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## The Zeitgeist of Secession Amidst the March Towards Unification: Scotland, Catalonia, and the Future of the European Union

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# THE ZEITGEIST OF SECESSION AMIDST THE MARCH TOWARDS UNIFICATION: SCOTLAND, CATALONIA, AND THE FUTURE OF THE EUROPEAN UNION

THOMAS Y. PATRICK\*

**Abstract:** Europe is in the midst of a period of unprecedented change. The European Union is undergoing great unification and centralization of power, and some believe that a “European” identity is subsuming the traditional national identity of Member States. Contributing factors to this remarkable phenomenon include the emergence of viable supranational frameworks, economic recession, technological advancement, and mass migration. Some groups, however, have been empowered by these circumstances to seek greater sub-state power and to solidify regional identities. Scotland and Catalonia in particular present two distinct independence movements in the midst of continental power centralization. Their efforts present novel and serious challenges both to their governing states and to the European Union itself. The European Union must aid the resolution of these movements or face sacrificing its own legitimacy. Either way, its course of action threatens to unleash a chain reaction that may ultimately compromise its decision-making capabilities and undermine its very future.

## INTRODUCTION

On September 18, 2014, the people of Scotland voted to remain a part of the United Kingdom (UK) in a highly anticipated referendum.<sup>1</sup> Of the 84% of the population that participated, 55.3% voted to remain with the UK, while 44.7% voted to become an independent country.<sup>2</sup> The referendum threatened to end a 307-year long union with England and Wales and arrived only seventeen years after an earlier referendum, which granted the Scottish government broad new powers and a separate parliament.<sup>3</sup> Alt-

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\* Thomas Y. Patrick is a Note Editor for the *Boston College International & Comparative Law Review*. He extends special thanks to his parents and brother for their constant support and encouragement.

<sup>1</sup> See *Scottish Referendum: Scotland Votes ‘No’ to Independence*, BBC (Sept. 19, 2014), <http://www.bbc.com/news/uk-scotland-29270441> [<http://perma.cc/9KLU-MUH2>].

<sup>2</sup> See *Scotland Decides: Results*, BBC (Sept. 19, 2014), <http://www.bbc.com/news/events/scotland-decides/results> [<http://perma.cc/QG9V-RRG5>].

<sup>3</sup> See Sarah Pruitt, *The History Behind the Scottish Independence Vote*, HIST. IN THE HEADLINES (Sept. 16, 2014), <http://www.history.com/news/the-history-behind-the-scottish-independence-vote> [<http://perma.cc/Y7Z4-XNL7>].

though it offered some initial resistance to the referendum, the British government signed the Edinburgh Agreement in 2012, which transferred to Scotland the legal authority to decide on independence.<sup>4</sup>

Two months after Scotland's referendum, the people of Catalonia voted to make Catalonia independent from Spain in a non-binding referendum.<sup>5</sup> Out of Catalonia's 7.5 million citizens, 2.3 million voted in the referendum, and over 80% of those who participated voted to create an independent state.<sup>6</sup> As in Scotland, this referendum was not a sudden anomaly, but the culmination of a long-standing campaign for autonomy dating from the reign of dictator Francisco Franco.<sup>7</sup> In 2013, the Catalan Parliament passed the *Declaració de Sobirania*, or Catalan Sovereignty Declaration, which called for a referendum and announced that Catalonia was a sovereign state.<sup>8</sup> The Spanish Constitutional Court suspended the proceeding, but the Catalan regional government subverted the order by declaring the referendum "unofficial" and therefore non-binding.<sup>9</sup>

There is currently no clear legal framework for sub-state self-determination.<sup>10</sup> In the absence of definitive law, a crucial indicator of a sub-state's

<sup>4</sup> See Agreement Between the United Kingdom Government and the Scottish Government on a Referendum on Independence for Scotland, Gr. Brit.-Scot., Oct. 15, 2012, <http://www.gov.scot/Resource/0040/00404789.pdf> [<http://perma.cc/CSN2-ZKCF>] [hereinafter UK-Scotland Agreement]; *Advocate General Says SNP's Referendum Plans Would Be 'Contrary to the Rule of Law,'* COURIER (Jan. 17, 2012), <http://www.thecourier.co.uk/news/politics/advocate-general-says-snp-s-referendum-plans-would-be-contrary-to-the-rule-of-law-1.49938> [<http://perma.cc/32TG-2UUY>].

<sup>5</sup> See *Catalonia Vote: 80% Back Independence—Officials*, BBC (Nov. 10, 2014) <http://www.bbc.com/news/world-europe-29982960> [<http://perma.cc/AYY5-9768>].

<sup>6</sup> See *Resultats Participa 2014*, GENERALITAT DE CATALUNYA 9N2014, <http://participa2014.cat/> (last visited Nov. 20, 2015) [<http://perma.cc/GQ2Y-98MK>]; *Population 1900-2015*, GENERALITAT DE CATALUNYA, <http://www.idescat.cat/pub/?id=acc&n=245&lang=en> (last visited Dec. 28, 2015) [[perma.cc/28Q5-7EMF](http://perma.cc/28Q5-7EMF)].

<sup>7</sup> See Pruitt, *supra* note 3; *Why a Vote?*, PUB. DIPL. COUNCIL OF CATALONIA, <http://www.cataloniavotes.eu/why-a-independence-referendum-incatalonia> (last visited Nov. 20, 2015) [<http://perma.cc/LT5X-DRAF>].

<sup>8</sup> *Resolució 5/X del Parlament de Catalunya, per la qual s'aprova la Declaració de Sobirania i del dret a decidir del poble de Catalunya* [Resolution 5/X of the Parliament of Catalonia, Approving the Declaration of Sovereignty and the Right of the People to Decide], Tram. 250-00059/10 i 250-00060/10, PARLAMENT DE CATALUNYA (2013), [http://www.parlament.cat/actualitat/R5\\_X\\_sobirania.pdf](http://www.parlament.cat/actualitat/R5_X_sobirania.pdf) [<http://perma.cc/R6RJ-M8VD>]; see M. Colomer, *La Declaració De Sobirania Ja Fa Via Al Parlament*, ARA.CAT (Jan. 22, 2013), [http://www.ara.cat/politica/declaracio-sobirania-Parlament-CiU-ERC-ICV\\_0\\_851914901.html](http://www.ara.cat/politica/declaracio-sobirania-Parlament-CiU-ERC-ICV_0_851914901.html) [<http://perma.cc/FRH3-SKTP>].

<sup>9</sup> See Ashifa Kassam, *Catalonia to Hold Unofficial Poll Instead of Independence Referendum*, GUARDIAN (Oct. 14, 2014), <http://www.theguardian.com/world/2014/oct/14/catalonia-calls-off-november-independence-referendum> [<http://perma.cc/VZ9D-P7PQ>]; *Spain Higher Court Suspends Catalonia Vote*, AL JAZEERA (Sept. 29, 2014), <http://www.aljazeera.com/news/europe/2014/09/spain-files-challenge-catalonia-referendum-2014929131040786306.html> [<http://perma.cc/T3JM-ZVRT>].

<sup>10</sup> See Peter Roethke, *The Right to Secede Under International Law: The Case of Somaliland*, 20 J. INT'L SERV. 35, 38 (2011). The author states, "International law does not grant sub-state entities a general right to secede from their parent states, nor does it prohibit secession." *Id.*

legitimacy is the attitude of other states or supranational organizations.<sup>11</sup> For European sub-states, the European Union's (EU) reaction is particularly important due to the fact that it is the dominating force in European politics and it simultaneously represents the majority of European countries.<sup>12</sup> Here, the EU stated that the outcome of Scotland's referendum was good for a "united, open[,] and stronger Europe."<sup>13</sup> This statement suggests that the EU preferred Scotland as a part of the UK rather than its own country, and it cast doubt upon whether the EU would recognize an independent Scotland.<sup>14</sup> Additionally, the European Commission discouraged Catalan separatists by stating that an independent Catalonia would not become part of the EU automatically, but would become a "third country" that would have to apply for EU membership.<sup>15</sup> The EU has not, however, made a definitive statement on the legality of the secession referendums.<sup>16</sup> Without a clear framework on sub-state independence, sub-state secession is treated as an internal issue for the state, which grants the governing state full control over the resolution of sub-state independence.<sup>17</sup> Absent third party intervention, the natural tensions between the sub-state and the governing state can lead to excessive repression of self-determination movements, social turmoil, and violence.<sup>18</sup>

This Note explores two current sub-state secession movements in Europe to demonstrate the need for a coherent EU legal framework on sub-

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<sup>11</sup> See SÉVERINE BELLINA ET AL., NOR. AGENCY FOR DEV. COOPERATION, THE LEGITIMACY OF THE STATE IN FRAGILE SITUATIONS 15 (2009), <http://www.norad.no/en/toolspublications/publications/2009/the-legitimacy-of-the-state-in-fragile-situations/> (select "Download") [<http://perma.cc/U2Y2-HUA3>]; Nico Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, 16 EUR. J. INT'L L. 369, 372–73, 397 (2005).

<sup>12</sup> See JEREMY RICHARDSON, EUROPEAN UNION: POWER AND POLICY-MAKING 3–8 (Jeremy Richardson ed., 3d ed. 2006); Christopher K. Connolly, *Independence in Europe: Secession, Sovereignty, and the European Union*, 24 DUKE J. COMP. & INT'L L. 51, 79–82 (2013).

<sup>13</sup> Alastair Macdonald & Paul Taylor, *Relief at Scotland's 'No' Tinged with Fear of Nationalism*, REUTERS (Sept. 19, 2014), <http://uk.reuters.com/article/2014/09/19/uk-scotland-independence-europe-idUKKBN0HE10M20140919> [<http://perma.cc/V7G3-EQCL>] (quoting the European Commission).

<sup>14</sup> See *id.*

<sup>15</sup> See Brussels Says an Independent Catalonia Would Need to Leave EU, EURACTIV.COM (Sept. 16, 2013), <http://www.euractiv.com/video/brussels-says-independent-catalonia-would-need-leave-eu-307234> [<http://perma.cc/J7KH-QZUV>].

<sup>16</sup> See Florentine Oberman, *Should Accession Criteria Be Adapted to Take into Account States That May Break Away from Current Members?*, EUR. YOUTH PARLIAMENT OF THE NETH. (Aug. 30, 2013), <http://eybuk.co.uk/accession-criteria-adapted-take-account-states-may-break-away-current-members> [<http://perma.cc/Q6C5-QDHJ>]. As Oberman explains, "the [European] Treaties do not feature any provision on the membership of an EU territory after secession." *Id.*

<sup>17</sup> See Connolly, *supra* note 12, at 73–74.

<sup>18</sup> See Fernando Betancor, *Catalonia and Spain: End Game Scenarios*, COMMON SENSE (Apr. 21, 2014), <http://www.fdbetancor.com/2014/04/21/catalonia-and-spain-end-game-scenarios/> [<http://perma.cc/UK7Z-S78C>].

state independence and accession to the EU. Part I of this Note provides a historical and social background to the ongoing sub-state secession movements in Scotland and Catalonia. It also analyzes the economic, political, and legal tensions at work in the two European regions. Part II discusses the current international framework for addressing separatists and explores the role of the EU in catalyzing sub-state nationalism. Part III assesses the future of Scotland and Catalonia as sub-states and advocates for the creation of a legitimate framework that will justly address the resolution of separatist movements.

## I. BACKGROUND

The modern conception of self-determination has its origins in the rise of nationalist philosophies in the nineteenth century.<sup>19</sup> The political manifestation of the doctrine, however, is most closely associated with Woodrow Wilson and the introduction of his Fourteen Points in 1918, which emphasized taking into account “the interests of the populations” of various countries and proclaiming the “opportunity of autonomous development” for European states.<sup>20</sup> Despite Wilson’s idealistic vision, “in the era after the First World War[,] self-determination, although in vogue as a political postulate and a rhetorical slogan . . . was not a part of the body of international legal norms.”<sup>21</sup> It was not until the close of the Second World War that the legal concept of self-determination gained traction as a recognized right, thanks in part to its prominent identification in foundational United Nations (UN) documents.<sup>22</sup>

The relatively recent development of legal self-determination notwithstanding, Europe’s borders have been in a constant state of flux for centuries, largely as a result of a complex amalgamation of revolution, war, and secession.<sup>23</sup> Even now, there are forty secessionist movements in Europe.<sup>24</sup>

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<sup>19</sup> See PATRICIA CARLEY, U.S. INST. OF PEACE, SELF-DETERMINATION: SOVEREIGNTY, TERRITORIAL INTEGRITY, AND THE RIGHT OF SECESSION 3 (1996), available at <http://www.usip.org/sites/default/files/pwks7.pdf> [<http://perma.cc/NA88-XPBX>] (pointing to John Stuart Mill as a particularly important contributor to the concept of self-determination).

<sup>20</sup> Woodrow Wilson, President of the United States, Address to a Joint Session of Congress on the Conditions of Peace (Jan. 8, 1918) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=65405>) [<http://perma.cc/L2D3-Y3EK>]; see Connolly, *supra* note 12, at 68–69.

<sup>21</sup> See Connolly, *supra* note 12, at 68 (quoting ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 317 (1998)).

<sup>22</sup> See *id.* at 69.

<sup>23</sup> See *Europe’s Changing Borders*, BBC (2003), [http://news.bbc.co.uk/2/shared/spl/hi/europe/02/euro\\_borders/html/default.stm](http://news.bbc.co.uk/2/shared/spl/hi/europe/02/euro_borders/html/default.stm) [<http://perma.cc/TT6G-G8KV>]; see also *The Formation of European Nations*, WORLDODOGY (2009), [http://www.worldodogy.com/Europe/Europe\\_Nations/](http://www.worldodogy.com/Europe/Europe_Nations/) [<http://perma.cc/F234-WWT4>].

Yet despite the unusual level of separatist fervor and the successful unilateral secession of Kosovo from Serbia, no concrete legal framework decisively regulates sub-state secession.<sup>25</sup> Consequently, the outcome of secession is determined by the governing state's attitude towards the secession and its ability to prevent sub-state separation, as well as recognition of the secession by other states.<sup>26</sup>

The renewed secessionist spirit across Europe has been related, in part, to the increasingly integrated EU, which is now the supreme force in European politics.<sup>27</sup> Like the legal right of self-determination, the EU is a twentieth century development.<sup>28</sup> What is now the EU began in 1951 when several European nations established the European Coal and Steel Community (ECSC).<sup>29</sup> The original purpose of the ECSC was to create a close economic partnership between six war-torn countries in order to prevent another European war.<sup>30</sup> In the late 1950s, the ECSC became the European Economic Community, and it began to expand while further integrating its members via open border controls and the creation of a single economic market.<sup>31</sup> The abrupt end of the Cold War "emboldened [M]ember [S]tates to develop a common foreign and security policy" and led to the Maastricht Treaty in 1992, which created the EU.<sup>32</sup> At the turn of the twenty-first century, the EU continued to integrate and expand, and introduced the Euro as the common currency for all Member States.<sup>33</sup> Finally, in 2009, the Treaty of Lisbon was signed, which empowered the EU as an institution and expanded its policy-making authority.<sup>34</sup>

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<sup>24</sup> See *What's EFA and History*, EUR. FREE ALLIANCE (2013), <http://www.e-f-a.org/about-us/whats-efa-and-history/> [<http://perma.cc/N8MB-RJT5>]. Several examples include *Bloc Nacionalista Valencia*, *Yorkshire First*, and *Liga Veneta Repubblica*. *Id.*

<sup>25</sup> See Connolly, *supra* note 12, at 67–68; Ian Traynor, *Is Europe Cracking Up?*, GLOBAL: THE INT'L BRIEFING (2013), <http://www.global-briefing.org/2013/04/is-europe-cracking-up/> [<http://perma.cc/X2RM-G7SV>] [hereinafter Traynor, *Is Europe Cracking Up?*].

<sup>26</sup> See Christopher J. Borgen, *Introductory Note to Kosovo's Declaration of Independence*, 47 INT'L L. MATERIALS 461, 463–64 (2008); Roethke, *supra* note 10, at 38; George B. Revel, *Scotland/UK Secession: International Legal Considerations 8–9* (Sept. 1, 2012) (unpublished L.L.M. thesis, University of Leicester), <http://ssrn.com/abstract=2384497> [<http://perma.cc/A4QT-XFTQ>].

<sup>27</sup> See RICHARDSON, *supra* note 12, at 3–8; Connolly, *supra* note 12, at 78–79.

<sup>28</sup> See CARLEY, *supra* note 19, at 3; *The History of the European Union*, EUROPEAN UNION, [http://europa.eu/about-eu/eu-history/index\\_en.htm](http://europa.eu/about-eu/eu-history/index_en.htm) (last updated Oct. 19, 2015) [<http://perma.cc/3F23-ZAU7>].

<sup>29</sup> See *The History of the European Union*, *supra* note 28.

<sup>30</sup> See DESMOND DINAN, *EUROPE RECAST: A HISTORY OF EUROPEAN UNION 5–6* (2d ed. 2014); *The History of the European Union*, *supra* note 28.

<sup>31</sup> See DINAN, *supra* note 30, at 6; *The History of the European Union*, *supra* note 28.

<sup>32</sup> See DINAN, *supra* note 30, at 6–8.

<sup>33</sup> See *id.* at 8; *The History of the European Union*, *supra* note 28.

<sup>34</sup> See DINAN, *supra* note 30, at 9.

Several other factors are stimulating the emergence of separatist groups, namely economy, identity, and autonomy.<sup>35</sup> In particular, the recent economic crisis has created widespread dissatisfaction with the current political establishment.<sup>36</sup> Rising wealth and income inequality have led many to question free-market doctrines and embrace protectionist policies, while poor workers in sub-states perceive that they are unrepresented within the larger state.<sup>37</sup> These economic forces, as well as ethnic delineations, have empowered secession movements, particularly those in Scotland and Catalonia.<sup>38</sup> Consequently, an examination of the economics and history of a sub-state is crucial to understanding its present and future.<sup>39</sup>

### *A. Scotland: Prospects of Post-Referendum Independence*

The division between England and Scotland has existed since 122 AD, when the Roman Emperor Hadrian constructed a wall across northern England to repel Scottish barbarians.<sup>40</sup> During the subsequent 1500 years, Scotland fought a series of wars with England to maintain independence.<sup>41</sup> The 1707 Act of Union permanently united the two countries under one banner, although Scotland was allowed to maintain separate ecclesial, legal, and educational systems and was given forty-five seats in the House of Commons.<sup>42</sup>

Scotland's unification with England catalyzed an intellectual and economic revolution in the country, and the Scottish population nearly tripled between 1801 and 1901.<sup>43</sup> Simultaneously, the Scots actively participated in

<sup>35</sup> See Connolly, *supra* note 12, at 55–56.

<sup>36</sup> See *Culture Matters More*, ECONOMIST (Aug. 11, 2012), <http://www.economist.com/node/21560294> [<http://perma.cc/6EWY-U6EP>]; Nouriel Roubini, *Economic Insecurity and the Rise of Nationalism*, GUARDIAN (Jun. 2, 2014), <http://www.theguardian.com/business/economics-blog/2014/jun/02/economic-insecurity-nationalism-on-the-rise-globalisation-nouriel-roubini> [<http://perma.cc/RJB9-5333>].

<sup>37</sup> See Connolly, *supra* note 12, at 55; Roubini, *supra* note 36.

<sup>38</sup> See Connolly, *supra* note 12, at 55–57; Roubini, *supra* note 36; see also Ross McGuinness, *Scottish Independence: Why Catalonia, Flanders and Venice Will Be Watching*, METRO (Aug. 22, 2014), <http://metro.co.uk/2014/08/22/scottish-independence-why-catalonia-flanders-and-venice-will-be-watching-4838046/> [<http://perma.cc/3SQZ-7QTA>].

<sup>39</sup> See Connolly, *supra* note 12, at 56–62; McGuinness, *supra* note 38.

<sup>40</sup> See Roland Flamini, *Scotland's Independence Bid: History, Prospects, Challenges*, WORLD AFF. J. (May/June 2013), <http://www.worldaffairsjournal.org/article/scotland's-independence-bid-history-prospects-challenges> [<http://perma.cc/ZQ73-46JP>].

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See JONATHAN I. ISRAEL, *DEMOCRATIC ENLIGHTENMENT: PHILOSOPHY, REVOLUTION, AND HUMAN RIGHTS 1750–1790*, at 233–34 (2011); JULIE JEFFERIES, U.K. OFFICE FOR NAT'L STATISTICS, *FOCUS ON PEOPLE AND MIGRATION: 2005*, at 3–4 (2005), <http://www.ons.gov.uk/ons/rel/fertility-analysis/focus-on-people-and-migration/december-2005/index.html> [<http://perma.cc/4E2X-F382>].

the budding British Empire by serving as soldiers, governors, and merchants, knitting together a shared identity with the British that continued well into the twentieth century.<sup>44</sup>

The primary engine for the Scottish independence movement, the Scottish National Party (SNP), was founded in 1934.<sup>45</sup> The SNP was restricted to the fringe of the Scottish political landscape until 1988, when the introduction of the poll tax by Margaret Thatcher's government sparked a revival in Scottish self-governance.<sup>46</sup> After a 1997 referendum, which demonstrated enormous support for a Scottish parliament, the Scotland Act of 1998 devolved powers from the UK's parliament in Westminster to Scotland's own parliament.<sup>47</sup> The SNP's political presence grew after 2000, and the party secured Scotland's first majority government in 2011.<sup>48</sup> Immediately after the elections, the SNP pushed for an independence referendum, leading to the Edinburgh Agreement in 2012.<sup>49</sup> The Edinburgh Agreement gave the Scottish government the legal authority to hold a binding referendum on the issue of secession before December 31, 2014.<sup>50</sup>

The drive for Scottish independence arises from economic inequalities as well as from political and cultural differences.<sup>51</sup> Although Scotland's per-capita gross domestic product (GDP) is higher than that of Great Britain, and its unemployment rate is lower, the country's total population makes up less than 10% of Great Britain's population.<sup>52</sup> The main economic tensions center on the exploitation of North Sea oil reserves and the wage difference

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<sup>44</sup> See Chris Gibbs, *The New Britons: Scottish Identity in the 18th and 19th Centuries*, NAPOLEON SERIES (Aug. 2006), [http://www.napoleon-series.org/research/society/c\\_scottishidentity.html](http://www.napoleon-series.org/research/society/c_scottishidentity.html) [<http://perma.cc/KA84-3CBY>].

<sup>45</sup> See Gareth Jones, *History of Scotland's Bids for Independence*, REUTERS (Feb. 4, 2014), <http://www.reuters.com/article/2014/02/04/us-scotland-independence-history-idUSBREA131BT20140204> [<http://perma.cc/6XF3-M72K>].

<sup>46</sup> See Ewen A. Cameron, *Scottish Independence: What History Tells Us About the Outcome of the Referendum*, TELEGRAPH (Aug. 20, 2014), <http://www.telegraph.co.uk/news/uknews/scottish-independence/11045857/Scottish-independence-what-history-tells-us-about-the-outcome-of-the-referendum.html> [<http://perma.cc/VR4T-65LG>]; Joshua Keating, *Scotland's Independence Leader on How Margaret Thatcher Helped Scottish Nationalism*, FOREIGN POLICY (Apr. 9, 2013), <http://foreignpolicy.com/2013/04/09/scotlands-independence-leader-on-how-margaret-thatcher-helped-scottish-nationalism/> [<http://perma.cc/Y6SV-APBC>].

<sup>47</sup> See Jones, *supra* note 45.

<sup>48</sup> See *id.*

<sup>49</sup> See *id.*

<sup>50</sup> See UK-Scotland Agreement, *supra* note 4.

<sup>51</sup> See Neil Irwin, *Why Does Scotland Want Independence? It's Culture vs. Economics*, N.Y. TIMES: THE UPSHOT (Sept. 9, 2014), <http://www.nytimes.com/2014/09/10/upshot/why-does-scotland-want-independence-its-culture-vs-economics.html> [<http://perma.cc/EGG7-G8NG>].

<sup>52</sup> See *Scotland in Numbers*, BBC (Nov. 25, 2013), <http://www.bbc.com/news/uk-scotland-24866266> [<http://perma.cc/RAV9-9YBE>].



between England and Scotland.<sup>53</sup> Opponents of independence have calculated that a successful referendum would overexpose Scottish banks and create a budget deficit equal to 5% of the Scottish GDP.<sup>54</sup> Although the referendum failed, the UK government promised to grant the Scottish government additional power as a concession.<sup>55</sup> Furthermore, the 2014 referendum does not preclude another vote on secession before the end of the decade, which is particularly noteworthy considering the closer-than-expected results in 2014 and the UK's own referendum to end EU membership scheduled for 2017.<sup>56</sup> Other economic factors, such as the price of crude oil and the UK tax regime, may also affect the drive for autonomy.<sup>57</sup>

### B. Catalonia's Battle for Sovereignty

Catalonia's journey towards independence is similar to Scotland's, although with some crucial differences.<sup>58</sup> For centuries, Catalonia was part of the Crown of Aragon, a sizeable Mediterranean empire.<sup>59</sup> In 1453, the marriage of King Ferdinand II to Isabella of Castile created modern-day Spain.<sup>60</sup> Catalonia retained its autonomy, culture, language, and tax system, but its authority gradually decreased over the subsequent two centuries.<sup>61</sup> Catalonia, as a state, was dissolved in 1716 as a result of its loss in the War of the Spanish Succession.<sup>62</sup>

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<sup>53</sup> See Jan-Pieter Atsma, *Why Vote Yes for Scottish Independence?*, INDEP. SCOT. (Jan. 6, 2014), <http://www.independentscotland.org/content/voting-yes-for-scottish-independence.htm> [<http://perma.cc/MG3V-UP9S>].

<sup>54</sup> See Larry Elliott, *Scottish Independence: Still Undecided? Six Key Economic Issues to Consider*, GUARDIAN (Sept. 17, 2014), <http://www.theguardian.com/business/economics-blog/2014/sep/17/scottish-independence-six-key-economic-issues> [<http://perma.cc/A886-Y4RK>].

<sup>55</sup> See Andrew Osborn & Alistair Smout, *Scottish Nationalists Storm Back After Referendum Defeat*, REUTERS (Nov. 7, 2014), <http://uk.reuters.com/article/2014/11/07/uk-britain-scotland-idUKKBN0IR1EQ20141107> [<http://perma.cc/9STC-4NAF>].

<sup>56</sup> See *After the No Vote*, ECONOMIST (Sept. 19, 2014), <http://www.economist.com/blogs/blightly/2014/09/scotlands-referendum-1> [<http://perma.cc/CA28-ZE34>].

<sup>57</sup> See Ewing, *Oil Price Plunge Has Produced Most Serious Jobs Situation Scotland's Faced in Living Memory*, HERALD SCOT. (Jan. 15, 2015) <http://www.heraldscotland.com/politics/scottish-politics/ewing-oil-price-plunge-has-produced-most-serious-jobs-situation-scotlands.1421318531> [<http://perma.cc/6S7K-RA7Q>].

<sup>58</sup> See Connolly, *supra* note 12, at 55–62; Flamini, *supra* note 40.

<sup>59</sup> See Connolly, *supra* note 12, at 55–56.

<sup>60</sup> See *id.*

<sup>61</sup> See *id.* at 56.

<sup>62</sup> See STANLEY G. PAYNE, A HISTORY OF SPAIN AND PORTUGAL 351–54 (1973); THE TREATIES OF THE WAR OF THE SPANISH SUCCESSION: AN HISTORICAL AND CRITICAL DICTIONARY 86 (Linda Frey & Marsha Frey, eds., 1995); Connolly, *supra* note 12, at 56.

Despite its annexation by Spain, Catalonia became a highly industrialized, cultured, and wealthy area by the beginning of the twentieth century.<sup>63</sup> It was independent for a brief time in the 1930s before being subjugated by Spanish dictator Francisco Franco.<sup>64</sup> Franco's brutal repression of Catalan culture triggered its revival and solidified Catalonia's separate identity from Spain.<sup>65</sup> The 1978 Spanish Constitution and the 1979 Statute of Autonomy restored democracy in Spain and provided for significant Catalan autonomy.<sup>66</sup> Catalonia nevertheless moved towards full independence, starting with an amended Statute of Autonomy in 2006 that defined Catalonia as a nation and gave preference to the Catalan language in political proceedings.<sup>67</sup> In 2010, the Spanish Constitutional Court excised these amendments on constitutional grounds.<sup>68</sup> This pronouncement only inflamed resentment against Spain and triggered separatist protests across the region.<sup>69</sup> Catalonia also pursued a series of increasingly nationalistic actions by banning the Spanish pastime of bullfighting and holding non-binding polls on the topic of secession, with the majority of voters supporting secession.<sup>70</sup> On September 11, 2012, around 1.5 million people took part in Catalonia's annual rally for independence in Barcelona.<sup>71</sup>

Simultaneously, the worldwide recession struck Spain.<sup>72</sup> Catalonia's unemployment skyrocketed to 24.45% by March 2013, with youth unemployment reaching 43% that year.<sup>73</sup> Catalonia's languishing economy and

<sup>63</sup> See PAYNE, *supra* note 62, at 476–79, 579; *Catalan History in 15 Episodes*, PUBLIC DIPLOMACY COUNCIL OF CATALONIA, <http://www.cataloniavotes.eu/history> (last visited Nov. 20, 2015) [<http://perma.cc/E93E-WJF6>].

<sup>64</sup> See Conxita Mir, *The Francoist Repression in the Catalan Countries*, 1 CATALAN HIST. REV., 133, 133–35 (2008); *Catalan History in 15 Episodes*, *supra* note 63.

<sup>65</sup> See Mir, *supra* note 64; see also Sue Wright, *Catalonia: The Geographical and Historical Context of the Language Question*, 5 CURRENT ISSUES IN LANGUAGE & SOC'Y 181, 187–88 (1998).

<sup>66</sup> See C.E., B.O.E. n. 311, Dec. 29, 1978 (Spain); see also Connolly, *supra* note 12, at 57.

<sup>67</sup> See Connolly, *supra* note 12, at 57–58.

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*; see also Xavier Vilà Carrera, *The Domain of Spain: How Likely Is Catalan Independence?*, WORLD AFF. J. (Jan./Feb., 2014), <http://www.worldaffairsjournal.org/article/domain-spain-how-likely-catalan-independence> [<http://perma.cc/3BVK-K79R>].

<sup>70</sup> See Connolly, *supra* note 12, at 58.

<sup>71</sup> See *80% Vote for Independence in Catalonia. How Should Madrid Respond?*, DEBATING EUR. (Nov. 10, 2014), <http://www.debatingeurope.eu/2014/11/10/catalan-independence-referendum/#.VLv5Jkok2II> [<http://perma.cc/LGZ5-PZPE>].

<sup>72</sup> See Raphael Minder, *Catalonia Presses Spain on Autonomy Even as Financial Crisis Simmers*, N.Y. TIMES (Sept. 13, 2012), <http://www.nytimes.com/2012/09/14/world/europe/14iht-catalonia14.html> [<http://perma.cc/53SV-HFYT>].

<sup>73</sup> See *Unemployment Rate in Catalonia Increases from 21.9% to 22.1% in the First Quarter of 2014*, CATALAN NEWS AGENCY (Apr. 29, 2014), <http://www.catalannewsagency.com/business/item/unemployment-rate-in-catalonia-increases-from-21-9-to-22-1-in-the-first-quarter-of-2014> [<http://perma.cc/82Z8-JFZU>]; *Unemployment Rates in an Independent Catalonia*, HELP CATALO-

its annual tax payment of €17 billion to Spain have contributed to the growing unrest.<sup>74</sup> As the wealthiest region in Spain—with a GDP per capita of €27,430 to Spain's €23,100—Catalans have perceived this payment as a burdensome contribution to an inefficient Spanish state.<sup>75</sup> Combined with the rediscovery of its national identity, the unequal economic pairing of Catalonia and Spain is making Catalan independence in the near future a serious possibility.<sup>76</sup>

## II. DISCUSSION

### *A. Current International and Cosmopolitan Legal Frameworks*

On paper, international law recognizes a people's right to self-determination.<sup>77</sup> The Charter of the UN proclaims that one of its goals is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”<sup>78</sup> Similarly, the Treaty of Lisbon, which functionally serves as the constitution of the EU, states that the “Union shall respect the equality of Member States . . . as well as their national identities . . . inclusive of regional and local self-government.”<sup>79</sup> Statements in the UN Declaration of Friendly Relations of 1970 and the UN Vienna Declaration of 1993 further enumerate the right of self-determination among all peoples.<sup>80</sup> These broad statements, which guarantee self-determination, seemingly suggest that international law is at least neutral towards secession.<sup>81</sup>

In order to achieve practical self-determination, an entity must obtain recognition as a sovereign state.<sup>82</sup> According to Article 1 of the Montevideo Convention, an entity must fulfill four conditions to be recognized as a

NIA (Sept. 26, 2013), <http://www.helpcatalonia.cat/2013/09/unemployment-rates-in-independent.html> [<http://perma.cc/D9FP-5MSG>].

<sup>74</sup> See 80% Vote for Independence in Catalonia, *supra* note 71.

<sup>75</sup> *Id.*; see Guiomar Parada, *Catalonia Wants Independence and Europe*, EAST ONLINE (Dec. 16, 2013), <http://www.eastonline.eu/it/opinioni/open-doors/catalonia-wants-independence-and-europe> [[perma.cc/8Z8F-26F5](http://perma.cc/8Z8F-26F5)].

<sup>76</sup> See Carrera, *supra* note 69.

<sup>77</sup> See Connolly, *supra* note 12, at 67–68.

<sup>78</sup> UN Charter art. 1, para. 2.

<sup>79</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 3a para. 2, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon].

<sup>80</sup> See Henrique Santos Costa de Souza, *The Principle of Self-Determination and the Right of Territorial Integrity: A Legal and Political Issue*, BOLETIM MUNDORAMA (Feb. 22, 2011), <http://mundorama.net/2011/02/22/the-principle-of-self-determination-and-the-right-of-territorial-integrity-a-legal-and-a-political-issue-por-henrique-santos-costa-de-souza/> [<http://perma.cc/2FRD-V2V7>].

<sup>81</sup> See Connolly, *supra* note 12, at 67.

<sup>82</sup> See Revel, *supra* note 26, at 8–9.

state.<sup>83</sup> Specifically, it must have a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.<sup>84</sup> The fourth requirement, which is more ambiguous than the others, is generally understood as satisfying an entity's independence.<sup>85</sup> Once these requirements are fulfilled, other states ostensibly have a positive duty to recognize a state as such.<sup>86</sup> Consequently, a sub-state secession movement must strive to fulfill as many of the four requirements as possible to obtain its goal of being recognized as a legitimate, independent state.<sup>87</sup>

Many scholars, however, claim that the Montevideo conditions, although necessary, are insufficient for a state to join the international community because of other states' often complex webs of political objectives.<sup>88</sup> As Ian Brownlie describes:

In this context of state *conduct* there is a duty to accept and apply certain fundamental rules of international law: there is a legal duty to 'recognize' for certain purposes at least, but no duty to make an express, public, and political determination of the question or to declare readiness to enter into diplomatic relations by means of recognition. This latter type of recognition remains political and discretionary. Even recognition is not determinant of diplomatic relations, and absence of diplomatic relations is not in itself non-recognition of the state.<sup>89</sup>

As a result of these "political and discretionary" aspects of recognition, secession is seriously disfavored in practice, despite the superficial recognition of a right to self-determination in UN documents and the Treaty of Lisbon.<sup>90</sup> This is because secession constitutes a dual threat to the "twin pillars" of the Westphalian nation state: sovereignty and territorial integrity.<sup>91</sup> Consequently, anything more than a superficial recognition of self-determination

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<sup>83</sup> See Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19; see also Revel, *supra* note 26, at 7–8 (explaining that, although the Montevideo Convention was a relatively recent treaty signed by primarily North and South American countries, the Convention codified what had been established over centuries of customary international law). The purpose of the Montevideo Convention was to establish the definition, characteristics, and obligations of statehood. See *Montevideo Convention*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Montevideo-Convention> (last updated Sept. 13, 2015) [<http://perma.cc/QE5A-NQPM>].

<sup>84</sup> See Revel, *supra* note 26, at 7–8.

<sup>85</sup> See *id.* at 7.

<sup>86</sup> See *id.* at 8.

<sup>87</sup> See *id.* at 8–9.

<sup>88</sup> See *id.*

<sup>89</sup> IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 95 (3d ed. 1979).

<sup>90</sup> See *id.*; Connolly, *supra* note 12, at 67–68; Revel, *supra* note 26, at 8.

<sup>91</sup> See Connolly, *supra* note 12, at 67.

would cause a “radical undermining of [s]tate sovereignty and a dramatic re-shaping of the present framework of the world community.”<sup>92</sup> Hence, secessionist movements illustrate the diametric relationship between the principles of territorial integrity and self-determination.<sup>93</sup> The resulting legal limbo has created an environment where the obvious incentive of existing states to maintain their power and territory work to repress sub-state self-determination.<sup>94</sup> As of 2015, only three non-colonial states—Kosovo, Bangladesh, and Eritrea—have successfully unilaterally seceded without the consent of their governing states.<sup>95</sup>

### B. *Self-Determination in Practice: Past Examples*

The EU previously dealt with secession in the early 1990s through the disintegration of Yugoslavia and the ensuing sub-state conflicts.<sup>96</sup> The small, partially recognized sub-state of Kosovo seceded from Serbia in February 2008 after more than a decade of ethnic violence.<sup>97</sup> The EU agreed to an ambivalent proposal, which allowed each Member State to decide whether to give or withhold recognition to Kosovo.<sup>98</sup> Twenty-three of the twenty-eight EU Member States subsequently recognized Kosovo.<sup>99</sup> The European Parliament adopted a resolution calling for full recognition of Kosovo in 2010.<sup>100</sup> Furthermore, the EU sent the European Union Rule of Law Mission (EULEX), which features 3200 police and judicial personnel designed to support Kosovo through the administration of EU law and the

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<sup>92</sup> See *id.* at 68 (quoting ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 317 (1998)).

<sup>93</sup> See Costa de Souza, *supra* note 80.

<sup>94</sup> See HURST HANNUM, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS 46 (1990). Hannum explains that “it is the principle of national unity that has been almost universally followed by the international community—which, after all, is composed of states whose interest is to maintain themselves.” *Id.*

<sup>95</sup> See Connolly, *supra* note 12, at 71.

<sup>96</sup> See Grace Bolton & Gezim Visoka, *Recognizing Kosovo’s Independence: Remedial Secession or Earned Sovereignty?* 2–5 (Oxford University, Occasional Paper No. 11/10, 2010).

<sup>97</sup> See *id.* at 1–2 (suggesting that Kosovo presents an excellent example of the political complexities of international recognition because the majority of states granting recognition belong to the first world, while formerly Soviet-oriented or Communist-oriented countries have refused to recognize Kosovo due to the United States’ significant political and military support of Kosovo); see also Gëzim Krasniqi, *Foreign Policy as a Constitutive Element of Statehood and Statehood Prerogative: The Case of Kosovo*, in THE FOREIGN POLICIES OF POST-YUGOSLAV STATES: FROM YUGOSLAVIA TO EUROPE 198, 198 (Soeren Keil & Bernhard Stahl eds., 2014).

<sup>98</sup> See *EU Splits on Kosovo Recognition*, BBC (Feb. 18, 2008), <http://news.bbc.co.uk/1/hi/world/europe/7249909.stm> [<http://perma.cc/H33Z-5W5A>].

<sup>99</sup> See Denis Fitzgerald, *Kosovo: What’s in a Name(Plate)?*, UN TRIB. (May 28, 2014), <http://untribune.com/kosovo-whats-nameplate/> [<http://perma.cc/6FP2-QHGT>].

<sup>100</sup> See Leo Cendrowicz, *A Court Upholds Kosovo Independence: Now What?*, TIME (Jul. 23, 2010), <http://content.time.com/time/world/article/0,8599,2005996,00.html> [[perma.cc/6GCM-RDVU](http://perma.cc/6GCM-RDVU)].

merging of Kosovar and European policy.<sup>101</sup> Both of these moves suggest that the European Parliament is sympathetic to recognizing Kosovar independence, and the merging of Kosovar and European policy through EU-LEX illustrates the EU's demonstrable although subtle willingness to bring an independent Kosovo into its sphere of influence.<sup>102</sup>

Despite the EU's apparently encouraging treatment of Kosovo, UN Secretary General Ban Ki-Moon quickly attempted to relegate its unilateral secession to a *sui generis* situation.<sup>103</sup> Some states asserted that Kosovo did not set a political precedent at all with regards to secession, while other states claimed that it did set a precedent that carried either harmful or beneficial consequences.<sup>104</sup> The International Court of Justice's advisory opinion on the legality of the matter concluded only that Kosovo's declaration of independence was not against international law, and it staunchly refused to make any statement regarding the legality of unilateral secession as a whole.<sup>105</sup>

The treatment of Crimea's secession from Ukraine has been far less promising for separatist movements.<sup>106</sup> Although the United States and twenty-three EU Member States were among the first to recognize Kosovo, both the United States and the EU immediately rejected the Crimean referendum as "illegal," even though the Crimean parliament's letter of intent to

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<sup>101</sup> See MARIA DERKS & MEGAN PRICE, NETH. INST. FOR INT'L REL., THE EU AND RULE OF LAW REFORM IN KOSOVO 9 (Nov. 2010), [http://www.clingendael.nl/sites/default/files/20110106\\_CRU\\_publication\\_mderks.pdf](http://www.clingendael.nl/sites/default/files/20110106_CRU_publication_mderks.pdf) [<http://perma.cc/U8P4-YETH>].

<sup>102</sup> See *id.*; Joachim Becker, *Enlarging the EU Sphere of Influence Eastwards—or: The Dialectics of Integration and Disintegration* 1–2, 11 (Wirtschaftsuniversität Wien, Working Paper, 2014), [http://www2.euromemorandum.eu/uploads/becker\\_enlarging\\_the\\_eu\\_sphere\\_of\\_influence\\_eastwards.pdf](http://www2.euromemorandum.eu/uploads/becker_enlarging_the_eu_sphere_of_influence_eastwards.pdf) [<http://perma.cc/TBB4-2ZLR>]; Cendrowicz, *supra* note 100.

<sup>103</sup> See Connolly, *supra* note 12, at 71–72; Interview by Interfax with Ban Ki-moon, UN Secretary-General (Mar. 14, 2008), <http://web.archive.org/web/20080314204124/http://www.interfax.com/17/373003/Interview.aspx> [<http://perma.cc/D5KL-4ZMV>].

<sup>104</sup> Compare Czech, Slovak Presidents: *Kosovo Sets Precedent*, B92 (Mar. 11, 2008), [http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=03&dd=11&nav\\_id=48353](http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=03&dd=11&nav_id=48353) [<http://perma.cc/UD3U-AAM9>] (“Kosovo is, above all, a precedent. We’ve opened a Pandora’s Box in Europe that could have disastrous consequences.”), and *The Kosovo Precedent*, BRUSSELS J. (Feb. 28, 2008), <http://www.brusselsjournal.com/node/3039> [<http://perma.cc/5R97-6XG2>] (quoting Palestinian president Mahmoud Abbas, who encouraged Palestine to follow Kosovar example and declare independence), with *UNSC Debates Kosovo in Emergency Session*, CHINA VIEW (Feb. 19, 2008), [http://news.xinhuanet.com/english/2008-02/19/content\\_7629471.htm](http://news.xinhuanet.com/english/2008-02/19/content_7629471.htm) [<http://perma.cc/6MLH-QGE7>] (quoting representatives from the United States, Britain, Italy, Belgium, and France asserting that Kosovo’s declaration of independence was unique and would not set a precedent).

<sup>105</sup> See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. Rep. 403, ¶¶ 83, 84 (Jul. 22).

<sup>106</sup> See *Ukraine Crisis: ‘Illegal’ Crimean Referendum Condemned*, BBC (Mar. 6, 2014), <http://www.bbc.com/news/world-europe-26475508> [<http://perma.cc/4FYJ-CLKJ>]; see also Catherine Ashton, EU High Representative, Statement on the Developments in Ukraine’s Crimea (Mar. 1, 2014), [http://eeas.europa.eu/statements/docs/2014/140301\\_01\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140301_01_en.pdf) [<http://perma.cc/HPE4-Z3C6>] (referring to the secession-related developments in Crimea as “extremely worrying”).

secede from Ukraine cited the Kosovo Declaration of Independence as a political precedent.<sup>107</sup> Additionally, the High Representative of the EU for Foreign Affairs and Security Policy, Catherine Ashton, expressed full support for the “unity, sovereignty, and territorial integrity” of Ukraine.<sup>108</sup> The negative reactions to Crimea, however, can be distinguished from other secession movements on the grounds that it was greatly influenced by Russia; evidence suggests Russian paramilitary troops may have prejudiced the Crimean secession vote.<sup>109</sup>

Spanish authorities compared the situation in Crimea to Catalonia, noting that both movements were fraudulent and violated state constitutional law.<sup>110</sup> Catalan officials completely rejected this statement.<sup>111</sup> Unlike separatists in Crimea, Catalan separatists have worked within Spain’s constitutional framework to achieve their goals, without any trace of outside military intervention.<sup>112</sup> The Spanish Constitution is silent on the matter of secession, although it establishes the “indissoluble unity of the Spanish Nation.”<sup>113</sup> Yet the constitution also proclaims that regions in Spain with “common historic, cultural[,] and economic” characteristics, such as Catalonia and the Basque Country, could enjoy some autonomy within Spain.<sup>114</sup>

<sup>107</sup> See Fitzgerald, *supra* note 99; *Ukraine Crisis: ‘Illegal’ Crimean Referendum Condemned*, *supra* note 106; Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol, (Mar. 11, 2014), <http://www.voltairenet.org/article182723.html> [perma.cc/67PH-V7VV] (citing Kosovo as a lawful example of unilateral secession).

<sup>108</sup> See Ashton, *supra* note 106.

<sup>109</sup> See Bahri Cani, *You Can’t Compare Crimea and Kosovo*, DEUTSCHE WELLE (Mar. 12, 2014), <http://dw.com/p/1BOji> [http://perma.cc/WF2W-F2HK]; *Putin Acknowledges Russian Military Servicemen Were in Crimea*, RUSS. TODAY (Apr. 17, 2014), <http://rt.com/news/crimea-defense-russian-soldiers-108/> [http://perma.cc/96BY-EJ6B].

<sup>110</sup> See Manel Manchón, *Margallo Se Destapa: Entre Catalunya y Crimea “El Paralelismo es Absoluto,”* [Margallo Uncovers: Between Catalonia and Crimea “The Parallel Is Absolute”] *ECONOMÍA DIGITAL* (Mar. 17, 2014), [http://www.economiadigital.es/es/notices/2014/03/margallo\\_se\\_destapa\\_entre\\_catalunya\\_y\\_crimea\\_el\\_paralelismo\\_es\\_absoluto\\_52042.php](http://www.economiadigital.es/es/notices/2014/03/margallo_se_destapa_entre_catalunya_y_crimea_el_paralelismo_es_absoluto_52042.php) [http://perma.cc/GY3V-4RX7]; Matt Moffett, *Crimea Vote Gets Attention of Europe’s Secession Movements*, *WALL ST. J.* (Mar. 20, 2014), <http://www.wsj.com/articles/SB10001424052702304256404579451681090329444> [http://perma.cc/9YYX-DB2X].

<sup>111</sup> See Manchón, *supra* note 110.

<sup>112</sup> See Connolly, *supra* note 12, at 57; Max Holleran, *Is Cataluña the Next Crimea?*, *HUFFINGTON POST* (Mar. 25, 2014), [http://www.huffingtonpost.com/max-holleran/catalan-independence-crimea\\_b\\_5021626.html](http://www.huffingtonpost.com/max-holleran/catalan-independence-crimea_b_5021626.html) [http://perma.cc/PZB6-SPFD].

<sup>113</sup> See C.E., B.O.E. n. 311, art. 2, Dec. 29, 1978 (Spain) (translated by author).

<sup>114</sup> See Connolly, *supra* note 12, at 57. The Basque people are an ethnic minority with a distinct culture, language, and history; they are concentrated in the Basque Country in northeastern Spain. See Ariel Bothen, *An Analysis of the Basque Independence Movement and the Political Position of the Basque Country Within the Spanish State 2–4* (May 2014) (unpublished B.A. thesis, University of Maine Honors College), <http://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?article=1151&context=honors>, [http://perma.cc/DM3B-ZNDA]. Over the course of the past sixty years, Basque nationalists carried out terrorist attacks throughout Spain, before submitting to a ceasefire in September 2010. See *id.* at 18, 21–23.

Prior to 2014, Catalan nationalists had hoped that the ambiguous constitutional language would be sufficient to justify secession.<sup>115</sup> In its judgment that Catalan secession was unconstitutional, however, the Constitutional Court of Spain removed the possibility of a negotiated legal referendum.<sup>116</sup> In response, some commentators believed that Catalonia was following the political example of Kosovo.<sup>117</sup> This assertion is inconsequential in this context, however, because Spain is one of five EU Member States that refuses to recognize Kosovo as an independent state.<sup>118</sup>

The Catalan secessionist movement has not been deterred by Spain's consistent rejection and denunciation, and it is possible that Spain's forceful maneuvering will instigate a unilateral declaration of independence by Catalonia.<sup>119</sup> Spain has already made clear that it would consider such an action unconstitutional.<sup>120</sup> As a result, the EU would be faced with the difficult choice of either defending Spain's territorial sovereignty at the expense of undermining Catalonia's right of self-determination as promised in the Treaty of Lisbon, or supporting Catalonia and destabilizing Spain's territorial integrity as well as other EU Member States with active sub-state secession movements.<sup>121</sup> This quandary demonstrates the legal impasse caused by secession movements as a result of the conflict between sub-state self-determination and state sovereignty.<sup>122</sup> Finally, any resulting social upheaval and violence may lead to human rights violations, which would add an additional layer of complexity.<sup>123</sup>

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<sup>115</sup> See Josep M. Muñoz, *News from Catalonia*, in WHAT'S UP WITH CATALONIA? 81–83 (Liz Castro ed., 2013), <http://files.cataloniapress.com/files/WhatsupCATcc.pdf> [<http://perma.cc/A93W-9JEK>].

<sup>116</sup> See *id.*; Carrera, *supra* note 69.

<sup>117</sup> *Catalonia Plans Secession "a la Kosovo"*, B92 (Oct. 18, 2012), [http://www.b92.net/eng/news/world.php?yyyy=2012&mm=10&dd=18&nav\\_id=82717](http://www.b92.net/eng/news/world.php?yyyy=2012&mm=10&dd=18&nav_id=82717) [[perma.cc/593S-VDQQ](http://perma.cc/593S-VDQQ)].

<sup>118</sup> See Carrera, *supra* note 69; *Catalonia Plans Secession "a la Kosovo"*, *supra* note 117. This was in part because of a fear that recognition of Kosovo would give Catalan nationalists a definitive political precedent upon which to effect secession. See Carrera, *supra* note 69.

<sup>119</sup> See Carrera, *supra* note 69.

<sup>120</sup> See Connolly, *supra* note 12, at 77.

<sup>121</sup> See Betancor, *supra* note 18; Anna Stepanowa, *International Law on Legality of the Crimea Secession*, BEYOND THE EU (Apr. 15, 2014), <http://beyondthe.eu/international-law-crimea-secession> [<http://perma.cc/5M5E-X4WD>] (“The complete implementation of the principle of self-determination undermines the principle of territorial integrity.”); Traynor, *Is Europe Cracking Up?*, *supra* note 25.

<sup>122</sup> See Connolly, *supra* note 12, at 68; Betancor, *supra* note 18; Stepanowa, *supra* note 121.

<sup>123</sup> See Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 INT'L & COMP. L.Q. 857, 865 (1994); Milena Sterio, *On the Right to External Self-Determination: "Self-istans," Secession, and the Great Powers' Rule*, 19 MINN. J. INT'L L. 137, 170 (2010); Betancor, *supra* note 18.



### C. The European Union as a Contra-State Presence

The recent emergence of supranational organizations like the EU threatens to transform assertions of sub-state independence.<sup>124</sup> For centuries, international law has been conceived as a diverse community composed of equal, sovereign states.<sup>125</sup> Although first realized in Europe, this gradually became a global conception as former European colonies, which adopted European legal frameworks, declared independence.<sup>126</sup> The emergence of the EU and UN formally codified this standard of international law in Europe and worldwide, respectively.<sup>127</sup> Simultaneously, the convergence of authority in a “small central ruling elite” within state government created inter-state instability.<sup>128</sup> This is because the “highly personalized” nature of inter-state affairs, conducted through the actions of a small number of individuals, created situations where “disagreements on specific issues [led] to disproportionate consequences for the respective national communities, or the international community at large.”<sup>129</sup>

The EU responded to this dissatisfaction by introducing a new paradigm for its members, which incorporated centralized supranationalism of a quasi-federal nature.<sup>130</sup> By establishing an association of multiple states operating collectively and according to definite norms, the EU placed a check on the power of state governments.<sup>131</sup> A similar process has occurred globally through the creation of an international body of laws in the UN.<sup>132</sup> But the rapid evolution of the EU and its expanding control over borders, currency, adjudication, and governance indicate that Europe is moving expeditiously towards supranationalism.<sup>133</sup> The result of this metamorphosis is a new multi-dimensional hierarchy of law, wherein the state has ceded powers to supranational organizations.<sup>134</sup> This creates, in turn, a two-tiered hierarchy of power in which the state “no longer monopolizes European-level

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<sup>124</sup> See Connolly, *supra* note 12, at 78–79.

<sup>125</sup> See Christoph Schreuer, *The Waning of the Sovereign State: Towards a New Paradigm for International Law?*, 4 EUR. J. OF INT’L L. 447, 447–48 (1993).

<sup>126</sup> See *id.*

<sup>127</sup> See *id.* at 451–52.

<sup>128</sup> See *id.* at 448.

<sup>129</sup> *Id.*

<sup>130</sup> See Jordi Matas I Dalmases et al., *The Internal Enlargement of the European Union*, CENTRE MAURITS COPPIETERS 9, 12–15 (2011), <http://www.ideasforeurope.eu/wp-content/uploads/2013/01/The-internal-enlargement-of-the-EU-Final.pdf.pdf> [<http://perma.cc/EV8C-8RF2>].

<sup>131</sup> See Schreuer, *supra* note 125, at 448–49, 468–69.

<sup>132</sup> See *id.* at 448, 451–52.

<sup>133</sup> See *id.* at 451–52.

<sup>134</sup> LIESBET HOOGHE & GARY MARKS, MULTI-LEVEL GOVERNANCE AND EUROPEAN INTEGRATION 3–7 (2001).

policy-making or the aggregation of domestic interests.”<sup>135</sup> Specific examples of this transition include the Court of Justice of the EU, the introduction of the Euro, and the Schengen Agreement.<sup>136</sup>

Many sub-state entities have responded to the developments in European power structures by “Europeanizing their governing strategies.”<sup>137</sup> Simultaneously, more states have conceded limited authority to sub-state entities to regulate certain matters across national boundaries with other states or sub-state entities.<sup>138</sup> This transformation of power structures could empower sub-state entities through the creation of regional-supranational alliances, wherein sub-state entities can use EU decisions and influence to bargain with state governments or achieve greater independence from states.<sup>139</sup> Consequently, this collaboration of supranational organizations and sub-states results in a dual ceding of decision-making power from states to sub-state entities as well as to supranational organizations.<sup>140</sup>

One example of this emerging dynamic is the Treaty of Lisbon’s expansion of regional representation within Member States.<sup>141</sup> Specifically, it strengthens the EU’s Committee of the Regions by requiring consultation of the Committee on matters of local and regional governance in EU Member States.<sup>142</sup> The shift in the Treaty of Lisbon towards greater “formal regional participation in the EU” has reinforced and validated sub-state identities.<sup>143</sup> As a result, sub-state citizens are beginning to perceive themselves as sub-state members within the larger EU, rather than just as members of a state.<sup>144</sup> Together, these changes have encouraged sub-state entities to strive for greater independence within their respective states.<sup>145</sup> The possibility of supranationalism encouraging sub-state secession has been termed the “enlargement from within.”<sup>146</sup>

<sup>135</sup> Angela K. Bourne, *The Impact of European Integration on Regional Power*, 41 J. COMMON MKT. STUD. 597, 600–01 (2003) [hereinafter Bourne, *The Impact of European Integration*] (quoting G. Marks et al., *European Integration from the 1980s: State-Centric v. Multi-Level Governance*, 34 J. COMMON MKT. STUD. 341, 346 (1996)).

<sup>136</sup> See Luis Moreno, *Scotland, Catalonia, Europeanization and the ‘Moreno Question,’* 54 SCOT. AFF. 1, 8–10 (2006).

<sup>137</sup> Bourne, *The Impact of European Integration*, *supra* note 135, at 601.

<sup>138</sup> See Schreuer, *supra* note 125, at 450.

<sup>139</sup> See Bourne, *The Impact of European Integration*, *supra* note 135, at 601–02.

<sup>140</sup> See *id.* at 600–02.

<sup>141</sup> Treaty of Lisbon, *supra* note 79, art. 3a para. 2; see Connolly, *supra* note 12, at 80.

<sup>142</sup> See Connolly, *supra* note 12, at 80.

<sup>143</sup> *Id.* at 81; see Moreno, *supra* note 136, at 8–9.

<sup>144</sup> See Moreno, *supra* note 136, at 8–10.

<sup>145</sup> See Connolly, *supra* note 12, at 82–85; Moreno, *supra* note 136, at 7–9.

<sup>146</sup> Emmanuel Dalle Mulle et al., *EU Enlargement: Lessons from, and Prospects for* 33 (Inst. for European Stud., Working Paper 3/2013, 2013), <http://www.ies.be/files/Working Paper Enlargement final.pdf> [<http://perma.cc/L2BK-R3HJ>].

The question of whether EU membership would be bestowed automatically upon a newly independent sub-state remains unanswered.<sup>147</sup> Some scholars have asserted that a sub-state's secession from an EU Member State would be treated as a matter of state succession, wherein the "new" state would be accepted immediately into the EU.<sup>148</sup> The European Commission's statement regarding Catalonia, however, would seem to indicate otherwise.<sup>149</sup>

#### *D. Negotiated Secession: The UK and the Quebec Advisory Opinion*

In contrast to Spain's "empire of law" approach towards Catalonia, which has pushed that sub-state closer to an unstable unilateral secession, the UK's approach allowed Scotland to decide its own future via a mutually acceptable referendum.<sup>150</sup> In doing so, the UK followed an alternative paradigm to the Kosovo model, one which was established by Canada's Supreme Court ruling on the matter of Quebec's secession.<sup>151</sup>

Quebec, like Catalonia and Scotland, possesses substantial differences from the state of which it is a part, namely a distinct language, French, and a divergent French-influenced culture and history.<sup>152</sup> Due to these differences, as well as economic disparities, the Quebecois held two referendums on independence from Canada in 1980 and 1995.<sup>153</sup> The Canadian government did not challenge either of these referendums, partially because the Canadian Constitution is textually silent on the matter of a province's secession.<sup>154</sup> Following the second referendum, however, the Governor in Coun-

<sup>147</sup> See Matas I Dalmases et al., *supra* note 130, at 33; *Brussels Says an Independent Catalonia Would Need to Leave EU*, *supra* note 15.

<sup>148</sup> See Matas I Dalmases et al., *supra* note 130, at 4, 15.

<sup>149</sup> See *id.* at 33; Nikolaj Nielsen, *EU Commission: Catalonia Must Leave EU if It Leaves Spain*, EU OBSERVER (Sept. 17, 2013), <https://euobserver.com/enlargement/121466> [<http://perma.cc/7YC2-AN3N>] (quoting the European Commission's vice president).

<sup>150</sup> See Carrera, *supra* note 69; see also Connolly, *supra* note 12, at 75–77. The rigidity of Spain's mentality regarding Catalonia was clearly indicated by a Spanish army colonel's statement that Catalan independence could only pass "[o]ver [his] dead body and that of many soldiers." Paul Mason, *Catalan Leaders Seek Independence Vote, Legal or Not*, BBC (Oct. 5, 2012), <http://www.bbc.co.uk/news/world-19847252> [<http://perma.cc/32UE-TGW6>].

<sup>151</sup> See Connolly, *supra* note 12, at 75–76, 101–02.

<sup>152</sup> See J.J. McCullough, *Quebec*, J.J.'S COMPLETE GUIDE TO CANADA, <http://www.thecanadaguide.com/quebec> (last visited Nov. 20, 2015) [<http://perma.cc/HF2J-VZQT>]. This arose from centuries of French colonization prior to Britain's absorption of Quebec at the end of the Seven Years War. See *id.*

<sup>153</sup> See McCullough, *supra* note 152; André Lecours, *What the Independence Referendums in Québec Suggest About Scotland*, LONDON SCH. OF ECON. & POL. SCI.: BRIT. POL. & POL'Y BLOG (Jul. 26, 2014), <http://blogs.lse.ac.uk/europpblog/2014/07/26/what-the-independence-referendums-in-quebec-suggest-about-scotland/> [<http://perma.cc/MPT2-5L5G>].

<sup>154</sup> See Roya M. Hanna, Comment, *Right to Self-Determination in In Re Secession of Quebec*, 23 MD. J. INT'L L. & TRADE 213, 220 (1999); Lecours, *supra* note 153.

cil of Canada submitted three questions to the Supreme Court of Canada: (1) whether the government of Quebec can secede under Canadian law; (2) whether international law granted Quebec the power to secede; and (3) in the case of a conflict on the matter of secession between Canadian and international law, which law would take precedence in Canada.<sup>155</sup> The court subsequently concluded that unilateral secession was not legal under the Canadian Constitution.<sup>156</sup> Furthermore, the court ruled that international law only recognized unilateral secession in the event of peoples governed by either a colonial empire or by “alien subjugation, domination[,] or exploitation.”<sup>157</sup> It also acknowledged the possibility of self-determination in the case where “a people is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.”<sup>158</sup> The court, however, specifically stated that secession could be negotiated internally via a constitutional amendment or other authoritative legislation.<sup>159</sup>

Unlike Spain, the UK does not possess a single, written constitution.<sup>160</sup> Rather, the UK’s entire body of law essentially serves as a constitution and is controlled by several general principles, such as parliamentary sovereignty.<sup>161</sup> Thus, the ability of Scotland’s legislature to discuss secession is limited under Schedule 5 Part 1 of the Scotland Act, which vests constitutional matters in the UK’s parliament.<sup>162</sup> As a result, the power to hold a referendum must be transferred by Parliament to the Scottish parliament via a bill.<sup>163</sup>

### *E. The Future of Negotiated and Unilateral Secession in Scotland and Catalonia*

As a result of the Canadian Supreme Court’s decision, which left open the possibility of negotiated secession, the UK embraced an alternative paradigm for sub-state self-determination.<sup>164</sup> Although the full impact of the referendum vote will gradually unfold over the upcoming months and years,

<sup>155</sup> In the Matter of a Reference by the Governor in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada (*In re Quebec Secession*), [1998] 2 S.C.R. 217, para. 2 (Can.); see Hanna, *supra* note 154, at 215–16. The court did not answer the third question submitted. *In re Quebec Secession*, 2 S.C.R. 217, para. 147.

<sup>156</sup> See *In re Quebec Secession*, 2 S.C.R. 217, para. 149.

<sup>157</sup> *Id.* at paras. 133, 154.

<sup>158</sup> *Id.* at para. 154.

<sup>159</sup> See *id.* at paras. 150–153.

<sup>160</sup> See *What Is the UK Constitution?*, U.C. LONDON CONST. UNIT, <http://www.ucl.ac.uk/constitution-unit/whatis/uk-constitution> (last visited Nov. 20, 2015) [<http://perma.cc/PM66-GFKH>].

<sup>161</sup> See *id.*

<sup>162</sup> See Revel, *supra* note 26, at 20–21.

<sup>163</sup> See *id.* at 21.

<sup>164</sup> See *In re Quebec Secession*, 2 S.C.R. 217, paras. 148–155; Connolly, *supra* note 12, at 76.

there are already several clear results.<sup>165</sup> The Scottish vote energized the SNP, with membership tripling in only seven weeks.<sup>166</sup> Several months after the vote, the SNP won fifty-six of the fifty-nine Scottish seats in the UK parliament, up from six seats.<sup>167</sup> This development points toward a unified, pro-secession presence both in the UK parliament and the Scottish government.<sup>168</sup> Simultaneously, the Scottish government will receive more powers via the Scotland Bill of 2015, including enhanced spending and taxation powers.<sup>169</sup> Moreover, while further devolution is occurring in Scotland, England and Wales are also pushing for their own devolution, effectively transforming the UK from a “quasi-federation . . . to a full-fledged de jure federation.”<sup>170</sup>

Even with increased decision-making power, Scotland may still gain its independence in the coming years—the SNP has already stated that another referendum may be needed in the next few years, especially if Britain decides to leave the EU in the near future.<sup>171</sup> With an overwhelming majority of Scottish seats secured in Parliament, a strong SNP presence in Scotland would make a second referendum likely.<sup>172</sup> Furthermore, Scotland’s demographics are favorable to a successful referendum in the near future, as younger voters generally voted for independence in the referendum, while voters over sixty-five overwhelmingly voted against independence.<sup>173</sup> Although the ultimate fate of Scotland as an independent nation is unclear, the UK has chosen a course that allows the Scots a reasonable degree of self-

<sup>165</sup> See John McCormick, *The Impact of Scotland’s Independence Referendum Continues to Unfold*, LONDON SCH. OF ECON. & POL. SCI.: BRIT. POL. & POL’Y BLOG (Oct. 14, 2014), <http://blogs.lse.ac.uk/politicsandpolicy/the-impact-of-scotlands-independence-referendum-continues-to-unfold/> [<http://perma.cc/Y99S-BFJR>].

<sup>166</sup> See Osborn & Smout, *supra* note 55.

<sup>167</sup> See Carole Cadwalladr, *The SNP 56: A Breath of Fresh Air . . . or a Timebomb at the Heart of Westminster?*, GUARDIAN (Jul. 12, 2015), <http://www.theguardian.com/politics/2015/jul/12/snp-mps-at-westminster-scotland> [<http://perma.cc/NJ6E-M4A8>]; Osborn & Smout, *supra* note 55.

<sup>168</sup> See Cadwalladr, *supra* note 167; Jones, *supra* note 45; McCormick, *supra* note 165.

<sup>169</sup> See Scot. Office of the Advocate Gen. for Scot., *Milestone Reached for Scotland Act*, GOV.UK (Apr. 1, 2014), <https://www.gov.uk/government/news/milestone-reached-for-scotland-act> [<http://perma.cc/LSA9-5GDH>].

<sup>170</sup> McCormick, *supra* note 165.

<sup>171</sup> See Chris Green, *Second Scottish Independence Referendum Could Come Within Five Years if SNP Decides ‘Circumstances’ Are Right*, INDEP. (Sept. 13, 2015), <http://www.independent.co.uk/news/uk/politics/second-scottish-independence-referendum-could-come-within-five-years-if-snp-decides-circumstances-10499130.html> [<http://perma.cc/CN2M-J7HJ>]; Osborn & Smout, *supra* note 55.

<sup>172</sup> See Green, *supra* note 171.

<sup>173</sup> See Lord Ashcroft, *How Scotland Voted, and Why*, LORD ASHCROFT POLLS (Sept. 19, 2014), <http://lordashcroftpolls.com/2014/09/scotland-voted/> [<http://perma.cc/7XKJ-82Q6>].

determination through negotiated referendums and increased devolution of power.<sup>174</sup>

The future of Catalonia looks far less stable.<sup>175</sup> Shortly after the unofficial secession referendum revealed that a majority of Catalans supported independence, Spanish prosecutors filed charges against the Catalan President Artur Mas and two other high-ranking Catalan officials.<sup>176</sup> The specific charges included civil disobedience, abuse of public funds, embezzlement, and obstruction of justice.<sup>177</sup> Had he been convicted, Mas would have been prohibited from holding any public office and faced up to six years in prison.<sup>178</sup> Interestingly, the Spanish prosecutor's office sent the charges to the Catalan Supreme Court and requested that it prosecute Mas.<sup>179</sup> The court, however, found by a vote of six to three that the accusations against Mas and the other ministers were not supported by evidence.<sup>180</sup> The Spanish government then ordered the court to prosecute Mas, which the Catalan court unanimously refused, in defiance of the administration.<sup>181</sup>

This episode only deepened the rift between Catalonia and Spain, as the decision to prosecute Mas was almost certainly motivated by Mas's defiant efforts to allow a free referendum on independence.<sup>182</sup> Other incidents illuminate the growing divide between Catalonia and Spain, including the death of a Catalan police officer by a hit and run vehicle driven by a Spanish soldier and the termination of a Catalan judge for assisting in the making of a model Catalan constitution.<sup>183</sup> Catalonia also announced that it will open fifty "delegation offices" around the world to represent the "political, commercial[,] and cultural interests" of Catalonia.<sup>184</sup>

<sup>174</sup> See Connolly, *supra* note 12, at 101–02; McCormick, *supra* note 165.

<sup>175</sup> See Simon Harris, *Legal Action Against Artur Mas Deepens the Rift Between Catalonia and Spain*, CATALONIA IS NOT SPAIN (Nov. 19, 2014), <http://independence.barcelonas.com/legal-action-artur-mas-deepens-rift-catalonia-spain/#sthash.jm9nAVF4.dpbs> [<http://perma.cc/A3TB-9HMF>].

<sup>176</sup> See *Prosecutors Take Legal Action Against Catalan Officials Over Mock Secession Referendum*, FOX NEWS (Nov. 21, 2014), <http://www.foxnews.com/world/2014/11/21/prosecutors-take-legal-action-against-catalan-officials-over-mock-secession/> [<http://perma.cc/WH62-BR6S>].

<sup>177</sup> Daniel Silva & Michaela Cancela-Kieffer, *Spanish Prosecutors to Take Legal Action Against Catalan President*, YAHOO! NEWS (Nov. 19, 2014), <https://news.yahoo.com/spanish-prosecutors-sue-catalan-president-over-referendum-184723411.html> [<http://perma.cc/AM8H-2M38>].

<sup>178</sup> *Id.*

<sup>179</sup> See Harris, *supra* note 175.

<sup>180</sup> See *id.*

<sup>181</sup> *Id.*

<sup>182</sup> See *id.*

<sup>183</sup> See Josep Sort, *Second Catalan Police Officer Killed in a Month*, LANDS OF GRACCUSS (Feb. 1, 2015), <http://graccusthink.blogspot.com/2015/02/second-catalan-police-officer-killed-in.html> [<http://perma.cc/R99K-U3X2>]; *Judge Vidal About to Get the Sack Over Draft Catalan Constitution*, ARA.CAT (Feb. 6, 2015), [http://www.ara.cat/en/Judge-Vidal-about-Catalan-Constitution\\_0\\_1298870199.html](http://www.ara.cat/en/Judge-Vidal-about-Catalan-Constitution_0_1298870199.html) [<http://perma.cc/M46U-YWTW>].

<sup>184</sup> *Catalonia to Open 50 Delegation Offices Worldwide*, PRESS TV (Feb. 4, 2015), <http://www.presstv.ir/Detail/2015/02/04/396083/Catalonia-to-open-50-delegation-offices> [<http://perma.cc/WH62-BR6S>].

Spanish politicians claim that secession is a legal impossibility under the constitution and that their opposition to an independent Catalonia is based solely on that impossibility.<sup>185</sup> Yet Article 92 of the Spanish Constitution states that “political decisions of special importance” may be submitted as a consultative referendum, and Article 150 allows the state to transfer or delegate legislative power to Catalonia.<sup>186</sup> Taken together, these articles may support a non-binding or negotiated referendum on secession.<sup>187</sup> Furthermore, the constitution has been amended twice since its introduction in 1978.<sup>188</sup>

At any rate, Mas announced in early 2015 that Catalonia would hold early elections on September 27.<sup>189</sup> The elections were widely viewed as the next step in Catalan independence—a clear opportunity for voters to accept or reject pro-independence politicians.<sup>190</sup> The vote resulted in pro-independence parties winning almost 50% of the popular vote, as well as 62 of the 135 seats in the Catalan parliament.<sup>191</sup> When combined with the ten seats of another separatist party, the pro-independence “Together for Yes” coalition now possesses an absolute majority in the parliament.<sup>192</sup> Upon their close victory, galvanized separatist leaders promised to create an independent Catalan state. On November 9, 2015 the Catalan parliament did just that, approving a “Declaration of Sovereignty,” which proclaimed “the start of the process to create an independent Catalan state in the form of a republic.”<sup>193</sup> This statement amounts to nothing less than a declaration of unilateral secession from Spain.<sup>194</sup>

cc/YN94-R3YV]. Offices have already opened in Belgium, the United States, the UK, France, Germany, Italy, and Austria. *Id.*

<sup>185</sup> See Harris, *supra* note 175.

<sup>186</sup> See C.E. B.O.E. n. 311, art. 92, art. 150 para. 2, Dec. 29, 1978 (Spain) (translated by author); Carles Boix & J.C. Major, *The View from Catalonia: The Ins and Outs of the Independence Movement*, FOREIGN AFF. (Sept. 11, 2014), [www.foreignaffairs.com/articles/141973/carles-boix-and-jc-major/the-view-from-catalonia](http://www.foreignaffairs.com/articles/141973/carles-boix-and-jc-major/the-view-from-catalonia) [<http://perma.cc/AA4K-7Q6N>].

<sup>187</sup> See Boix & Major, *supra* note 186.

<sup>188</sup> See Harris, *supra* note 175.

<sup>189</sup> See Clara Gil Del Olmo et al., *Catalonia Sets Date for Early Elections*, EL PAÍS (Jan. 15, 2015), [http://elpais.com/elpais/2015/01/15/inenglish/1421314320\\_146772.html](http://elpais.com/elpais/2015/01/15/inenglish/1421314320_146772.html) [<http://perma.cc/H6WN-ZFNV>].

<sup>190</sup> See *id.*

<sup>191</sup> *Catalonia Vote: Pro-independence Parties Win Elections*, BBC, (Sept. 28, 2015), <http://www.bbc.com/news/world-europe-34372548> [<http://perma.cc/EUV4-MSHS>].

<sup>192</sup> See *id.*

<sup>193</sup> Resolution 1/XI of the Parliament of Catalonia on the Start of the Political Process in Catalonia as a Consequence of the Electoral Results of 27 September 2015 para. 2, PARLAMENT DE CATALUNYA (2015), <http://www.parlament.cat/document/intrade/153127> [<http://www.parlament.cat/document/intrade/153127>] [hereinafter Resolution 1/XI].

<sup>194</sup> See *id.*; Stephen Burgen, *Catalan ‘Independence Declaration’ to Trigger Showdown with Madrid*, GUARDIAN (Oct. 27, 2015), <http://www.theguardian.com/world/2015/oct/27/catalan->

Spanish Prime Minister Mariano Rajoy immediately called the separatist designs “nonsense” and promised to fight independence declarations in court, continuing the rigid Spanish attitude towards Catalan discontent.<sup>195</sup> The declaration of sovereignty, however, asserts that the Spanish Constitutional Court’s decisions are no longer legally binding upon Catalonia.<sup>196</sup> Rajoy forcefully reiterated that his “government will not allow this to continue . . . Catalonia will not disconnect itself from anywhere, and there will be no fracture.”<sup>197</sup> In addition, Artur Mas was once again summoned to court to answer for his part in organizing the unofficial referendum in 2014.<sup>198</sup> This time, Mas attended and assumed full responsibility of the vote, while over 3000 separatists, including hundreds of regional officials, protested outside.<sup>199</sup> At this point, the Spanish government has several options, ranging from the severance of funds to the suspension of the regional government.<sup>200</sup> It is likely that Spain will gradually increase the pressure upon Catalonia to induce the compliance of the regional government.<sup>201</sup> The Spanish national elections in December 2015 will undoubtedly determine the future of Spain’s tone towards the separatists, as each of the four major parties vying for power has a different strategy for dealing with the Catalan question.<sup>202</sup> If the Spanish government’s inflammatory rhetoric and refusal to compromise continues, however, violent escalation and widespread upheaval is certainly plausible.<sup>203</sup>

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independence-declaration-puts-region-on-course-for-madrid-showdown [http://perma.cc/39AT-3M6Q].

<sup>195</sup> See Julien Toyer, *Victorious Catalan Separatists Claim Mandate to Break from Spain*, REUTERS, (Sept. 27, 2015), <http://www.reuters.com/article/2015/09/27/spain-catalonia-idUSL5N11X04O20150927> [http://perma.cc/2QTF-K7KA].

<sup>196</sup> See Resolution 1/XI, *supra* note 193, at para. 6.

<sup>197</sup> Ashifa Kassam, *Catalonia MPs Vote for Secession as Spain Looks to Block Plans in Court*, GUARDIAN (Nov. 9, 2015), <http://www.theguardian.com/world/2015/nov/09/catalonia-mps-to-vote-on-secession-plan-in-showdown-with-spains-government> [http://perma.cc/T3ND-32AE].

<sup>198</sup> *Artur Mas: Catalan President Appears in Barcelona Court*, BBC (Oct. 15, 2015), <http://www.bbc.com/news/world-europe-34536973> [http://perma.cc/RD7F-HTV8].

<sup>199</sup> *Id.*

<sup>200</sup> See How Spain Will Respond to the Next Step Toward Catalan Independence, STRATFOR GLOBAL INTELLIGENCE (Nov. 7, 2014) <https://www.stratfor.com/analysis/how-spain-will-respond-next-step-toward-catalan-independence> (enter email address in prompt; then follow “Get Full Article Free” hyperlink).

<sup>201</sup> See *id.*

<sup>202</sup> Samuel Whitesell, *Secession in Spain: The Fight for an Independent Catalonia*, L. ST., (Oct. 7, 2015), <http://lawstreetmedia.com/issues/world/secession-spain-independent-catalonia/> [http://perma.cc/UBH4-6M3Y].

<sup>203</sup> See Betancor, *supra* note 18.



### III. ANALYSIS

The insights from Scotland and Catalonia exemplify a growing trend towards secession within the EU that has been magnified by economic hardship and the EU's increasing political and economic integration.<sup>204</sup> Ironically, this same integration, combined with other recent forces, has cultivated the rise of Eurosceptic groups that challenge the EU's legitimacy.<sup>205</sup> As a result of this fragile situation, the designation of a defined framework on sub-state secession has become critical.<sup>206</sup> If the EU fails to act, unilateral secession, prompted by state politics, may become the norm, leading to reduced state legitimacy and further disorder in Europe.<sup>207</sup> The EU can prevent this deleterious outcome by using the question of EU citizenship, as well as political proclamations, to promote democratic and negotiated secessions.<sup>208</sup> By applying its substantial political influence in this way, the EU may attempt to foster a precedent of controlled, negotiated secession, which will allow for orderly power transitions and increased legitimacy for the EU itself.<sup>209</sup>

#### A. *The Crisis of Legitimacy*

Scotland and Catalonia together confirm an alarming development: Europe is entering an era of rapid change.<sup>210</sup> Globalization, inter-cultural migration, and advances in communications are among the primary propellants of this transformation.<sup>211</sup> Together, these factors are testing the integrity of the EU itself and increasing popular discontent throughout Europe,

<sup>204</sup> See Connolly, *supra* note 12, at 53–54.

<sup>205</sup> See *id.* at 95–96.

<sup>206</sup> See *id.* at 53, 54, 78; Borgen, *supra* note 26, at 461–62; Nikos Chrysoloras, *Towards a Plausible EU Response to Breakaway Regions*, EU OBSERVER (Jan. 8, 2013), <https://euobserver.com/opinion/118655> [<http://perma.cc/UD52-J3DR>].

<sup>207</sup> See Katrin Bennhold, *From Kurdistan to Texas, Scots Spur Separatists*, N.Y. TIMES (Sept. 10, 2014), [http://www.nytimes.com/2014/09/11/world/europe/separatists-around-the-world-draw-inspiration-from-scotland.html?\\_r=0](http://www.nytimes.com/2014/09/11/world/europe/separatists-around-the-world-draw-inspiration-from-scotland.html?_r=0) [<http://perma.cc/TPP5-DDQK>]; Chrysoloras, *supra* note 206.

<sup>208</sup> See Borgen, *supra* note 26, at 462–63; Connolly, *supra* note 12, at 101–04; David Haljan, *Mapping the Theme of Secession, in SECESSION WITHIN THE UNION: INTERSECTION POINTS OF INTERNATIONAL AND EUROPEAN LAW* 10, 16–17 (Catherine Brölmann & Thomas Vandamme eds., 2014), available at <http://acelg.uva.nl/publications/secession.html> [<http://perma.cc/9TW9-M9HT>].

<sup>209</sup> See Connolly, *supra* note 12, at 101–04; Ekaterina Blinova, *Scotland Independence Frustrates Spain Prior to Catalonia Referendum*, SPUTNIK (Sept. 10, 2014), <http://sputniknews.com/world/20140910/192795886/Scotland-Independence-Frustrates-Spain-Prior-to-Catalonia.html> [<http://perma.cc/V5ZX-UE3X>].

<sup>210</sup> See Connolly, *supra* note 12, at 53–54.

<sup>211</sup> See PHILIPPE C. SCHMITTER & ALEXANDER H. TRECHSEL, COUNCIL OF EUR., *THE FUTURE OF DEMOCRACY IN EUROPE: TRENDS, ANALYSES AND REFORMS* 3 (2004), <http://www.nonformality.org/wp-content/uploads/2006/07/2-Greenpaper.pdf> [<http://perma.cc/QWN4-TXTT>].

while also fostering regional identity and encouraging secessionist ideas.<sup>212</sup> Negative trends in voter turnout, which is expected to be no higher than 35% for national parliamentary elections within the next five years, illustrate the crumbling legitimacy of both EU Member States and the EU itself.<sup>213</sup> Thus, the EU is facing its own serious identity crisis and needs to salvage its legitimacy.<sup>214</sup>

The economic downturn of the last five years has simultaneously prompted the emergence of two diametrically opposed viewpoints regarding the EU and national sovereignty.<sup>215</sup> The pro-sovereignty coalition views the Eurozone crisis and economic difficulties as “emblematic of fundamental flaws in the idea of European integration” and a reason for states to reaffirm their individual sovereignty.<sup>216</sup> Many proponents of this viewpoint advocate the termination of the EU, or at least a sizeable reduction in its scope and power.<sup>217</sup> Paradoxically, these same factors have inspired a pro-EU position that asserts that an economic union is impractical without a full political union.<sup>218</sup> At present, the Eurosceptic forces are gaining strength due to increasing frustration with perceived European inaction and bureaucracy.<sup>219</sup>

### B. The Citizenship Question

Although Scotland and Catalonia demonstrate two opposing forms of secession, both threaten to upend the legal status quo.<sup>220</sup> Furthermore, both the Scottish and Catalan movements perceive the EU as the key to their respective futures due to the instant legitimacy and economic benefit that EU membership would bring.<sup>221</sup> The crux of this perception lies in the hope that each sub-state would retain EU membership through its former governing state.<sup>222</sup> Despite the preliminary statement by former European Commis-

<sup>212</sup> See *id.* at 3–5.

<sup>213</sup> See *id.* at 5.

<sup>214</sup> See *id.* at 4–5; R. Daniel Kelemen, *Built to Last? The Durability of EU Federalism*, in MAKING HISTORY: STATE OF THE EUROPEAN UNION VOL. 8, at 51, 59 (Sophie Meunier & Kate McNamara eds., 2007); Connolly, *supra* note 12, at 95–97.

<sup>215</sup> See Connolly, *supra* note 12, at 95.

<sup>216</sup> *Id.* at 95–96.

<sup>217</sup> See *id.* at 96.

<sup>218</sup> See *id.*

<sup>219</sup> See SCHMITTER & TRECHSEL, *supra* note 211, at 29–31; JOSE IGNACIO TORREBLANCA & MARK LEONARD, EUR. COUNCIL ON FOREIGN REL., THE CONTINENT-WIDE RISE OF EUROSCEPTICISM 1–4 (2013), [http://www.ecfr.eu/page/-/ECFR79\\_EUROSCEPTICISM\\_BRIEF\\_AW.pdf](http://www.ecfr.eu/page/-/ECFR79_EUROSCEPTICISM_BRIEF_AW.pdf) [<http://perma.cc/7FRM-6JE2>].

<sup>220</sup> See Chrysoloras, *supra* note 206; Connolly, *supra* note 12, at 77, 101.

<sup>221</sup> See Angela K. Bourne, *Europeanization and Secession: The Cases of Catalonia and Scotland*, 13 J. ETHNOPOLITICS & MINORITY ISSUES IN EUR. 94, 105 (2014) [hereinafter Bourne, *Europeanization and Secession*].

<sup>222</sup> See Connolly, *supra* note 12, at 84; James Crawford & Alan Boyle, *Annex A Opinion: Referendum on the Independence of Scotland—International Law Aspects*, in SCOTLAND ANALYSIS: DE-

sioner José Manuel Barroso that an independent sub-state would *not* automatically carry EU membership, the question of succession is legally “unknown territory.”<sup>223</sup>

An additional issue is whether the people of Scotland and Catalonia would retain their EU citizenship.<sup>224</sup> Article 20(1) of the Treaty on the Functioning of the European Union effectively precludes national measures that divest EU citizens of their citizenship.<sup>225</sup> Scholars such as Aidan O’Neill claim that the nature of EU citizenship rights as espoused in Article 20(1) and by the Court of Justice of the European Union’s case law would lead to the conclusion that both the independent sub-state and the governing state should each succeed to the combined state’s existing EU membership, so that everyone in those countries retains their citizenship.<sup>226</sup> Although international organizations generally mandate that new states separately obtain treaty or organizational membership, this interpretation would conform with Article 34 of the 1978 Vienna Convention on Succession of States in Respect of Treaties, which implies that a new state’s succession to the treaty obligations of its former governing state is automatic.<sup>227</sup> Other complications include the disentanglement of newly independent sub-states like Scotland from the fragile Eurozone, the reintroduction of border controls as a result of an exit from the Schengen Area, and the loss of the automatic right to move freely, work, and study in EU Member States.<sup>228</sup>

### *C. Secession as the Crucible of Continued EU Relevance: The Twin Dangers of Unilateral Secession and Lost Legitimacy*

The legal questions of automatic sub-state accession to the EU and the right of self-determination present an excellent opportunity for the EU to clarify its position on secession.<sup>229</sup> Yet the EU’s current approach to sub-state separatists is contradictory and confusing.<sup>230</sup> The EU’s response up until now has been to eliminate the circumstances in which the right to self-

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VOLUTION AND THE IMPLICATIONS OF SCOTTISH INDEPENDENCE 67, 107 (2013), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79408/Annex\\_A.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79408/Annex_A.pdf) [<http://perma.cc/DGH5-FQDK>].

<sup>223</sup> See Ciara Murphy, *Scottish Independence: A Question of International Law or of the EU’s “New Legal Order?” (Part II)*, EUR. L. BLOG (Feb. 15, 2013), <http://europeanlawblog.eu/?p=1565> [<http://perma.cc/7CVF-GYNZ>]; see also Connolly, *supra* note 12, at 84.

<sup>224</sup> See Crawford & Boyle, *supra* note 222, at 105; Murphy, *supra* note 223.

<sup>225</sup> See Consolidated Version of the Treaty on the Functioning of the European Union art. 20, May 9, 2008, 2008 O.J. (C 115) 47; Crawford & Boyle, *supra* note 222, at 107.

<sup>226</sup> See Murphy, *supra* note 223.

<sup>227</sup> See Vienna Convention on Succession of States in Respect to Treaties art. 34, Aug. 23, 1978, 1946 U.N.T.S. 3; Connolly, *supra* note 12, at 84–85.

<sup>228</sup> See Bourne, *Europeanization and Secession*, *supra* note 221, at 107.

<sup>229</sup> See Connolly, *supra* note 12, at 104; Chrysoloras, *supra* note 206.

<sup>230</sup> See Connolly, *supra* note 12, at 54, 83, 103.

determination is equivalent to the right to secession for sub-state entities; this approach has become outdated as the traditional nature of statehood has changed.<sup>231</sup> This shift in the definition of statehood has also affected sub-state secession movements, which have simultaneously been increasing in strength.<sup>232</sup> Furthermore, the recent and profound transfers of sovereignty from European states to the EU have weakened national sovereignty.<sup>233</sup> Sub-state entities have consequently “tethered the traditional goal of sovereign statehood to the realities of an integrating Europe in which state sovereignty is constrained.”<sup>234</sup> To further complicate matters, the EU has articulated ideals of self-determination for all peoples that have inspired minority citizen groups in Member States.<sup>235</sup> Yet the EU’s bureaucratic structure emphasizes the primacy of the state by limiting full participation in its institutions to *only* Member States and not sub-states.<sup>236</sup>

In light of this dissonance, the behavior of the EU may encourage sub-states to seek their independence through secession.<sup>237</sup> Similarly, without a clear declaration from the EU to guide them, Member States may assert political and military pressure to suppress sub-state movements and maintain territorial integrity.<sup>238</sup> One example of this scenario would be Catalonia’s attempted seizure of independence through a unilateral declaration of secession.<sup>239</sup> If Catalonia were successful in breaking away from Spain, it would provide the simmering Basque independence movement with its own opportunity and justification to seize sovereignty and set a political precedent for other movements in Europe.<sup>240</sup> Spain, fearing this outcome, might do everything in its power to repress the Catalan movement.<sup>241</sup> The unsettling

<sup>231</sup> See *id.* at 53.

<sup>232</sup> See TORREBLANCA & LEONARD, *supra* note 219, at 1; Teona Srmava, *A Problem of European Identity? Separatist Movements in the EU*, PROJECT FOR DEMOCRATIC UNION (Mar. 5, 2014), <http://www.democraticunion.eu/2014/03/problem-european-identity-separatist-movements-eu/> [<http://perma.cc/3PNR-SMG3>].

<sup>233</sup> See Ted Cattle, *Statehood and the Problem of Flux: A Case for Interculturalism*, OPEN DEMOCRACY UK (Apr. 16, 2013), <https://www.opendemocracy.net/ourkingdom/ted-cattle/statehood-and-problem-of-flux-case-for-interculturalism> [<http://perma.cc/5EVY-VT5F>].

<sup>234</sup> Connolly, *supra* note 12, at 54.

<sup>235</sup> See Treaty of Lisbon, *supra* note 79, art. 3a para. 2; Bourne, *Europeanization and Secession*, *supra* note 221, at 95.

<sup>236</sup> See Connolly, *supra* note 12, at 54.

<sup>237</sup> See DANIEL FURBY, BUS. FOR NEW EUR., A LONG AND WINDING ROAD?: SCOTTISH INDEPENDENCE AND EU ACCESSION 6 (2014), [http://www.businessforneweurope.org/scottish\\_independence\\_and\\_eu\\_accession](http://www.businessforneweurope.org/scottish_independence_and_eu_accession) [<http://perma.cc/FM8G-329U>].

<sup>238</sup> See Betancor, *supra* note 18.

<sup>239</sup> *Id.*

<sup>240</sup> See Raphael Minder, *Catalan Vote Seen as Test for Separatists in Europe*, N.Y. TIMES (Aug. 5, 2014), <http://www.nytimes.com/2014/08/06/world/europe/catalan-vote-seen-as-test-for-separatists-in-europe.html> [<http://perma.cc/V48M-3TMW>].

<sup>241</sup> See Betancor, *supra* note 18.

actions of the Spanish government and the restlessness of the Catalans both suggest that this is a plausible scenario.<sup>242</sup>

There is a further complication to this kind of scenario.<sup>243</sup> Without a definite framework governing secession, legal and political dynamics—including the administrative roles of states and sub-states in the EU and events such as the Eurozone crisis—will affect the prospects of Scottish and Catalan nationalism as much as any legal principle of international law.<sup>244</sup> The political considerations of various EU Member States would also be important in determining the secession question.<sup>245</sup> Such was the case in Kosovo, where the requisite vote for recognition was “fraught with political complications,” as several countries refused to recognize Kosovo’s independence because they were afraid of encouraging their own sub-state movements.<sup>246</sup> The Crimean secession also demonstrated this political interplay, given the prominent role of Russia in accomplishing Crimea’s separation from Ukraine.<sup>247</sup> Thus, unilateral sub-state secession may be manipulated by other states to accomplish their own political objectives.<sup>248</sup>

Despite these unsettling conditions, the EU has the opportunity to assert its influence and to answer the question of sub-state secession.<sup>249</sup> A clarification on the secession question is important in light of the recent empowerment of Eurosceptics by renewed nationalism, cultural fervor, and economic instability.<sup>250</sup> Otherwise, the return of ethnic nationalism would coincide with a breakdown of European solidarity after sixty-five years of attempted cooperation.<sup>251</sup> Dutch journalist Ian Buruma highlighted the grav-

<sup>242</sup> See *id.*; Harris, *supra* note 175 (describing several aggressive actions taken by the Spanish government against Catalan officials).

<sup>243</sup> See Connolly, *supra* note 12, at 54.

<sup>244</sup> See *id.*

<sup>245</sup> See Brian Zachary Mund, *Breakaway States: Understanding When the International Community Recognizes the Legitimacy of Separatist States 3* (Dec. 2013) (unpublished essay, University of Pennsylvania), <http://repository.upenn.edu/cgi/viewcontent.cgi?article=1218&context=curej> [<http://perma.cc/U5KB-4BYZ>].

<sup>246</sup> See Connolly, *supra* note 12, at 87; see also Simone F. van den Driest, *Some Thoughts on the Viability of EU Membership*, in *SECESSION WITHIN THE UNION*, *supra* note 208, at 26, 31–32.

<sup>247</sup> See Cani, *supra* note 109; Chrisella Herzog, *Political Legitimacy and International Law in Crimea: Pushing the U.S. and Russia Apart*, *DIPLOMATIC COURIER* (May 8, 2014), <http://www.diplomaticcourier.com/news/topics/politics/2187-political-legitimacy-and-international-law-in-crimea-pushing-the-u-s-and-russia-apart> [<http://perma.cc/2XYV-R2NH>].

<sup>248</sup> See Michael Blake, *Putin Manipulates International Norms for Imperial Ambitions*, *AL JAZEERA AMERICA* (Jul. 24, 2014), <http://america.aljazeera.com/opinions/2014/7/ukraine-putin-russianseparatistsinternationalall.html> [<http://perma.cc/TK5S-GQW5>]; Cani, *supra* note 109.

<sup>249</sup> See Connolly, *supra* note 12, at 102–03.

<sup>250</sup> See *id.* at 95–96, 103; GLENN GOTTFRIED, *INST. FOR PUB. POL’Y RES., CONTINENTAL DRIFT: UNDERSTANDING THE GROWTH OF EUROSCEPTICISM 22* (2014), [www.ippr.org/files/publications/pdf/continental-drift\\_Oct2014.pdf](http://www.ippr.org/files/publications/pdf/continental-drift_Oct2014.pdf) [<http://perma.cc/24FG-SYVV>].

<sup>251</sup> See Ian Buruma, *Breaking Up Is Hard to Do*, *GLOBE & MAIL*, <http://www.theglobeandmail.com/commentary/breaking-up-is-hard-to-do/article715343/> (last updated Mar. 13, 2009)

ity of this danger, stating, “We know what happened when the twin pulls of blood and soil determined European politics before. Without having intended it, the EU now seems to be encouraging the very forces that postwar European unity was designed to contain.”<sup>252</sup> Consequently, the ultimate treatment and status of Scotland and Catalonia may decide not only the fates of the UK and Spain, but possibly the entire EU as well.<sup>253</sup>

#### *D. The Democratic Solution and the Opportunity for Action*

Despite these threats, the secession quandary provides the EU with an opportunity to prevent a balkanized Europe and to assert its continued dominance in the future of European politics.<sup>254</sup> Such a result, however, can occur only if the EU takes definite steps to elucidate and regulate sub-state secession.<sup>255</sup> The longstanding fear of encouraging a “domino” effect, as demonstrated by the Kosovo incident, has so far inhibited EU action.<sup>256</sup> Yet a limited framework that allows the EU to oversee negotiated secessions could reduce the chances of this scenario occurring.<sup>257</sup> Continued consolidation of political power in areas such as foreign policy and the labor market would also lower the costs of secession, thus rendering autonomy claims more politically feasible.<sup>258</sup>

The EU could regulate sub-state secession by encouraging negotiated secession movements like the one in Scotland.<sup>259</sup> The peaceful and democratic resolution of the problem in Scotland demonstrated that secessionist aspirations did not need to involve violence or coercion, contrary to almost every other secession movement.<sup>260</sup> This serves as a crucial reminder in light of the turbulent situations surrounding Crimea and Kosovo as well as

[<http://perma.cc/CGH8-9DGN>]; Ian Traynor, *The Centre Is Falling Apart Across Europe*, GUARDIAN (Nov. 15, 2014), <http://www.theguardian.com/world/2014/nov/16/europes-centre-cannot-hold> [<http://perma.cc/58Z8-KP8P>] [hereinafter Traynor, *The Centre Is Falling Apart Across Europe*].

<sup>252</sup> Buruma, *supra* note 251.

<sup>253</sup> See Henri de Waele, *Secession and Succession in the EU: Fuzzy Logic, Granular Outcomes?*, in SECESSION WITHIN THE UNION, *supra* note 208, at 34, 37–39; van den Driest, *supra* note 246, at 31–32; Traynor, *The Centre Is Falling Apart Across Europe*, *supra* note 251.

<sup>254</sup> See Connolly, *supra* note 12, at 101–04.

<sup>255</sup> See *id.*; Haljan, *supra* note 208, at 15–16.

<sup>256</sup> See Bridget L. Coggins, *The History of Secession: An Overview*, in ASHGATE RESEARCH COMPANION TO SECESSION 23, 33 (Aleksandar Pavković & Peter Radan eds., 2011); Borgen, *supra* note 26, at 464.

<sup>257</sup> See Connolly, *supra* note 12, at 102–03.

<sup>258</sup> Andrea Filippetti, *European Integration and the Winds of Secession*, OPEN DEMOCRACY (Oct. 13, 2014), <https://www.opendemocracy.net/can-europe-make-it/andrea-filippetti/european-integration-and-winds-of-secession> [<http://perma.cc/WQX3-7YMC>].

<sup>259</sup> See Connolly, *supra* note 12, at 104.

<sup>260</sup> See *In Focus: Centripetal vs. Centrifugal Forces: Experimenting with the Dynamics of Different Power-Sharing Forms in the EU*, GRP. OF THE PARTY OF EUR. SOCIALISTS (Oct. 15, 2014), <http://pes.cor.europa.eu/NEWS/Pages/In-Focus-October-2014.aspx> [<http://perma.cc/SA4M-S8Q5>].

the deteriorating situation in Catalonia.<sup>261</sup> If managed appropriately by the EU, Scotland's referendum could instigate a more positive trend across the rest of Europe by inspiring sub-state entities to push for negotiated referendums.<sup>262</sup>

The EU has the power to encourage a negotiated secession precedent.<sup>263</sup> On the one hand, it could attempt to influence secessionist movements to adopt peaceful and democratic mechanisms.<sup>264</sup> Additionally, the EU could discourage countries like Spain from repressing sub-state movements through the "empire of law" approach, and instead encourage the peaceful resolution of self-determination claims.<sup>265</sup> On the other hand, because sub-states critically value EU membership, the EU could use membership to discourage overzealous secessionist movements and incentivize democratic action.<sup>266</sup> A strong, defined position by the EU on negotiated secession would thus allow smaller populations to exercise greater autonomy and encourage democratic intercourse.<sup>267</sup> By doing so, the EU would help to bolster the fledgling right of self-determination that is so idealistically proclaimed in its founding documents, as well as in the UN's founding charter.<sup>268</sup>

If Catalonia were to achieve its independence from Spain through a negotiated referendum on secession, it would benefit Catalonia in several ways.<sup>269</sup> As a separate EU Member State, Catalonia would benefit from streamlined administrative efficiency, a reduced tax burden, and continued access to foreign markets, while maintaining its unique linguistic and cul-

<sup>261</sup> See Connolly, *supra* note 12, at 56–58; Cani, *supra* note 109; Hurst Hannum, *The Scottish Vote: Precedent or Pandora's Box?*, BOS. GLOBE (Sept. 18, 2014), <http://www.bostonglobe.com/opinion/2014/09/18/scotland-independence-vote-precedent-pandora-box/FNapelJOKIFb9I9FgEGTTK/story.html> [<http://perma.cc/Q34A-Y76X>].

<sup>262</sup> See Connolly, *supra* note 12, at 87, 102–04; van den Driest, *supra* note 246, at 31–32.

<sup>263</sup> See Connolly, *supra* note 12, at 103–04; Alan J. Kuperman & Eliezer S. Poupko, Rapporteur's Summary, University of Texas at Austin Symposium: Secession Redux: Lessons for the EU (Mar. 1, 2013), [http://www.utexas.edu/cola/centers/european\\_studies/events/past-conferences/Secession\\_Redux\\_2013.php](http://www.utexas.edu/cola/centers/european_studies/events/past-conferences/Secession_Redux_2013.php) [<http://perma.cc/QT3F-CZ6V>] [hereinafter *Secession Redux Rapporteur's Summary*].

<sup>264</sup> See Connolly, *supra* note 12, at 101–03; *Secession Redux Rapporteur's Summary*, *supra* note 263.

<sup>265</sup> See Carrera, *supra* note 69; *Secession Redux Rapporteur's Summary*, *supra* note 263.

<sup>266</sup> See *Brussels Says an Independent Catalonia Would Need to Leave EU*, *supra* note 15; Philippa Fletcher, *EU Legal Fog Lets Scots Bank on Politics to Keep Them In*, EURACTIV.COM, <http://www.euractiv.com/sections/elections/eu-legal-fog-lets-scots-bank-politics-keep-them-308433> (last updated Nov. 28, 2014) [<http://perma.cc/7JQK-QYCV>].

<sup>267</sup> See Bourne, *Europeanization and Secession*, *supra* note 221, at 95, 98–100; *Secession Redux Conference Report*, *supra* note 263.

<sup>268</sup> See U.N. Charter art. 1, para. 2; Treaty of Lisbon, *supra* note 79, art. 3a.

<sup>269</sup> See Josep Desquens, *Europe's Stateless Nations in the Era of Globalization: The Case for Catalonia's Secession from Spain*, 6 BOLOGNA CTR. J. INT'L AFF. 85, 94–96 (2003).

tural identity.<sup>270</sup> Although Spain may have to deal with a “domino effect,” wherein the Basque country attempts to follow in Catalonia’s footsteps, the current tactic of the Spanish government will eventually lose “the hearts and minds of the vast majority of the people” in Catalonia.<sup>271</sup> Further repression of both secession movements would only make violent action more likely.<sup>272</sup> Thus, holding a negotiated referendum may paradoxically help Spain retain its integrity, while avoiding future social turmoil and promoting democracy.<sup>273</sup>

Similarly, in the event that Scotland uses the UK’s exit from the EU to re-attempt secession, it is in the EU’s best interest to let Scotland join the organization should the referendum be successful.<sup>274</sup> Not only would Scotland’s accession be in the interest of the very pro-EU people there, but it would also benefit the EU by providing them access to Scotland’s many natural resources.<sup>275</sup> Scotland’s access to the EU’s single market would provide Scottish companies with more trading partners and more potential customers, while allowing the unimpeded flow of capital, goods, and services.<sup>276</sup> Edinburgh is Europe’s fourth largest financial center by equity assets and would have the second highest GDP per capita in the EU, behind only Luxembourg.<sup>277</sup> Furthermore, Scotland’s youth employment is substantially below the EU average, and Scotland makes up 25% of Europe’s offshore wind and tidal resources.<sup>278</sup> Finally, Scotland controls a large share of the 24 billion barrels of oil in the North Sea.<sup>279</sup> Thus, Scotland’s accession to the EU would benefit both the EU and an independent Scotland.<sup>280</sup>

<sup>270</sup> See *id.*

<sup>271</sup> James Walsh, *Catalan Independence Poll: What Happens Next?*, GUARDIAN (Nov. 11, 2014), <http://www.theguardian.com/world/2014/nov/11/catalan-independence-poll-what-happens-next> [<http://perma.cc/23YP-QEH4>]; see Desquens, *supra* note 269, at 94–96; Leopold Traugott, *Catalonia and Spain—Separation or Divorce?* 20–21 (2014) (unpublished manuscript, University of Maastricht).

<sup>272</sup> See Betancor, *supra* note 18; Filipe dos Santos Henriques, *Catalonia: The Next State of Europe*, THE NEW FEDERALIST (FEB. 22, 2014), <http://www.thenewfederalist.eu/catalonia-the-next-state-of-europe> [<http://perma.cc/DHA2-TE6P>].

<sup>273</sup> See Henriques, *supra* note 272; Traugott, *supra* note 271, at 19–21.

<sup>274</sup> See Fletcher, *supra* note 266.

<sup>275</sup> See *id.*; GOV’T OF SCOTLAND, SCOTLAND IN THE EUROPEAN UNION 39–40 (2014), <http://www.scotland.gov.uk/Resource/0043/00439166.pdf> [<http://perma.cc/3YAN-Y37U>] [hereinafter SCOTLAND IN THE EUROPEAN UNION].

<sup>276</sup> See SCOTLAND IN THE EUROPEAN UNION, *supra* note 275, at 53.

<sup>277</sup> See Tanya Zhekova, *Scotland and EU Membership in the Case of Independence*, ONE EUROPE (SEPT. 3, 2014), <http://one-europe.info/scotland-and-eu-membership-in-the-case-of-independence> [<http://perma.cc/35FY-FX6Y>].

<sup>278</sup> See SCOTLAND IN THE EUROPEAN UNION, *supra* note 275, at 24, 39.

<sup>279</sup> See *id.*

<sup>280</sup> See Fletcher, *supra* note 266; SCOTLAND IN THE EUROPEAN UNION, *supra* note 275, at 24, 39; Zhekova, *supra* note 277.



## CONCLUSION

In the wake of unprecedented European integration, the EU faces a substantial wave of Euroscepticism and nationalism. This Euroscepticism, powered by the economic crisis, has resulted in a loss of faith in the EU's institutions and a dire questioning of its legitimacy. Yet the growing problem of sub-state secession, as illuminated by Scotland and Catalonia, presents a valuable opportunity for the EU. By developing a framework that allows for negotiated referendums, the EU can assert itself in European politics and reclaim its legitimacy. A defined framework on secession would discourage unregulated unilateral secession that would injure Member State integrity, create instability and turmoil, and demonstrate EU impotence. Finally, action on the question of secession would allow the EU to be true to the democratic principles established in its foundational documents.

With a defined framework on secession, the EU can mediate negotiated referendums amongst Member States while remaining neutral on secession referendum outcomes. The EU can also use the question of sub-state membership to encourage dialogue between sub-states and Member States on the issue of self-determination and to accomplish democratic outcomes. With this achieved, the EU can preside over the beginning of a new era for the European continent—one that sees the emergence of regional self-determination as the building block of an integrated, egalitarian union.