

# Place over Nation

## The Role of Regionalism in Redefining Secession

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### Introduction

ON THE 23<sup>rd</sup> June 2016 the citizens of the United Kingdom voted to leave the European Union by 52%. The decision to hold a referendum by the conservative government was in part to address the growing support for the United Kingdom Independence Party (UKIP) as well as pressure from the conservative membership. Despite the UK overall voting to leave the EU some regions strongly supported remaining a member. Among these was Scotland, where 62%, including a majority in every local authority, voted to remain. Two years earlier Scotland had held its own referendum on independence, with 55% voting to stay within the UK. After the Brexit vote, the Scottish National Party (SNP), who led the campaign for independence, went on to win a sizeable majority of seats in Scotland at the following two general elections as well as in the Scottish Parliament. The stark contrast between the way Scotland voted on EU membership compared to England has been cited by the Scottish First Minister Nicole Sturgeon as a justification to press for another independence referendum.

These two referendums held in the UK are indicative of two movements that have steadily attracted growing support across Europe. One of these is made up of Eurosceptic parties hostile to the EU, embodied by the Front National, UKIP and the Dutch Freedom Party. These parties run on a platform either critical of or pushing for a withdrawal from the European project and are best described as 'isolationists' for their rejection of regional cooperation and looking to reassert the sovereignty of the nation state. In contrast, the other movement encompasses broadly pro-EU independence parties in Scotland, Catalonia and Corsica who campaign for the independence of a sub-state territory, but qualify this by advocating continued membership of the EU.<sup>1</sup> A perfect example of this being the Scottish National Party's use of the campaign slogan 'Independence in Europe.'<sup>2</sup> Though continued membership of the EU has been found to make independence more viable to the general population, by minimizing the associated risks,<sup>3</sup> analysis has shown that these independence parties have been consistent in their support of the EU.<sup>4</sup>

There has been a tendency to consider both movements as undesirable manifestations of twentieth century nationalism that seek to reduce cooperation across international borders. However, such a broad categorization is misguided and fails to acknowledge

how the two movements contrasting positions on EU membership underlines a pronounced difference towards cooperation at the regional level. It is this difference, rather than the real-world political parties who represent the movements, that this article will focus upon. I will argue that the strengthening of cooperation through European-wide institutions has emboldened sub-national groups to seek independence from member states by lowering the risk of secession. Far from being a threat to the European project these movements could help strengthen it. To do so would require continued commitment to regional cooperation and moving towards an identity based on shared residency rather than nationality. If this is successful, then in time these groups may strengthen the EU democratically by moving certain decision-making processes closer to citizens and reinvigorating the principle of subsidiarity.

## Self Determination and Secession

**T**HE PRINCIPLE of self-determination was famously included by President Woodrow Wilson in his Fourteen-Points speech outlining his vision for a peaceful end to the First World War. The principle has subsequently developed into a core principle of international law and was embodied in Principle 1 of the International Covenant on Civil and Political Rights:

*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>5</sup>*

Despite its salience within international law, the practical implications of the right to self-determination have proved contentious, particularly given the historical changes in the makeup of the international order since it was first suggested. While traditionally the principle was understood as referring to the right of a people to constitute themselves as a state, it is now perceived as more nuanced, with a notable distinction drawn between internal and external self-determination.

Internal self-determination refers to the right of a people to not be restricted from exercising their cultural, social and political rights within their respective states.<sup>6</sup> Though this principle has been invoked to advocate for the rights of various groups within states, territorially concentrated groups have also used it to justify seeking a form of internal secession. This refers to a process whereby a new regional administrative body is created after breaking away from an existing one, thus altering the internal institutional makeup of a state. In such cases, both successor regional bodies remain part of the same federal system or central government. The process usually takes place within federalized states, with recent examples including the secession of part of the Canton of Bern to create the Jura Canton in Switzerland as well as the creation of the state of Telangana from Andhra Pradesh in India. In contrast, external self-determination refers to the more traditional understanding of the principle, whereby a territorially concentrated people seek to form a new sovereign state through a process of external secession.<sup>7</sup> Aware of the bloody conflicts that have been fueled by the breakup of states, many scholars have been under-

standably reluctant to extend the right to external self-determination beyond situations where a group have consistently suffered severe violations to their basic rights.<sup>8</sup>

The increasing development of institutions above the state level, particularly at the regional level with the European Union, has served to scramble these two definitions and requires a reassessment of the discussion of secession.<sup>9</sup> Rather than focusing on the type of political body that is created it is more fitting to look at the new relationship between the two parties and the framework of cooperation this exists within. Withdrawing from a regional or international institution, as the UK did when leaving the EU, can be just as devastating and complicated as when a component of a state performs an external secession. This is especially so when there is only a limited framework to guide the structure of the future relationship.

## A Shared Framework

**A**NY SECESSION will occur within some form of framework that will structure the subsequent relationship between the two parties. While an internal secession may take place within the institutions of a federalized state, a successful external secession will see the successor states subject to the rules of the global governance system. The latter has undergone considerable development in recent decades with a proliferation of international treaties and institutions substantially increasing cooperation between states. However, the most significant example of a supranational institution has been at the regional level with the EU. The freedom of movement for persons, goods, services and capital, along with the creation of supranational political, economic and legal institutions has entrenched cooperation between EU members in a way not seen in the modern state era. These developing layers of supranational governance have been likened to the storeys of a house, starting at the top with the global, followed by the regional and subsequently the levels of constitutional political authority within each nation state.<sup>10</sup> This analogy is useful from a constitutional perspective, though it doesn't illustrate how each level applies to and is comprised of different groups. While the lowest levels of political authority with states—districts, communes, or municipalities—have jurisdiction over the fewest number of citizens, governance at the global level covers, at least in theory, the whole of humanity.

Instinctively we often associate the higher levels of governance as taking precedent over those below, though it has been argued that a more appropriate way to view their relationship is one of “process, communication and interaction, rather than mechanical precedence of ‘higher’ levels over ‘lower’ levels of governance.”<sup>11</sup> Regardless of the exact relationship between these levels in each field of jurisdiction, it is fair to say that ordinary citizens influence is greatest at the most local level simply due to numbers: the more people involved in a polity or decision-making process the less influence each individual citizen wields.<sup>12</sup>

Acknowledging this fact allows us to consider a narrow case for secession along purely democratic lines, whereby secession is sought by a territorially concentrated group looking to increase their influence over their own affairs.<sup>13</sup> If we assume that this mo-

tivation can fuel a secession at any level of governance, then how does a group looking to leave a regional body like the EU differ from a group seeking to form their own state while remaining part of the EU? I will argue that a difference can be drawn in the two groups formulation of a collective identity and how they define themselves as a group. It is this identity that can inform their view on cooperation beyond the level of the nation state. For while the former seek secession explicitly to reduce cooperation across borders, or between nations, the latter situate their claim for secession, and the creation of a new state, on continued international cooperation through a regional body.

## Collective Identity

**L**EUUS therefore take two secessionist movements—isolationists, aimed at leaving a regional body and those seeking to create a new state while remaining part of a regional body—and assume that both are fueled simply by a desire to have more control over their own affairs. At first sight there appears little difference between them. If the former commits to continued cooperation with the members of their regional border at the global level—‘Global Britain’ as the British slogan goes—then how is this different from the sub-state territory seeking secession while remaining a member of a regional institution? Where a distinction can be drawn is the identity that a push for secession is based upon. A collective identity plays a crucial role in all calls for secession. An identity that evokes a strong feeling of cultural distinction has been highlighted as providing the necessary spark to begin to shape groups preference for secession, with rational and structural considerations coming into play later in the process.<sup>14</sup> It is difficult to precisely pinpoint all the individual cultural factors that a group may draw upon as a basis for collective identity. However, it is possible to judge whether basing an appeal for secession on a certain form of collective identity is consistent with the position isolationists and independence parties take.

## Nationalism

**T**HE CHARGE of nationalism has been raised against political parties belonging to both the Eurosceptic and pro-EU independence movements. Indeed, many of the parties in both movements openly describe themselves as nationalist. Just like any term that is subject to academic scrutiny nationalism is incredibly difficult to define.<sup>15</sup> It presupposes a distinction between different groups of people into separate nations based upon certain characteristics. In academic discourse defining nations along ethnic or racial lines is generally avoided with the focus instead upon a group identity based upon a set of shared cultural norms. These norms may not be unique to that group, but are sufficient for the members to identify themselves as belonging to a distinct nation. In order for nationalism to be effective the members of the perceived nation have to “care about their identity as members of that nation.”<sup>16</sup>

The coupling of both movements to nationalism is understandable given the prominent role nationality plays in our everyday political identity as well as the dominance of nationalist theory in the sphere of secession and state formation. David Miller, one of the most prominent defenders of the nationalist position, advocates that the nation is the proper agent that has the right to self-determination.<sup>17</sup> Miller defines a nation:

*as a group of people who recognize one another as belonging to the same community, who acknowledge special obligations to one another, and who aspire to political autonomy—this by virtue of characteristics that they believe they share, typically a common history, attachment to a geographical place, and a public culture that differentiates them from their neighbours.*<sup>18</sup>

Though Miller and other nationalist theories are careful to distance themselves from the more extreme elements of nationalism the emphasis upon a public culture and common history as defining characteristics for membership of a political community can in practice be problematic. They can lead to the alienation of a large section of the population, not least new arrivals, who do not feel they conform to this cultural identity. It has to be stressed that elements within both movements discussed here have invoked nationalist rhetoric when campaigning for their respective form of secession and that those in secessionist movements have often gone further towards ‘blood and soil’ nationalism than is advocated by nationalist scholars in academic manuscripts.<sup>19</sup> I intend to show that while for isolationists a nationalist identity is perfectly consistent with their position towards the EU for pro-EU independence movements it is not.

By seeing the nation as the appropriate agent of political organization isolationists can consistently argue that political cooperation between nationalities—for example at the regional or international level—should be limited. Appeals to a shared national identity therefore align with their objective of secession from the EU. Withdrawal will inevitably lead to less cooperation with people seen as coming from other nationalities. In contrast, nationalist appeals by independence movements are inconsistent with advocating for continued membership of the EU. Arguing to secede from their current state by invoking a nationalist identity, that argues those with shared cultural characteristics should have control over their governance, would run counter to integration and enhanced cooperation at the regional level with other nationalities. An independence pursued along nationalist lines not only raises theoretical issues but could lead to a violation of the principles of the EU specifically non-discrimination based upon nationality and even result in undermining the principle of freedom of movement by sowing the seeds for anti-foreigner sentiment: if a territory of a state secedes on the basis that their nation should be independent it would be logical to conclude that they wouldn’t be so open to welcoming individuals from other nationalities. Indeed, Miller has applied his theory of nationalism to argue for the justification of restrictions on immigration based on the ground of national self-determination stating that:

*Because immigration unavoidably affects that future direction—in part because of the demographic and cultural changes that inward migration brings with it, and in part because*

*most of the new arrivals will themselves become politically active citizens in due course—decisions about whom to admit, how many to admit, and what the terms of admission should be are all important matters for a democracy to decide.*<sup>20</sup>

A position that directly contradicts the principle of freedom of movement at the European level. It is these supposed nationalist elements of independence movements that led to them being branded by Joseph H. H. Weiler:

*ethically demoralizing [for] . . . reverting to an early 20<sup>th</sup>-century post-World War I mentality, when the notion that a single state could encompass more than one nationality seemed impossible.*<sup>21</sup>

### Territorial Identity

WITH INDEPENDENCE movements support of the EU inconsistent with a collective identity based upon nationalism, an alternative is required to support their claims to secession. One way for independence movements to avoid the pitfalls of nationalism, when pressing for secession, is to appeal to a collective identity rooted in shared residency. While territorial concentration is included as a condition in most definitions for which group can secede, the “territorial conception of self-determination” has been pioneered by Jeremy Waldron as an alternative to the traditional nationalist or cultural manifestation of self-determination.<sup>22</sup> Waldron sees the territorial conception as prescribing that “people of each territory have a right to work out their own constitutional, political, or legal arrangements without interference from the outside.”<sup>23</sup> In advocating this position Waldron draws upon the work of Immanuel Kant by emphasizing the role that physical proximity plays in facilitating conflict, the settlement of which requires the establishment of a political community:

*people who find themselves quarrelling over the just use of resources are required, morally, to enter into political community with one another, so that their disputes can be resolved consistently within a single coherent framework of law.*<sup>24</sup>

Waldron’s assertion that those who are closest to us pose the most potent threat has been challenged on factual grounds,<sup>25</sup> though perhaps a more fitting interpretation of his position is that we are more likely to interact with those closest to us, regardless of whether that interaction is cooperative or conflictive. In many ways Waldron’s position comes prior to that of nationalist theorists, arguing that shared political institutions, culture, and identity are products of interaction fostered through residency in a shared area that change and develop over time. As these institutions grow, a greater number of people interact *through* them rather than directly with each other, still, the institutions remain territorial in nature.

This territorial condition can clearly be seen in real-world cases of secession, particularly with regards who is given a choice in secessionist votes. The vast majority of votes on secession determine eligibility based on residency, with citizens living outside of an area that wants to secede rarely afforded a say. For example, the terms of the Scottish referendum gave a vote to all those residing and registered to vote in Scotland, including European citizens. It did not extend the vote to people based on any other criteria such as having been born in Scotland. In a referendum in Switzerland for the creation of a new canton from the Jura area of the Berner Oberland a proposal was made by those pushing to secede arguing that only those whose place of origin (*Heimatort*) was from the Jura should have the right to vote, regardless of their current place of residence. This was rejected with the franchise for the vote determined by residency.<sup>26</sup> It is interesting to compare this with the referendum in the UK on EU membership where nationality rather than residency was the determining factor. Though this is consistent with the nationalist identity of those pushing to leave, it resulted in the disenfranchisement of over three million EU citizens living in the UK at the time. Arguably one of the groups most affected by the vote.

If residency is the accepted standard for secessions within states, whether internal or external, then why should it be different for a state that is seeking to secede from a regional entity? There appears little normative difference between these secessionist cases, particularly when the effects are as devastating as Brexit had on the EU population resident in the UK. The right of non-citizen residents to vote in elections is already a reality in many countries, particularly in Latin America.<sup>27</sup> While EU citizens currently have the right to vote in local elections, expanding this to include votes at the national level could be a first step to move towards a territorial identity within the block. This would make the exclusion of non-citizen residents on future matters of secession far harder to achieve.

An additional advantage of focusing upon current residency is that it avoids many of the problems that stem from secession as a right based upon the rectification of a historic injustice that is often central in nationalist claims. Given its strong intuitive appeal there is a worrying tendency among those pushing for secession to invoke a past injustice whether real or perceived as a foundation for their claim and therefore an important part of their identity.<sup>28</sup> Appealing to such a claim can have detrimental effects on the relations between the group that is believed to have suffered and that which inflicted the injustice. This is particularly problematic as often members of the perceived ‘perpetrators’ reside alongside those seeking to secede. In his discussion on historic injustice, in particular the loss of lands by certain groups, Jeremy Waldron asserts that: “The only experiences we can affect are those of people living now and those who will live in the future.”<sup>29</sup> Waldron argues that it is almost impossible to judge the effects of a wrongful act that happened generations ago and that at some point we have to put it aside, if not forget then at least not try and predict how things might have been had that act not taken place.<sup>30</sup> Rather than focusing upon historic injustice secessionist movements could focus upon a common future or shared fate.<sup>31</sup> This would tie in more closely with a territorial identity based upon shared interaction and experiences. In particular, shared residency exposes all residents to the same ecological factors which will be the biggest challenges facing political communities in the next century.

## The EU and State Response to Secession

SO FAR this article has neglected to discuss the EU's position towards the continent's independence movements. Perhaps on no other issue is the regional body in a trickier position. As an institution whose authority stems from its member states it cannot openly advocate or be seen to support a sub-state secessionist movement.<sup>32</sup> Independence movements have therefore generally been treated with hostility by EU institutions. In the run up to the Scottish referendum then President of the EU Commission José Manuel Barroso described the possibility of an independent Scotland joining the EU as “extremely difficult, if not impossible.”<sup>33</sup> There exists no provisions within the EU prescribing what should occur in the case of a secession of part of a member state and although legal analysis points to flaws in Barroso's reasoning what the process would be in a case of secession from or breakup of a member state is far from certain.<sup>34</sup> Even if membership were to be granted whether it would be seamless, at least from a legal perspective appears doubtful.<sup>35</sup>

Despite this ambiguity the actual principles of the European project would not seem to exclude secession of constituent parts of member states. This is especially true if we are working on the assumption that an independence movement is looking to increase the influence of a group of citizens over their own governance. This position closely corresponds with the principle of subsidiarity which has been defined as:

*[Subsidiarity] aims to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at EU level is justified in light of the possibilities available at national, regional or local level.*<sup>36</sup>

The EU already has in place procedures to respect this principle of subsidiarity. The Maastricht Treaty established the EU Committee of the Regions (COR) comprising of local and regional representatives with the aim of giving these actors a say in European legislation.<sup>37</sup> There have also been reforms to ensure local officials are consulted and involved with respect to initiatives financed through EU Structural Funds.<sup>38</sup> The incorporation of sub-state actors within the structure of the EU clearly signals the institution's willingness to work at the level below the state. A breakup of a member state would not jeopardize this principle and could even support it.

Another potential objection to independence movements within member states might come from those who believe that the aim of the European project is to create a harmonized polity, with a collective identity akin to that of the modern nation-state. Despite the economic and legal harmonization of European member states a pan-European identity is still some way off with many doubting this will ever be possible. I have already suggested territory as an alternative identity to nationality, but it is important to examine an integrated Europe could effectively function with different group political identities based on territory rather than requiring a harmonized regional identity.

‘Democracy’ is one such model that fulfils this requirement.<sup>39</sup> Rather than advocating that the EU requires the construction of a shared European identity, to enable the



creation of a single *demos*, understanding the EU as a democracy recognizes that it is made up of multiple *demoi* that are linked together under a shared multilateral institution.<sup>40</sup> The democratic level of the EU is ascertained by judging whether its actions and legislation respect principles of equality and non-discrimination towards the citizens of each member state.<sup>41</sup> These principles may be seen by some to be the basis of European identity,<sup>42</sup> but institutional compliance does not require citizens to identify with them nor forfeit their national identity. If we acknowledge that it is not a necessity for the European project to create a European identity to replace local ones, then independence movements no longer take the shape of the ghastly specters that some have painted them. Independence movements on achieving secession could result in a strengthening of democratic institutions both for the EU and the constituent states.

The EU is becoming acutely aware of the challenges of citizen alienation from the democratic process and the potential threats of this. The EU is of course not fully responsible for these consequences; member states themselves are not impinged or prevented from improving their democratic institutions by being a member of the EU, moves that could offset some of the hostility towards the block. The EU has also introduced measures to attempt to address these effects including increasing the power of the European Parliament and the protection of individual rights under treaties. These measures do not appear to have had the desired effect with the majority of European citizens unaware of their rights under EU law and elections to the European Parliament still seen as second-order in many countries.<sup>43</sup>

Taking these factors into account hostility towards these independence movements from EU institutions appears not to be based on principle, but rather on practical concerns regarding member state objections. It should be clear that the emphasis must remain on states to engage in a lawful, respectful and dignified way with sub-state entities seeking independence: the British government's facilitation of a referendum on Scottish independence serves as a positive example compared to the Spanish government's refusal to entertain discussion of a vote in Catalonia. Still, there are certain ways that the EU could respond. In the previous section I mentioned enfranchising non-citizen residents, as a way to move towards a territorial political identity, as an area the EU could engage member states on. In addition the recommendations made by Christopher K. Connolly for how the EU and its member states could react constructively in the face of calls for secession are enlightening, namely: [i] on matters of secession

*states faced with separatist movements should consider allowing for referendums to gauge support for separation . . . [ii] the EU should consider expanding the formal opportunities for sub-state regions to participate in EU policymaking . . . [iii] the EU should clarify its position on how it would deal with secession from a member state.*<sup>44</sup>

These steps Connolly argues, citing Bruno Coppieters, can help the EU fulfil its role in cases of secession "as an institutional framework within which conflict transformation and resolution may take place."<sup>45</sup> Though the extent to which member states will accept or even engage in these proposals is far from clear, there is no principled reason stopping them.

## The Benefits of Peacefully Changing Borders

IT HAS become a cliché in discussions of secession in Europe to note how the continents borders have constantly been in a state of flux. Ever since the oft-cited Treaty of Westphalia gave birth to the modern state, borders have stubbornly refused to remain set: the break-up of Yugoslavia and the reunification of Germany are both well within living memory. Without wishing to venture too deeply into the debate it seems, given the tide of history, to be naïve to believe that while borders remain a feature of political organization they will not continue to change. In the past these changes have more often than not been accompanied by spilt blood; a situation it is in everyone's interest to avoid. If state borders are to change then there should be the possibility for them to do so in a way that would guard against the outbreak of conflict.

The avoidance of conflict and maintaining peace in Western Europe was one of the central arguments in favor of European integration. The establishment of the EU has changed the nature of Europe's borders, making them more permeable by enshrining the free movement of persons, goods, services and capital. In time the EU may have the opportunity to make the implications of border changes among its member states nothing more than administrative boundary changes designed to enhance the democratic influence of its citizens. Circumstances may force the block to set a precedent—as could have happened with Scotland and may yet occur with Catalonia—to allow territories that have seceded from member states to remain part of the EU.

It is possible to extend the arguments made in this article further, to areas of the world that do not have an established regional institution like the EU and where conflict is more prevalent. This is not to say that secession should be encouraged, but rather efforts should be spent on building up institutions of regional governance that can contain conflicts within their structure. For the traditional separation of conflicts between states and conflicts within states, like the separation of internal and external secession, no longer fits the majority of conflicts in the world today, if it ever did. Neighboring countries have throughout history played an important role in conflicts even so far as actively instigating and supporting certain actors. Even when neighboring countries have not directly supported one fraction, they have to bear the brunt of devastation as well as being the first port of call for displaced persons. The role of regional actors can therefore be positive or detrimental to securing a peace settlement depending on the interests of the actors. Recognition of the actors' interests and their engagement in finding a solution is increasingly seen as a necessity to find a solution to a conflict. Ignoring the interests of regional actors in a conflict will inevitably result in failure.

## Conclusion

THE EUROPEAN project is under pressure. In recent years the community has been portrayed as going from crisis to crisis. The vote in the UK to leave the block was an eruption of a Euroscepticism that began as rumblings of discontent, but has now found widespread support across the continent. Though many Eurosceptic

parties base their criticisms of the EU and calls for withdrawal on a divisive nationalism, it is important to recognize the role secession can have in empowering citizens in their decision-making. Pro-EU independence movements may offer a new way for institutional change within the EU by countering nationalist arguments focused on isolationism, while opening a new path to reconnect people with their political institutions. For pro-EU independence movements to fulfil this potential they must avoid resorting to nationalist rhetoric and instead focus on advancing a collective identity that prioritizes shared place and a common future. Institutional changes such as increasing the voting rights of non-citizen residents in member states as well as clearly defining the repercussions of a secessionist vote within a member state would actively help to set the stage for independence movements to play a more positive role in the development of the union. Above all it is important to emphasize the importance of a strong institution at the regional level to transform potentially contentious conflicts over territory and identity into a positive process of democratic renewal.



## Notes

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### Abstract

#### Place over Nation: The Role of Regionalism in Redefining Secession

In recent years two movements that appear to challenge the foundations of the European Union have gained ground across the continent. The first is a growing Euroscepticism, embodied by an increase in support for parties who advocate a retreat from regional cooperation. The other consists of groups seeking independence from their existing states, who have notably achieved electoral success in Scotland and Catalonia. While the former are inherently opposed to the current form of regional cooperation the latter have generally been positive towards the EU; with continued membership of the union often qualifying their calls for independence. This article examines how regionalism has redefined questions of secession and how pro-EU independence movements may offer a chance for European regionalism to fulfil its democratic potential by moving decision processes closer to citizens and reinventing the EU's principle of subsidiarity.

### Keywords

regionalism, independence, European Union, secession, nationalism, identity