States by stating that "no State shall be formed or erected within the Jurisdiction of any other State [...] without the Consent of the Legislatures of the States concerned as well as of the Congress" (Article IV, section 3, para. 1). According to Madison, this provision pursues "the immediate object of the federal Constitution [...] to secure the union of the thirteen primitive States" (Madison James, 2008, 'Federalist Paper No. 14', in *The Federalist*, Oxford University Press, 70). The (unconstitutional) unilateral secession of West Virginia from one of the founding states of the Union – the secession was authorized the Virginia's parliament *in exile* on May 13, 1862, but that did not prevented the federal Congress from admitting West Virginia to the Union on June 20, 1863, nor its implicit recognition as a state by the United States Supreme Court on December 1, 1870, judgement Virginia v. West Virginia, 78 U.S. 39 (Kesavan Vasan, Stokes Paulsen Michael, 2002, 'Is West Virginia Unconstitutional?', in *90 California Law Review, 291*) – confirms Schmitt's claim that the American federation ceased to exist after the War of Secession, as the "federal elements of the constitution" were no longer related to "the political independence of member states but only with organizational prerogatives concerning their legislative and administrative autonomy" (Schmitt Carl. 'The Constitutional Theory of the Federation', 36-37). Schmitt observes Germany as another example of a federal state that no longer retains its federal character due to the obliteration of its federal foundation and federalism itself by the "democratic concept of the constituent power of the whole people" (id., 55). This assessment can

be empirically proven by the extinction of the *Land* of Baden pursuant to the federal law of May 4, 1951, adopted after a referendum where the population of the federated state overwhelmingly voted against the merger that led to the establishment of the federated state of Baden-Württemberg (Beaud Olivier, *Théorie de la Federation*, 331-333). When called to assess the constitutionality of the extinction of Bade, the German Federal Constitutional described Germany as a "flexible" (*labilen*) federal state, as there is no constitutional guarantee regarding the individual political existence or the territorial integrity of the *Landër* (judgment of May 30, 1956, Baden vote, BvP 1/56, D-1, para. 1).

[CCV] Pereira Coutinho Francisco, 2018, 'A Natureza Jurídica do Acordo Económico e Comercial Global (CETA)', 31 Themis 295, 302, footnote 31.

[CCVI] Article 88, para. 5, of the French Constitution states that the ratification of accession treaties to the European Union require referendum, unless a three-fifths majority in both parliamentary chambers decides otherwise. This provision was introduced after the referendum on the Treaty Establishing a Constitution for Europe, signed in Rome on October 29, 2004, to fundamentally give the French people a say on Turkey's accession to the European Union (Burgorgue-Larsen Laurence, Astresses Pierre-Vincent, Bruck Véronique, 2019, 'The Constitution of France in the Context of EU and Transnational Law: An Ongoing Adjustment and Dialogue to Be Improved', in Albi A., Bardutzky S. (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Springer, 1188).

[CCVII] United Kingdom's accession requests were turned down by the French government in January 1963 and December 1967. In a referendum held on April 23, 1972, 68.3% of French voters (38.8% abstention rate) approved the law allowing the first European enlargement to Denmark, Ireland, the United Kingdom, and Norway (Wyller Thomas Chr, 1996, 'Norway: Six Exceptions to the Rule', 139-152, in Gallagher M, Uleri P. V. (eds.), *The Referendum Experience in Europe*, MacMillan Press, 73). The Norwegian people later rejected accession in referendums held on September 25, 1972 (53.5% of votes against with a 21.8% abstention rate) and on November 27 and 28, 1994 (52.2% of votes against with a voter turnout of 88.6%).

[CCVIII] Hroch Miroslav, 1995, *Social Preconditions of National Revival in Europe: A Comparative Analysis of the Social Composition of Patriotic Groups among the Smaller European Nations,* Cambridge University Press, 22-24.

[CCIX] As Walker Neil, 'Internal Enlargement in the European Union', 45, exemplifies: "Just as «independence in Europe» [...], conveys a very different meaning and sense of collective identity than would the «separatism outside Europe's Northern edge» of an unattached Scotland, so too «Britain in Europe» is much less isolationist than without its qualifier [...], and «Scotland-in Britain-in-Europe» suggest a much less subordinate native identity than merely «Scotland in Britain»".

[CCX] In the lower house (Congress of Deputies) of the Spanish parliament (*Cortes Generales*), the nineteenth legislature, which began in December 2019, included an unprecedented number of nationalist (10% of deputies) and regionalist (2% of deputies) parties from the Basque Country, the Canary Islands, Cantabria, Catalonia, Galicia, Navarre and Valencia.

[CCXI] Schmitt Carl. 'The Constitutional Theory of the Federation', 31: "(T)he political *status quo* in the sense of political survival must also be guaranteed *within* the federation [...]. No part of the territory of any member state may be appropriated and even less may its political existence be abrogated without its consent" (italics in the original).

References

- ALFREDSSON, Gudmundur. "Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law". In Minorities, Peoples and Self-Determination 163-172 (Ghanea, N., and Xanthaki, A. (eds.), Martinus Nijhoff Publishers, 2005)
- ANDERSON, Benedict. Imagined Communities: Reflections on the Origin and Spread of Nationalism (Verso, 2006)
- ARMSTRONG, Kenneth. "The Reach and Resources of European Law in the Scottish Independence Referendum". In Secession and Withdrawal from the EU: Troubled Membership 106-133 (Closa, C. (ed.) Cambridge University Press, 2017),
- ATHANASSIOU, Phoebus, and Laulhé Shaelou, Stéphanie. "EU Accession from Within?" An Introduction". In 33 *Yearbook of European Law* 335 (2014)
- AZEREDO LOPES, José Alberto. "Direito de Autodeterminação dos Povos". In Regimes Jurídicos

Internacionais I 549-630 (Azeredo Lopes, J. A. (ed.), Universidade Católica Editora Porto, 2020)

- BARTEN, Ulrike. Minorities, Minority Rights and Internal Self-Determination (Springer, 2015)
- BEAUD, Olivier. "Déficit politique ou déficit de la pensée politique?". In 87 *Le Debat* 32 (1995)

– Théorie de la Fedération (Presses Universitaires de France, 2007)

- BERAN, Harry. "A Liberal Theory of Secession". In XXXII Political Studies 21 (1984)
- –, "A Democratic Theory of Political Self-Determination for a New World Order". In Theories of Secession 32-59 (Lehning, P. (ed.), Routledge, 1998)
- BERLIN, Isaiah. "Two Concepts of Liberty". In Liberty 166-217 (H. Hardy (ed.), Oxford University Press, 2002)
- BESSON, Samantha. "Sovereignty". In Max Planck Encyclopedia of Public International Law (R. Wolfrum, R. (ed.), Oxford University Press, 2011)
- BICKERTON, Chris J.. European Integration: From Nation-States to Member States (Oxford University Press, 2012)
- BLANCO DE MORAIS, Carlos. A Autodeterminação dos Povos no Direito Internacional Público: o caso do estatuto jurídico do enclave de Cabinda (Universidade Lusíada Editora, 1998)
- –, "A Sindicabilidade do Direito da União Europeia pelo Tribunal Constitucional Português" In Estudos em Homenagem ao Professor Sérvulo Correia I 221-255 (Almedina, 2010)
- VON BOGDANDY, Armin. "Neither an International Organization nor a Nation State: The European Union as a Supranational Federation". In The Oxford Handbook of the European Union 761-776 (Jones E., Menon A., and Weatherill S., Oxford University Press, 2012)
- BONGARDT, Anette and Torres, Francisco. "On States, Regions and European Integration – Editorial". In 52 Intereconomics 326 (2017)
- BORGEN, Christopher J.. "Imagining Sovereignty, Managing Secession: The Legal Geography of Eurasia's «Frozen Conflicts»". In 9 Oregon Review of International Law 477 (2007)
- BOSSACOMA I BUSQUETS, Pau. Justícia i legalitat de la secessió: Una teoria de l'autodeterminació nacional des de Catalunya (Institut d'Estudis Autonòmics (Catalunya), 2015)

  –, Secesión e integración en la Unión Europea: Catalunha ¿nuevo Estado de la Unión*?* (Institut d'Estudis de l'Autogovern (Catalunya), 2017)

  – Morality and Legality of Self-Determination: A Theory of National Self-Determination (Palgrave Macmillan, 2020)
- BRITO, Wladimir. Direito Internacional Público 2nd Edition (Coimbra Editora, 2014)
- BURGORGUE-LARSEN, Laurence, Astresses, Pierre-Vincent, and Bruck, Véronique. "The Constitution of France in the Context of EU and Transnational Law: An Ongoing Adjustment and Dialogue to Be Improved". In National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law 1181-1222 (Albi A., and Bardutzky, S. (eds.), Springer, 2019)
- CAPLAN Richard, and Vermeer, Zachary. "The European Union and Unilateral Secession: The Case of Catalonia". In 73 Zeitschrift für öffentliches Recht 747 (2018)
- CASSESE, Antonio. Self-Determination of Peoples: A Legal Reappraisal (Cambridge University Press, 1995)
- CHARMON, Merijn, and Van der Loo, Guilaume. "The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation Issues versus Widening and Deepening". In 20 European Law Journal 613 (2014)
- CLOSA, Carlos. "Secession from a Member State and EU Membership: The View from the Union". In 12 European Constitutional Law Review 240 (2016)

  –, "A critique theory of democratic secession". In Between Democracy and Law: The Amorality of Secession 49-61 (Closa, C., Margiotta C., and Martinico, G. (eds.) Routledge, 2020)
- COHEN, Jean L.. Globalization and Sovereignty. Rethinking Legality, Legitimacy and Constitutionalism (Cambridge University Press, 2012)
- CONNOLLY, Christopher K.. "Independence in Europe: Secession, Sovereignty, and the European

Union". In 24 Duke Journal of Comparative and International Law 51 (2014)

- CONSTANTINESCO, Vlad. "Le fédéralisme? D'un anti-étatisme à un a-étatisme?". In 355 L'Europe en Formation 41 (2010/1)
- COUDENHOUVE-KARLEGY, Richard. Pan-Europa: Un grande Progetto per l'Europa unita (Cerchio, 1997)
- CRAWFORD, James. The Creation of States in International Law 2nd Edition (Clarendon, 2006)
- CRAWFORD, James, and Boyle, Alan. "Referendum on the Independence of Scotland: International Law Aspects". In Scotland Analysis: Devolution and the Implications of Scottish Independence 66-108 (HM Government (ed.), Crown, 2013)
- DASHWOOD, Alan. "The Relationship between the Member States and the European Union". In 41 Common Market Law Review 355 (2004)
- DERMINE, Paul. "Succession and EU Treaty Obligations". In Secession Within the Union: Intersection Points of International and European Law 40-47 (Brölmann, C. et al., ACELG/ACIL, 2014)
- DOMINICÉ, Christian. "The Secession of the Canton of Jura in Switzerland". In Secession: International Law Perspectives 453-476 (Cohen, M. G. (ed.) Cambridge University Press, 2006)
- DOUGLAS SCOTT, Sionaidh. "Scotland, Secession, and the EU". In Queen Mary University of London, School of Law (Legal Studies Research Paper No. 301/2019
- VAN DEN DRIEST, Simone. "Secession within the Union: Some Thoughts on the Viability of EU Membership". In Secession Within the Union: Intersection Points of International and European Law 26-33 (Brölmann, C., et al.,. ACELG/ACIL, 2014)
- DUGARD, John and David Raič. "The Role of Recognition in the Law and Practice of Secession". In Secession: International Perspectives 94-137 (Kohen, M. G. (ed.), Cambridge University Press, 2006)
- DUMBERRY, Patrick. "Lessons learned from the Quebec Secession Reference before the Supreme Court of Canada", in M. G. Cohen (coord.), *Secession: International Law Perspectives*, Cambridge University Press, 2006, pp. 415-452
- DUVERGER, Maurice. L'Europe dans tout ses États (PUF, 1995)
- EDWARD, David. "EU Law and the Separation of Member States". In 36 Fordham International Law Journal 1151 (2013)
- ESCUDERO ESPINOSA, Juan Francisco. Self-Determination and Humanitarian Secession in Internacional Law of a Globalized World: Kosovo v. Crimea (Springer, 2017)
- FARLEY, Benjamin R.. "Calling a State a State: Somaliland and International Recognition". In 24 Emory International Law Review 777 (2010)
- FASONE, Cristina. "Secession and the Ambiguous Place of Regions Under EU Law". In Secession from a Member State and Withdrawal from the European Union: Troubled Membership 48-68 (Closa, C. (ed.) Cambridge University Press, 2017)
- FEYEN, Benjamin and Ewa Krzaklewska. "«Generation ERASMUS»: The New Europeans? A Reflection". In The ERASMUS Phenomenon: Symbol of a New European Generation? 229-242 (Feyen B. and Kzaklewska, E. (eds.) Peter Lang, 2012)
- FLIGSTEIN, Neil, Alina Polyakova and Sandholz, Wayne. "European Integration, Nationalism and European identity". In 50 Journal of Common Market Studies 106 (2012)
- FORSYTH, Murray. *U*nions of States: The Theory and Practice of Confederation (Leicester University Press, 1982)
- FOUÉRÉ, Yann. L'Europe aux cent drapeaux: essay pour server à la construction de l'Europe (Presses d'Europe, 1968)
- FUKUYAMA, Francis. Identity: The Demand for Dignity and the Politics of Resentment (Farrar, 2014)
- GALÁN GALÁN, Alfredo. "Secesión de Estados y pertenencia a la Unión Europea: Cataluña en la encrucijada". In 1 Istituzioni del Federalismo: rivista di studi giuridici e politici 96 (2013)
- GALERA VICTORIA, Adoración. "The Catalan Independence Movement in the Political and Constitutional Debate in the European Union". In Claims for Secession and Federalism 575-588 (López-

Basaguren, A, and Escajedo San-Epifanio, L. (eds.), Springer, 2019)

- GARBEN, Sacha. "The Bologna Process and the Lisbon Strategy: Commercialisation of Higher Education Through the Back Door?". In 6 CYELP 209 (2010)
- GARCÍA, Andrade, Paula. "State Succession and EU Citizenship". In Secession Within the Union: Intersection Points of International and European Law 48-57 (Brölmann, C. et. al.,, ACELG/ACIL, 2014)
- GUADREAULT-DESBIENS, Jean-François. "The Law and Politics: From the Political Contingency of Secession to a «Right to Decide»? Can Lessons Be Learned from the Quebec Case?". In The Canadian Contribution to a Comparative Law of Secession 33-68 (Delledonne, G., and Martinico, G. (eds.), Palgrave Macmillan, 2019)
- GELLNER, Ernest. Nations and Nationalism (Cornell University Press, 1983)
- VAN GERVEN, Walter. The European Union: A Polity of States and Peoples (Stanford University Press, 2005)
- GINSBURG, Tom and Versteeg, Mila. "From Catalonia to California: Secession in Constitutional Law". In 70 Alabama Law Review 923 (2019)
- GOUNIN, Yves. "Les dynamiques d'éclatements d'États dans l'Union Européenne: case tête juridique, défi politique". In 4 Politique étrangère 11 (2013)
- GOWLAND, David. Britain and the European Union (Routledge, 2017)
- GIDDENS, Anthony. Turbulent and Mighty Continent: What Future for Europe? (Polity, 2014)
- GUIDI, Mattia, and Mattia Casula. "The Europeanization of the Catalan Debate: A «War of Attrition»?". In The Amorality of Secession 173-192 (Closa, C., Margiotta, C. and Martinico, G. (eds.), Routledge, 2020)
- GUIRAO, Fernando. "An Independent Catalonia as a Member State of the European Union". In Catalonia: A New Independent State in Europe? A Debate on Secession Within the European Union 189-223 (Cuadras-Morató, X. (ed.), Routledge, 2015)
- HAAS, Ernst B.. The Uniting of Europe: Political, Social and Economic Forces (1950-1957) (Stanford University Press, 1968)
- HABERMAS, Jürgen. "Remarks on Dieter Grimm's «Does Europe Need a Constitution?»". In 1 European Law Review 302 (1995)
- The Crisis of the European Union. A Response (Polity Press, 2012)
- HALJAN, David P.. "Negotiating Quebec Secession". In 1 Revue Belge de Droit International 191 (1998)
- HAPPOLD, Matthew. "Independence: In or Out of Europe? An Independent Scotland and the European Union". In 49 International and Comparative Law Quaterly 15 (2000)
- HILPOLD, Peter. "Self-determination and Autonomy: Between Secession and Internal Self-Determination". In 4 International Journal on Minority and Group Rights 302 (2017)

- HOBSBAWM, Eric J.. Age of Revolutions. 1789-1848 (Vintage Books, 1962)
- Nations and Nationalism since 1780: Programme, Myth, Reality 2nd Ed. (Cambridge University Press, 1992)
- HOROWITZ, Donald L.. Ethnic Groups in Conflict 2nd Ed. (University of California Press, 2000)
- HROCH, Miroslav. Social Preconditions of National Revival in Europe: A Comparative Analysis of the Social Composition of Patriotic Groups among the Smaller European Nations (Cambridge University Press, 1985)
- IGNATIEFF, Michael. Blood and Belonging: Journeys into the New Nationalism (Penguin Canada, 1993)
- KEFALE, Asnake, Kamusella, Tomasz and Van der Beken, Christophe. In Eurasian Empires as Blueprints for Ethiopia (Routledge, 2021)
- KENEALY, Daniel and Stuart S. MacLennan. "Sincere Cooperation, Respect for Democracy and EU Citizenship: Sufficient to Guarantee Scotland's Future in the European Union?". In 20 European Law

Journal 591 (2014)

- KESAVANT, Vasan and Michael Stokes Paulsen. "Is West Virginia Unconstitutional?". In 90 California Law Review 291 (2002)
- KITROMILIDES, Paschalis M.. "Reviews. Jean Baptiste Duroselle, Europe: A History of its Peoples (translated by Richard Mayne), London, Viking, 1990". In 24 European History Quarterly 123 (1994)
- KLABBERS, Jan. "The Right to be Taken Seriously: Self-Determination in International Law". In 28 Human Rights Quarterly 186 (2006)
- KOCHENOV, Dimitry. EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law (Kluwer, 2008)
- KOCHENOV, Dimitry and Martijn van der Brink. "Secessions from EU Member States: The Imperative of Union's Neutrality". In 1 European Papers 67 (2016)
- KOHEN, Marcelo. "Introduction". In Secession: International Perspectives 1-20 (Cohen, M. (ed.)„ Cambridge University Press, 2006)
- KOHN, Hans. The Idea of Nationalism: A Study on its Origins and Background (MacMillan, 1946)
- KOSKENNIEMI, Martti. "National Self-Determination Today: Problems of Legal Theory and Practice". In 43 The International and Comparative Law Quarterly 241 (1994)
- KRAUSE, Rolf Friedrich. "Popular Votes and Independence for Montenegro". In Direct Democracy and Minorities 22-32 (Marxer, W. (ed.), Springer, 2012)
- HILLION, Christophe. "Scotland and the EU: Comment by Christophe Hillion". In VerfBlog (September 15, 2014)
- INNERARITY, Daniel and Ander Errasti. "Decide on What? Addressing Secessionist Claims in an Interdependent Europe". In The Amorality of Secession 62-83 (Closa, C. , Margiotta C., and Martinico, G. (eds.), Routledge, 2020)
- LARSEN, Signe Rehling. The Constitutional Theory of the Federation and the European Union (Oxford University Press, 2021)
- LAUTERPACHT, Hersch. Recognition in International Law (Cambridge University Press, 1947)
- LENAERTS, Koen. "Constitutionalism and the Many Faces of Federalism". In 38 The American Journal of Comparative Law 205 (1990)
- LEVRAT, Nicolas, Antunes, Sandrina, Tusseau, Guillaume, and Williams, Paul. Catalonia's Legitimate Right to Decide: Paths to Self-Determination (University of Geneva, 2017)
- LINCOLN, Abraham. "The Gettysburg Address". In Abraham Lincoln: Quotes, Quips, and Speeches (Leidner, G. (ed.), Cumberland House, 2009)
- LÓPEZ, Jaume. "A Right to Decide? On the Normative Basis of a Political Principle and its Application in the Catalan Case". In Catalonia in Spain and Europe: Is There a Way to Independence? 27-40 (Nagel K., and Rixen, S. (eds.), Nomos, 2015)
- LÓPEZ BASAGUREN, Alberto. "La secesión de territorios en la Constitución española". In 25 Revista de Derecho de la Unión Europea 87 (2013)
- LÓPEZ CASTILLO, António. "Autodeterminación soberanista e integración europea: España 2014". In 46-47 Cuadernos de Alzate 141 (2013)
- –, "State Integration and Disintegration Within the European Union: Regarding the Purported Secession of Catalonia and its Hypothetical Membership of the EU". In Claims for Secession and Federalism 563-573 (López-Basaguren, A., Escajedo San-Epifanio, L. (eds.), Springer, 2019)
- LUCAS PIRES, Francisco. Introdução ao Direito Constitucional Europeu (Almedina, 1997)
- –, "A Europa (O que é)". In A Revolução Europeia: antologia de textos 329-341 (Gabinete em Portugal do Parlamento Europeu, 2008)
- MACHADO, Jónatas E. M.. Direito Internacional 4th Ed. (Coimbra Editora, 2013)
- MAIA, Catherine, and Robert Kolb. O Estatuto Internacional da Província Angolana de Cabinda à Luz do Direito Internacional Público (Almedina, 2016)

- MANCINI, Susanna. "Secession and Self-Determination". In The Oxford Handbook of Comparative Constitutional Law 481-500 (Rosenfeld, M., and Sajó, A. (eds.), Oxford University Press, 2012)
- MARGIOTTA, Constanza. "An Update on Secession as the «Ultimate Right»". In Between Democracy and Law: The Amorality of Secession 9-28 (Closa, C., Margiotta C., and Martinico, G. (eds.), Routledge, 2020)
- MACIVER, Alastair. "Metaconstitutionalising Secession: the *Reference* and Scotland (in Europe)". In The Canadian Contribution to a Comparative Law of Secession 111-134 (Delledonne, G., and Martinico, G. (eds.), Plagrave Macmillan, 2019)
- MADISON, James. Federalist Paper No. 14". In The Federalist 67-79 (Goldman, L. (ed.), Oxford University Press, 2008)
- MANGAS MARTÍN, Araceli. "La secesión de territorios en un Estado miembro: efectos en el derecho de la Unión Europea". In 25 Revista de Derecho de la Unión Europea 66 (2013)
- MAR, Katherine del. "The Myth of Remedial Secession". In Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law 79-108 (French, D. (ed.), Cambridge University Press, 2013)
- MATAS I DALMESES, Jordi et. al.. The Internal Enlargement of the European Union: An Analysis of the Legal and Political Consequences for the European Union in the Event of Secession From or Dissolution of a Member State (Centre Maurits Coppieters, 2011)
- MATTOSO, José. A Identidade Nacional (Fundação Mário Soares, 1998)
- MCCANN, Philip. The UK Regional-National Economic Problem: Geography, Globalisation and Governance (Routledge, 2016)
- MEDINA ORTEGA, Manuel. El derecho de secesión en la Unión Europea (Marcial Pons, 2014)
- –, "The Political Rights of EU citizens". In Secession from a Member State and Withdrawal from the European Union: Troubled Membership 134-152 (Closa, C. (ed.), Cambridge University Press, 2017)
- MEINECKE, Friedrich. Cosmopolitanism and the Nation State (Princeton University Press, 1970)
- van MIDDELAAR, Luuk. The Passage to Europe: How a Continent Became a Union (Yale University Press, 2013)

– Alarums & Exclusions: Improvising Politics on the European Stage (Agenda Publishing, 2019)

- MIGUEL BÁRCENA, Josu de. "La cuestión de la secession en la Unión Europea: una visión constitucional". In 165 Revista de Estudos Políticos 211 (2014)
- MILWARD, Alan S.. The European Rescue of the Nation State (University of California Press, 1993)
- MIRANDA, Jorge. Manual de Direito Constitucional II 6th Ed. (Coimbra Editora, 2007)
- MORAVCSIK, Andrew. "The Myth of Europe's «Democratic Deficit»". In 43 Intereconomics 331 (2008)
- MOREIRA, Adriano. "Nação". In 4 Polis 492 (1986)
- NICOLAÏDIS, Kalypso. "We, the Peoples of Europe". In 83 Foreign Affairs 97 (2014)
- OETER, Stefan. "Recognition and Non-Recognition with Regard to Secession". In Self-Determination and Secession in International Law 45-67 (Walter, C, von Ungern-Sternberg, A., and Abushov, K. (eds.), Oxford University Press, 2014)
- O'NEILL, Aidan. "A Quarrel in a Faraway Country? Scotland, Independence and the EU", *Eutopia Law Blog*, of November 14, 2011
- PEREIRA COUTINHO, Francisco. "A Natureza Jurídica do Acordo Económico e Comercial Global (CETA)". In 6 Themis 295 (2018)

  – "You Can't Have Your Cake and Eat it Too: Portugal and the Self-determination of Western Sahara". In 5 UNIO – EU Law Journal 103 (2019)

- – Independência na União Europeia (Almedina, 2021)

- PESCATORE, Pierre. "Foreword". In Courts and Free Markets, Perspectives from the United States and Europe I vii-x (Sandalow, T., and Stein E. (eds.), Clarendon, 1982)

- PHILPOTT, Daniel. "In Defense of Self-Determination". In 105 Ethics 352 (1995)

  –, "Self-Determination in Practice". In National Self-Determination and Secession 79-102 (Moore, M. (ed.), Oxford University Press, 1998)
- PINELLI, Lucas, and Weyembergh, Anne. "La Justice belge refuse de renvoyer un responsible politique Catalan en Espagne: explications sur le mandate d'arrêt européen". In Justice en ligne (October 15, 2020)
- PIRIS, Jean-Claude, "Political and Legal Aspects of Recent Regional Secessionist Trends in some EU Member States (I)". Secession from a Member State and Withdrawal from the European Union: Troubled Membership 69-87 (Closa, C. (ed.), Cambridge University Press, 2017)

  –, "Political and Legal Aspects of Recent Regional Secessionist Trends in some EU Member States (II)". In Secession from a Member State and Withdrawal from the European Union: Troubled Membership 88-105 (Closa, C. (ed.), Cambridge University Press, 2017)
- POCOCK, J. G. A.. The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton University Press, 1975)
- POIARES MADURO, Miguel. "Contrapunctual Law: Europe's Constitutional Pluralism in Action". In Sovereignty in Transition 502-537 (Neil Walker (ed.), Hart, 2003)
- RADOSLAVOV YORDANOV, Yoveslav. "La secesión de territorios en un Estado Miembro de la Unión Europea y sus consecuencias en relación com las minorias resultantes". In 23 Anuario Hispano-Luso-Americano de Derecho Internacional 385 (2017-2018)
- RAIČ, David. Statehood and the Law of Self-Determination (Kluwer, 2002)
- RAMOS, Rui. História de Portugal: A segunda fundação (1890-1926) VI (Editorial Estampa, 1994)
- RENAN, Ernest. Qu'est ce que c'est une nation? Conference faite en Sorbonne, le 11 mars 1882 2nd Ed. (CL, 1882)
- REQUEJO, Ferran, and Nagel, Klaus-Jürgen. "Democracy and Borders: External and Internal Secession in the EU". In 14 EU Borders Working Paper Series (2017)
- RIDAO MARTÍN, Joan, and González Bondía, Alfonso. "La Unión Europea ante la eventual creación de nuevos Estados surgidos de la secesión de Estados miembros". In 27 Revista de Derecho de la Unión Europea 363 (2014)
- SARMIENTO, Daniel. "The Strange (German) Case of Mr. Puigdemont's European Arrest Warrant". In Verfblog (April 11, 2018)
- SCHMITT, Carl. "The Constitutional Theory of the Federation". In 91 Telos 26 (1992)
- SCHÖNBERGER, Christophe, "European Citizenship as Federal Citizenship: Some Citizenship Lessons of Comparative Federalism". In 19 Europe Review of Public Law 61 (2007)
- SCHUMAN, Robert, Pour l'Europe (orig. 1963) 4th Edition (Nagel, 2005)
- SCHÜTZE, Robert. "On «Federal» Ground: the European Union as an (Inter)national Phenomenon". In 46 *Common Market Law Review* 1069 (2009)
  - From Dual to Cooperative Federalism (Oxford University Press, 2009)
  - "Federalism and Foreign Affairs: Mixity as an (Inter)national Phenomenon". In Foreign Affairs and the EU Constitution: Selected Essays 175-208 (Cambridge University Press, 2014)
  - "Models of Demoicracy: Some Preliminary Thoughts". In EUI Working Papers (2020/8)
- SHAW, Malcolm. International Law 8th Ed. (Cambridge University Press 2017)
- SIEYÈS, Emmanuel Joseph. Qu'est-ce que le Tiers État? (Chez Alexandre Correard, 1833)
- SIGALAS, Emmanuel. "Does ERASMUS Student Mobility promote a European Identity?". In Webpapers on Constitucionalism & Governance beyond the State 2 (University of Hamburg, 2009)
- STERIO, Milena. Secession in International Law: A New Framework (Edward Elgar Publishing, 2018)
- STRIEBECK, Jennifer. "A Matter of Belonging and Trust: The Creation of an European Identity through the ERASMUS Programme?". In The ERASMUS Phenomenon: Symbol of a New European Generation? 191-206 (Feyen, B. and Krzaklewska E. (eds.), Peter Lang, 2012)
- SUNSTEIN, Cass R.. "Constitutionalism and Secession". In 58 University of Chicago Law Review 633

(1991)

- TANCREDI, Antonello. "Dismemberment of States". In Max Planck Encyclopedia of Public International Law (Wolfrum, R. (ed.), Oxford University Press, 2007)
- THÜRER, Daniel, and Burri, Thomas. "Secession". In Max Planck Encyclopedia of Public International Law (Wolfrum, R. (ed.), Oxford University Press, 2009)
- TIERNEY, Stephen and Boyle, Katie. "An Independent Scotland: The Road to Membership of the European Union". In ESRC Scottish Centre on Constitutional Change Briefing Papers (ESRC Scottish Centre on Constitutional Change, 2014)
- TOMUSCHAT, Christian. "Secession and Self-Determination". In Secession: International Perspectives 23-45 (Kohen, M. (ed.), Cambridge University Press, 2006)
- TURP, Daniel. "Catalonia's «Right to Decide» under International, European, Spanish, Catalan and Comparative Law". In The Catalan Independence Referendum: An Assessment of the Process of Self-Determination 55-74 (IRAI, 2017)
- VAUBEL, Roland. "Secession in the European Union". In 33 Economic Affairs 288 (2013)
- DE WAELE, Henri. "Secession and Succession in the EU: Fuzzy Logic, Granular Outcomes?". In Secession Within the Union: Intersection Points of International and European Law 34-39 (Brölmann, C. et. al., ACELG/ACIL, 2014)
- WALKER, Neil. "Internal Enlargement in the European Union". In Secession and Withdrawal from the EU: Troubled Membership 32-47 (Closa, C. (ed.), Cambridge University Press, 2017)
- WEBER, Max. Essays on Sociology (University Press, 1946)
- WEILER, Joseph H. H.. "Federalism without Constitutionalism: Europe's *Sonderweg*". In The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union 54-71 (Nicolaïdis, K. and Howse R. (eds.), Oxford University Press, 2001)

  –, "Catalonian Independence and the European Union". In 23 European Journal of International Law 910 (2012)
- WHEELER, Douglas L., and Opello Jr., Walter C.. Historical Dictionary of Portugal, 3rd ed. (The Scarecrow Press, 2010)
- DE WITTE, Bruno, "Community Law and National Constitutional Values". In18 Legal Issues of Economic Integration 22 (1991-1992)

  –, "Scotland and the EU: Comment by Bruno de Witte", *Verfassungsblog*, September 10, 2014
- WYLLER, Thomas Chr.. "Norway: Six Exceptions to the Rule". In The Referendum Experience in Europe 139-152 (Gallagher, M., and Uleri, P. V. (ed.), MacMillan Press, 1996)
- ZILLER, Jacques. "The European Union and the Territorial Scope of the European Treaties". 38 Victoria University of Wellington Law Review 51 (2007)
- ZIMMERMANN, Andreas. In "Continuity of States". Max Planck Encyclopedia of Public International Law (Wolfrum, R. (ed.), Oxford University Press, 2006)