

## Secession and Expulsion

### Lessons for the EU from United States History, 1789 - 1861

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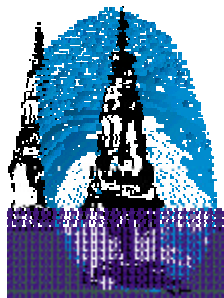
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### **Secession and Expulsion: Lessons for the EU from United States History, 1789 - 1861**

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**Secession and Expulsion:  
Lessons for the EU from United States History, 1789 – 1861**

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Abstract: If secession or expulsion ends in a “velvet divorce,” as with Czechoslovakia, costs are minimal and the split is relatively unimportant. High costs arise if a federation splits into mutually hostile, comparably sized regions. Perhaps the majority of splits lead to dangerous hostility. A well-designed constitution minimizes the likelihood of hostile splits by limiting the issues that are dealt with at the federal level, by providing checks and balances, and by establishing due process under the rule of law. Preventing the conditions under which a hostile split may arise is more cost-effective than trying to optimize the terms of a split or to find last-minute compromises to forestall the split.

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“If the South had won, we’d be fighting them all the time, like England and France, or France and Germany.” John J. Sweeney (1955).

#### **Section 1. Introduction**

European Union countries are considering a draft constitution that includes provisions for secession and even expulsion of member states. Many at the Convention on the Future of Europe that wrote the draft constitution had strong opinions on secession and expulsion (Reuters, April 25, 2003):

“It should be made evident that the political and economic cost of withdrawal could be very high.... This would not only be just, but it would be a deterrent to use the threat of withdrawal as a political weapon in negotiations within the Union,” said Danuta Hübner, European affairs minister of Poland.

“Withdrawal should only be possible when the treaties are amended and a member state refuses to ratify the amendments. Very strict rules and conditions must be attached,” said Pascale Andreani, representing the French government.

“(We should not) offer this on a silver platter to euroskeptics, they will continue to cause disruption in their national parliaments and among national public opinion whenever something difficult is proposed by Brussels,” said Juergen Meyer, a representative from the German parliament.

“Those concerned that this will simply fuel those anti-Europe feelings ... will find in practice that they have been proved wrong,” said Gisela Stuart of the British Parliament. “For those who use it as a political card, it will be seen as calling their bluff,” she added.

The Convention members have strong though conflicting views. Nevertheless, in arriving at its views, it appears that the Convention spent little time on analytical and historical research on secession.

Many possible reasons can be put forward to justify secession or to counter these arguments; a discussion that accounts for all of them is necessarily wide-ranging and often abstract (Buchanan 1993). An alternative approach is to examine concrete, historical cases that

may have revealing implications for particular unions, in this paper, the European Union. This paper focuses on a particular historical case, the evolution of views on succession in the United States from the adoption of its constitution in 1789 until secession led to the outbreak of the U.S. Civil War in 1861. The purpose is to draw possible lessons for the design of a European Union constitution, and indeed for enhancing the likelihood of the survival of the EU. The justification of focusing on these 72 years of U.S. history is that they contain lessons by analogy and analysis for possible secession pressures among the member states of the EU.

For the first 72 years after its Constitution was adopted, the United States faced sporadic but serious internal threats to its existence. These threats arose, first, over internal political conflicts regarding defense and foreign policy issues, and then later regarding protective tariffs and how the federal government spent the funds generated by tariffs and other taxes. Slavery became an increasingly contentious issue from the 1820s on, and eventually played a major role in the secession crisis that led to the Civil War.

Examining the events that led to the Civil War suggests a number of conclusions that are relevant to designing a federal constitution. First, if secession or expulsion ends in a “velvet divorce,” as with Czechoslovakia, costs are minimal and the split is not dreadfully important. In such a case, there is little sense in making it difficult for the countries to separate. Second, high costs arise if a federation splits into mutually hostile regions of roughly comparable size. Empirically, perhaps the majority of splits do lead to dangerous hostility; certainly this is what happened when states seceded from the United States, and eventually the Union and the Confederacy fell into Civil War. Third, a well-designed constitution minimizes the likelihood of hostile splits by minimizing the likelihood of grave conflicts arising. It does so by limiting the issues that are dealt with at the federal level, by providing checks and balances to keep member states from feeling oppressed and becoming angered, and by establishing due process under the rule of law to ensure that member states feel they are

treated fairly. Fourth, preventing the conditions that may cause a split to arise is more cost-effective than trying to prevent an imminent split or to optimize the terms of a split. By the time a split is imminent, U.S. history suggests that there is little room left for maneuver.

## **Section 2. Pressures for Secession in the United States**

Every country faces many issues on which there are major splits in opinion. In the U.S., these splits threatened secession because of the way that the splits were distributed regionally, in particular, across states. On particular sets of issues, public opinion was often substantially more homogeneous within a given state than across the country as a whole, though of course on most issue there was some heterogeneity of opinion within most states. Further, public opinion was often more homogeneous across states in a given region than across the country as a whole. Concretely, substantial majorities in the New England states were strongly opposed to the Louisiana Purchase of 1803, to the trade embargo of 1807-1809, and to the War of 1812 (from 1812 to 1815). The southern and western states, however, were much more favorable to each of these defense/foreign-policy issues. From the mid-1820s to mid-1840s, the agrarian western and southern states were opposed to the protective tariffs that favored manufacturing in New England and the upper Middle Atlantic States (Pennsylvania, New York and New Jersey). Further, public opinion in the southern and western states was on average more in favor of federally financed infra-structure projects in their territories, so-called “internal improvements,” for example, canals, roads, river and harbor projects and later railroads, than was public opinion in the New England states. Related, many in the southern and western states were bitter that relatively little of “their” federal taxes and tariffs went on improvements in their territory.

For comparison, note that the degree of Euro-skepticism varies substantially across countries. There are gross differences in countries’ per capita net contributions to (receipts from) the EU. On many social issues, views of Nordic members are notably different from

some other countries'. EU members angrily but speedily adopted Donald Rumsfeld's distinction between "Old Europe" and "New Europe."

The new member states of eastern and central Europe are hardly uniform, but compared to members in Western Europe are substantially poorer on average, substantially more dependent on agriculture, and are systematically discriminated against by the EU. Typically, they have little love for Germany. Those that were allied with France in the 1930s have little confidence in French promises regarding security. The negotiations leading to accession have been a demeaning and distasteful experience that has reduced the EU's popularity in all of them.

Proponents of secession in the U.S. based their arguments on the federal nature of the Union, and states' rights under the Union. Similarly, the EU is a federation<sup>1</sup>, in which member states give some sovereignty to the center, but retain other sovereign rights. The analogy to the U.S. is of course imperfect, but can nevertheless be enlightening if due allowances are made for the differences. U.S. arguments for succession ran on two tracks. The first track was ideological. Proponents argued this or that federal action was unconstitutional, in that it violated the rights of the member states or violated the rights of the people whom the states were entitled or obligated to defend. In response to unconstitutional behavior by the federal government, it was argued, states could interpose their sovereignty between their citizens and the federal government—interposition. More strongly, it was argued, an individual state could nullify federal laws on its territory, if the law was unconstitutional in the state's view—nullification. In the last resort, individual states could leave the union—secession. (The Virginia and North Carolina legislatures discussed secession as early as the mid-1790s, in response to the undeclared war with France.)

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<sup>1</sup> "Federation" is used here as an analytical term, to denote that the federal, central government has some sovereign powers over the states and their citizens, but the states retain other sovereign powers. "Federal" has many connotations in the EU contexts and is used invidiously by some opposed to further central accumulation of power. None of these connotations are meant here. Wildavsky (1998a) compares federal and unitary systems.



The second track was self-interest. Often the federal acts that were opposed as unconstitutional were acts that had harmful economic effects for the opponents. Sometimes the acts threatened powerful political interests. Ideology by itself often led to much talk, but seldom led to much action. Self-interest by itself would not necessarily have led to secessionist proposals in the absence of ideology that supported states' rights and seemed to justify interposition, nullification or secession as legitimate remedies in some cases.

Secession appealed to many Americans, to some as a legitimate end in itself, to others as a political threat to extort concessions from the federal government and the other member states. Secession was a viable strategy because the states had a special, politically powerful status under the Constitution, and because issues tended to polarize states in one region against those in other regions. In addition, though the Constitution never touched on secession, many Americans agreed that a state could lawfully secede, or were at least uncertain that secession was illegal. Further, many thought the New England states, especially if joined by New York, were large enough in terms of population and wealth to be a viable confederation (Banner, 1970); similarly, many thought the Deep South, with or without the western states and the border states, could be a viable confederation. In contrast, possible European federations are little discussed now as alternatives to the EU. If strong grievances arise among EU members, however, and lead to talk of secession, likely many alternatives will suggest themselves to fertile European minds.

### **Section 3. Chronology of Conflicts Involving Interposition, Nullification and Secession**

The paper now turns to a chronology of pressures for interposition, nullification and secession. It shows that there were almost always pressures for secession and almost always advocates of secession, nullification or interposition. Further, as circumstances changed, a region could go from sympathy for secession to strong opposition based on nationalism, or

vice versa. Table 1 gives a chronological summary of incidents and conflicts that involved interposition, nullification or secession.

***The Kentucky and Virginia Resolutions.*** The Kentucky Resolutions were drafted by Jefferson, introduced in the Kentucky legislature by John C. Breckinridge<sup>2</sup>, and passed Nov. 16, 1798. The Virginia Resolutions were drafted by Madison, introduced in the Virginia legislature by John Taylor, and passed Dec. 24, 1798. Both sets of resolutions arose from interactions of the growth of political parties in the early republic and from partisanship over the wars between Britain and France that followed the French Revolution of 1789. More directly, the Kentucky and Virginia Resolutions were in response to the Alien and Sedition Acts; these in turn arose from the undeclared war with France and the XYZ affair (McDonald pp. 39-43).<sup>3</sup> On their face, the Resolves seemed to focus on civil liberties<sup>4</sup>. In fact, the Acts were pushed through Congress by Federalist administration that seemed relatively pro-British, and were opposed by states and politicians that were seen as relatively pro-French. Opponents of the Acts could easily foresee the Acts being used against them. The Kentucky Resolutions stated "... each of the parties [to the Constitution, i.e., each state] has an equal right to judge for itself, as well of infractions as of the mode and measures of redress." The Third Virginia Resolve proclaimed the doctrine of interposition. The state governments "have the right and are in duty bound to interpose for arresting the progress of evil" arising from the federal government going beyond its constitutional powers, and "for maintaining within their

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<sup>2</sup> Breckinridge became attorney general under Jefferson. His grandson, John Cabel Breckinridge was vice president of the U.S. from 1857-1861, then served in the U.S. Senate for several months in 1861, became a major general in the Confederate army, and was the last Confederate secretary of war.

<sup>3</sup> President George Washington issued a Proclamation of Neutrality (April 22, 1793) between Britain and her allies on the one hand and France on the other. During President Adams's administration, France attacked American shipping, and Adams defended this shipping with naval vessels (Adams Proclamation, 1797) that engaged in sporadic high seas battles with French ships until 1800.

<sup>4</sup> The Sedition Act of 1798 imposed fines and imprisonment "... if any person shall write, print, utter ... any false, scandalous and malicious writing against the government of the United States, or either house of the Congress... or the President..., with intent to defame ... or to bring them ... into contempt or disrepute..." As is well known, however, the Act provided that the defendant could "... give in evidence in his defense, the truth of the matter contained in the publication charged as libel..." The individual states had seditious libel laws, many not as liberal regarding truth as a defense as the federal law. The opposition was to a *federal* law.

respective limits the authorities, rights, and liberties appertaining to them.” (McDonald p. 42.) No state joined Kentucky and Virginia, and every state from Maryland northward rebuffed them.<sup>5</sup> Many outside the two states charged them with lack of commitment to the Union verging on treason. The Federalists lost the presidential and congressional elections of 1800. The Alien and Sedition Acts had expiry deadlines, and were not renewed, allowing the conflict to die off. The arguments in the Resolutions for states’ rights, interposition and nullification formed the basis of future arguments, however.<sup>6</sup>

*New England Federalists.* The next three major instances of talk of interposition, nullification and secession involved not the South but New England. Some among the “New-England Federalists” talked of secession in response to President Thomas Jefferson’s Louisiana Purchase of 1803, from France. They viewed the purchase as unconstitutional, and argued that it would lead to perpetual domination of the East (that is to say, the North-east) by the South and the West.

President Jefferson imposed an embargo on foreign trade in December, 1807, at the height of the Napoleonic Wars between France and Britain and her allies, for the purpose of avoiding incidents that might lead to war with one side or the other. In January, 1808, the ineffective embargo was strengthened to forbid trade by sailing vessel, even coasting trade within the U.S. Finally, in March, 1808, the embargo was strengthened to forbid trade at all. The embargo had severe economic consequences for New England, which had strong trading

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<sup>5</sup> The Kentucky Resolution of 1799 noted the rebuffs but reaffirmed Kentucky’s position; similarly Madison’s report to the Virginia legislature (1799) on the Virginia Resolutions continued to affirm them in the face of rebuffs.

<sup>6</sup> Madison (1829) later distanced himself from the more radical interpretations of the Virginia Resolutions as sanctioning nullification or secession. “In comparing the doctrine of Virginia in ’98-’99 with that of the present day in S. Carolina, will it not be found that Virginia asserted that the States, as parties to the constitutional compact, had a right and were bound, in extreme cases only, and after a failure of all efforts for redress under the forms of the constitution, to interpose their sovereign capacity for the purpose of arresting the evil of usurpation and preserving the Constitution and the Union whereas the doctrine of the present day in S. Carolina asserts that in a case of not greater magnitude than the degree of inequality in a operation of a tariff in favor of manufactures, she may of herself finally decide, by virtue of her sovereignty, that the Constitution has been violated, and that if not yielded to by the Federal Government, though supported by all the other States, she may rightfully resist it and withdraw from the Union.”

interests. New England Federalists talked of interposition, nullification and possibly secession; some of their state militias did not help to block forbidden land trade, and juries often refused to indict or convict shippers and owners who allegedly violated the embargo. The talk died down when the embargo was lifted in 1809.

Under President James Madison, Congress declared war on Britain in June, 1812—the War of 1812, which lasted from 1812-1815. Of the states north and east of Pennsylvania, no representative or senator voted in favor of war, save some from Vermont. The governor of Massachusetts practiced interposition. He refused to allow the state militia to be turned over to federal command, or to allow the militia to leave the state. Secessionists proposed the Hartford Convention of 1814, but the Convention was dominated by less extreme souls, and ended up proposing amendments to the constitution rather than secession.

New England secession sentiment in these three instances was roundly denounced by many Southerners who favored nationalism. The South's position on secession, was subject to change, however.

Secession sentiment waxed and waned in New England in later years. For example, in 1844, the Massachusetts legislature threatened to secede if Texas was annexed to the Union.

*Conflicts over Protective Tariffs.* The “Tariff of Abominations,” 1828, led to developments in the theories of interposition and nullification. South Carolina ended up holding a convention (very similar to its federal constitution-ratifying convention of 1788), which declared the Tariff null, and threatened to interpose state force if any federal attempts were made to collect the tariffs in South Carolina. President Andrew Jackson responded with a fierce denunciation (Declaration on Nullification, December 10, 1832) and by getting a “force” bill through Congress. The matter was settled at a practical level, without the use of force, when Congress passed lower tariffs (March, 1833); South Carolina acquiesced in these tariffs, while insisting that the force bill was null. A number of southern politicians argued

during the crisis over the Tariff that the proper response was secession, but they found relatively little popular support in their states.

Southerners argued that protective tariffs aided northern manufactures at the expense of the agricultural south. Further, the revenues from the tariffs were not used on “internal improvements” that many, but hardly all, southern politicians favored. Thus, many southerners were angry over both federal tariff policy and federal policy that opposed internal improvements—they did not get their fair share of federal expenditures.

***Conflicts over the Rights of Amer-Indians.*** In the 1820s and 1830s, the deep-south states of Georgia, Alabama and Mississippi quarreled with the federal government regarding state powers over American Indians living in these states. On a number of occasions, state courts rejected U.S. Supreme Court decisions and orders.<sup>7</sup> Many residents of these states discussed these issues explicitly in terms of interposition and nullification. The deep-south states clashed with the federal government both on ideological grounds and grounds of self-interest. On the one hand, they argued that Indians should not have separate sovereign territory within these states. On the other hand, whites wanted Indian land, particularly after gold was discovered in north Georgia in 1828.

***Texas, Mexico and the Extension of Slavery.*** Foreign affairs, especially with regards to Texas and Mexico, were a source of sectional strife, including threats of interposition, nullification and secession. On the one hand, Texas’s success in its War of Independence (1836) led to on-going American calls to annex Texas. Indeed, a minority of southerners had dreams of annexing all of Mexico, Cuba, other Caribbean Islands, perhaps even much of the Americas. On the other hand, many northerners and opponents of slavery had grave doubts about acquiring territories that would bring in one slave state (Texas) and might allow creation

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<sup>7</sup> These conflicts between states and U.S. Supreme Court occurred while Andrew Jackson was president. Jackson had little sympathy for the Indians, and refused to intervene, in contrast to his behavior towards South Carolina when he threatened use of force over nullification of the tariffs of 1828 and 1832. Jackson took the Jeffersonian

of further slave states. Texas was annexed on December 29, 1845, and conflict rapidly blew up between Mexico and the U.S. over the southern boundary of Texas. This led to the Mexican War of 1846-1848 (known in Mexico as The War of American Intervention<sup>8</sup>). Many of the northern and northwestern politicians were opposed to entering the war and to acquiring new territories from Mexico. Before the war, the Massachusetts legislature stated that the annexation of Texas might lead the north-eastern states to leave the Union. During the war, a company of Massachusetts volunteers was raised, but the governor demanded it not go outside state boundaries, and the legislature would not pass appropriations for the company. In the treaty of Guadalupe Hidalgo ending the war, the U.S. acquired clear title to Texas, and in addition California, New Mexico (including what became Arizona) and Utah (running from the Kansas Territory west to California), for a payment of \$15 million plus assuming Mexican debt to Americans. Agitation continued over acquiring Cuba, but for the most part people agreed that the U.S. had reached its boundaries, had fulfilled its “Manifest Destiny” to stretch from the Atlantic to Pacific Oceans and from Mexico to Canada.<sup>9</sup> What to do with the land acquired from Mexico, and with parts of the Louisiana Purchase that were not yet organized as territories, was a different issue, and this largely turned on slavery.

*The Sharpening Conflict over Slavery.* In the early years of the U.S., even many Southerners defended slavery only as a necessary evil; the slaves were in the U.S., and it would take time to free them. By the 1840s, slavery was “a great moral, social and economic blessing—a blessing to the slave, and a blessing to the master,” according to Senator Albert Gallatin Brown of Mississippi. Slavery, “instead of an evil, [was] a positive good ... the most safe and stable basis for free institutions in the world.” (McPherson 1988, p. 56.)

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position that the three branches of the federal government “must each for itself be guided by its own opinions of the Constitution.”

<sup>8</sup> Davis (1995, p. 179).

<sup>9</sup> The phrase is attributed to John L. O’Sullivan (McPherson 1988, p. 48n).

The U.S. negotiated a peaceful settlement with Britain regarding the border of the Oregon Territory with Canada. The northern border was negotiated as 49°; Polk’s supporters in the election of 1844 had demanded a

The Compromise of 1820, or the Missouri Compromise, had seemed to settle the issue of the expansion of slavery in land acquired in the Louisiana Purchase. Missouri was admitted as a slave state, and slavery was forbidden in the rest of the Louisiana Purchase *north* of Missouri's *southern* border. The expansion of slavery arose once again, however, in the 1840s.

Meanwhile, by the 1830s, some northerners were actively rescuing slaves and hindering enforcement of the federal fugitive slave laws. On occasion, mob violence was used to rescue slaves who had made it to free territory. In some northern states, the judiciary refused to enforce fugitive slave laws, and even actively resisted U.S. Supreme Court decisions that favored slave owners and slave catchers. Some supporters of resistance explicitly discussed this behavior in terms of the states' right to nullify the fugitive slave laws.

An important number of hard-core abolitionists argued that the northern, free states should secede from the Union rather than be part of a slave-owning nation—or alternatively Union should expel the slave states. Similarly, they responded favorably to southern threats that the slave states might secede.

***Settlement of Major Issues.*** In 1846, the Walker tariff was passed, designed to generate revenues but not provide protection that harmed the South and West. Further, starting in the late 1840s and becoming important in the 1850s, the federal governments made grants of federal land to many states, to be used to finance railroads, the most important “internal improvement” of the time. This was viewed as a legal way of getting around the constitutional prohibitions on internal improvements that were generally viewed as binding; further, these subsidies did not involve actually appropriating any federal money. Thus, two of the major conflicts between southern states and the federal government were eased.

By the late 1840s, many of the defense and foreign policy issues, and the tariff and “internal improvements” issues, were thus settled. The issues were not settled by agreement

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more northern border, using the slogan “54° 40’ or fight.” The territory eventually became free states: Oregon before the start of the Civil War, and later Washington and Idaho.

based on principles. Rather, they were settled with practical compromises that left the battles over ideological issues in abeyance. Foreign and defense policy tensions with France, Britain and later Mexico died off with treaties and long periods of peace. Shortly after the end of the War of 1812 (January 8, 1815), the British-French wars were ended with the allied victory at Waterloo, and Americans did not have to make decisions about which side to favor. When the Mexican War ended in 1848, the tension that started with Mexico over Texas in the 1830s was over, with a huge transfer of sparsely populated land to the U.S. There were no longer tensions within the U.S. about whether to admit Texas, and whether or what territory to seize from Mexico. “Manifest Destiny,” in the sense of the belief that the U.S. would stretch from the Atlantic to the Pacific Ocean and from Canada to Mexico, was fulfilled. Only a fringe continued to agitate for seizure of Cuba or for expanding elsewhere in the Americas.<sup>10, 11</sup>

After the huge blow up over the “Tariff of Abominations” of 1828, a compromise tariff was reached in the 1840s (the Walker tariff) that was acceptable to both manufacturing interests in the eastern states and in the old northeast, and to agrarian interests in the south and the farther west. This tariff prevailed until 1857, when it was superseded by “another Democratic tariff passed in March 1857 [that] lowered duties still further and enlarged the free list.” (McPherson 1988, p. 192.)

Finally, especially in the early 1850s the great public works projects that agitated many people received compromise but effective federal support. At that time, railroads were the key public work under debate. The federal government began to make grants of federal land to individual states for use in financing railroad projects.

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<sup>10</sup> The U.S. negotiated the purchase of the Gadsden Strip from Mexico, in 1853, to add to Arizona. Russia sold Alaska to the U.S. in 1867. The U.S. annexed Hawaii in 1893. During the Spanish-American War of 1898, the U.S. seized Cuba, Puerto Rico, Guam and The Philippines from Spain. Cuba was soon freed. The Philippines achieved independence in 1946. Guam remains a U.S. territory. Puerto Rico is an anomaly—a Commonwealth. Puerto Ricans are U.S. citizens, do not pay federal taxes, and do not vote in federal elections. In referenda, independence draws only a few percent of votes. Statehood has never drawn a majority of votes. The U.S. bought the then Danish Virgin Islands in 1916; the American Virgin Islands are American territories and their citizens are U.S. citizens. The U.S. is the United Nations trustee for the Marshall Islands and American Samoa.

<sup>11</sup> The Democratic Party’s platform for 1860, however, called for acquiring Cuba.



*Slavery: The Remaining Issue.* From the 1820s until the outbreak of the Civil War, division over slavery became increasingly severe, and threats of secession or expulsion grew increasingly loud and frequent. Public opinion in the Deep South was most strongly in favor of slavery, in New England least favorable; sympathy for slavery was mixed and variable across the Border States, even in the Middle-Atlantic states (Wheeler 1973).

Southern states felt pressured over a number of issues related to slavery. One issue was enforcement of fugitive slave laws. A larger issue was whether the territories gained in the Mexican-American War would become slave states or would enter the Union as free states.

These tensions led to the Great Compromise of 1850. California was admitted as a free state<sup>12</sup>, and a strong fugitive slave law was passed among other provisions. (It was widely agreed that because of climate and geography, the New Mexico and Utah Territories would be free when they eventually entered.)<sup>13</sup> California tilted the balance; there was one more free state than slave states, a particularly important consideration in the Senate, where each state had two senators. In Senate debate over the Great Compromise, John C. Calhoun of South Carolina clearly threatened southern secession if the guarantees he sought for the South were not provided, and clearly though not directly threatened to use force in secession if necessary. (He warned of “political revolution, anarchy, civil war” (McPherson 1988, pp. 56-57)). Many “Free Soilers,” opposed to expansion of slavery in the territories, believed Southerners were bluffing. William E. Seward of New York thought that, “the malcontents of the South ... expect to compel compromise. I think the President [i.e., Zachary Taylor] is willing to try conclusions with them as General Jackson was with the nullifiers.” (McPherson 1988, p. 68.)

To be sure, public opinion in the free states was too split for effective opposition to slavery or the slave states. Many northerners opposed abolition. Many politicians were

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<sup>12</sup> Because of the discovery of gold in 1848, California had a larger population than Florida or Delaware when it applied for admission in 1850 (McPherson 1988, p. 64).

<sup>13</sup> To be sure, some Southerners claimed slave labor might be suitable in these territories, and were insulted by attempts to ban slavery.

“northern men with southern principles,” “doughfaces” who strongly supported southern measures in Congress. To many northerners, southerners seemed to fear combinations against them that were logically possible rather than likely. Indeed, many northerners thought the slave states got their way on most issues, attributing these successes to “the slave power,” a sort of conspiracy dominant in the South but with power across the Union. Many abolitionists argued a “slaveocracy” existed that controlled the federal government, and growing numbers of northerners came to believe the charge. Indeed, Lincoln lent support to these charges in a speech in his 1858.

The new fugitive slave law in the Compromise of 1850 was tough and in some ways biased towards slave owners<sup>14</sup>. Enforcement of this fugitive slave law led to a number of well publicized conflicts between slave catchers and federal officers on one hand, and northern state officials and mobs on the other hand. Southern secessionists made much of these incidents. These incidents also swayed northerners, initially opposed to abolition or neutral, to become neutral or active supporters of abolition.

**“Bleeding Kansas.”** To the west of Missouri (a slave state) and its northern neighbor Iowa (a free state), the remainder of the Louisiana Purchase had not been organized as a territory, and thus was not available for settlement. Stephen A. Douglas proposed the Nebraska Act in January, 1854, to organize the Louisiana Purchase as two territories—west of Iowa and to the north (up to the Canadian border) as the Nebraska Territory, and west of Missouri as the Kansas Territory.<sup>15</sup> His bill allowed for the residents of each territory to decide whether it would enter the Union as a free or slave state—the program of “popular sovereignty.”<sup>16</sup> In the course of negotiations, he explicitly changed his bill to repeal the

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<sup>14</sup> The presumption in court was in favor of the slave catcher rather than the alleged runaway slave, who was denied a trial by jury and could not testify.

<sup>15</sup> See the discussion and references in McPherson (1988) and McDonald (2000).

<sup>16</sup> Douglas did not invent the concept but seized on it. Lewis Cass (senator from Michigan), the Democratic nominee for president in 1848, campaigned on a platform with “popular sovereignty.” See McPherson (1988, p. 58).

Missouri Compromise provision that forbade slavery north of Missouri's southern border. In principle, then, Nebraska and Kansas might enter as slave states. In practice, observers recognized that Nebraska was unsuitable for agriculture of the type that used slaves in the South. Kansas, however, was suitable for growing hemp, a staple crop for slave labor; further, the north-west portion of Missouri, next to the north-east portion of Kansas, had the densest incidence of slavery in Missouri, suggesting slavery's spread to Kansas. Douglas succeeded in getting the Kansas-Nebraska act passed in 1854, though in the face of strong Northern opposition.

Many Northerners were shocked by the overthrow of the Missouri Compromise, and the seeming possibility of the extension of slavery throughout the territories. In Kansas, pro- and anti-slavery forces began a savage guerilla war (1854-), marked by terrorism and massacres that were played up in Northern newspapers. Further, the pro-slavery forces, at a convention in Lecompton, adopted the so-called Lecompton Constitution (November 7, 1857) that guaranteed slavery in Kansas, and after a sham referendum, applied for admission to the Union. President James Buchanan tried to force admission through Congress, but failed in the House (April 1, 1858). This attempted power-play, too, stirred up anti-slavery sentiment in the North. Kansas eventually entered the Union, in January, 1861, as a free state.<sup>17</sup>

***The Dred Scott Decision.*** The Dred Scott case was another major issue that stirred up anti-slavery sentiment.<sup>18</sup> Scott was a slave who had been taken by his master to Illinois and to Fort Snelling in the northern part of the Louisiana Purchase (now Minnesota), for approximately two years in each. He sued for his freedom on the grounds he had lived in free states. The Supreme Court, under Chief Justice Roger Taney, was dominated by Southerners. In a seven-to-two decision in 1857 that Taney wrote, the court held that Scott was not a citizen of the U.S. because of his race. Further, the court held that the Missouri Compromise was

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<sup>17</sup> There were thus four more free states than slave states, from the admission of California in 1850, then Minnesota and Oregon, and finally Kansas.

unconstitutional (Minnesota was free territory under the Missouri Compromise), because Congress could not regulate slavery in the territories. In what amounted to an aside, Taney held that this meant that voters in the territories could not prohibit slavery. Of course, these points of the decision caused an uproar in the North. Douglas attempted to uphold the doctrine of “popular sovereignty” by arguing (June 1857) that a territory could refuse to pass or enforce laws supporting slavery, and thus as a practical matter could prohibit slavery. Some Southerners responded by proposing legislation in Congress that that would have the federal government protect slave-owners rights if the territories would not.

*The Slave Power, and the “Slaveocracy.”* Many Northerners came to believe that there was a conspiracy to let the South get its way on all key issues. Certainly, the 1850s—with the fugitive slave law and its enforcement, the Kansas-Nebraska Act, the Lecompton Constitution and the Dred Scott decision—did much to lend support to this view. In a speech in 1858 after his nomination for the senate, Lincoln constructed an elaborate metaphor that accused Douglas, former president Franklin Pierce, Chief Justice Roger Taney, and President James Buchanan of conspiracy to further the slave power. The belief in the conspiratorial slave power was one powerful factor, along with the recession and panic of 1857, that cost Democrats greatly in the Congressional elections of 1858.

*The “Irrepressible Conflict.”* Some historians view the American Civil War (1861-1865) as an “Irrepressible Conflict”<sup>19</sup> between opposing cultures. Others disagree strongly, some pointing to the “needless” political conflicts over slavery in the 1850s that greatly exacerbated tensions, as discussed above. It is clear, however, that the Union was at least doomed to a virtually unending political conflict. As long as there remained a significant number of states significantly dependent on slavery, slavery would remain a seriously divisive

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<sup>18</sup> See the discussion and references in McPherson (1988) and McDonald (2000).

<sup>19</sup> The phrase is from William H. Seward (1858; McPherson 1988, p. 198), a founder of the Republican Party, a rival of Lincoln’s for the 1860 Republican presidential nomination, and Secretary of State for Lincoln and then Andrew Johnson.

issue that spilled over into many, even most, other political issues. Political conflict would continue as long as anyone could foresee, unless secession, or secession plus a civil war, ended the quarrel.

#### **Section 4. Drawing Implications for the European Union**

Much of the concern over possible secession from the EU should be focused on designing a constitutional system in which pressures for secession are unlikely to arise. By the time pressures for secession arise, generally there is no very good way of dealing with the issues.

*Optimal Policy Towards Secession.* Some general conclusions are available from economic principles. Secession may usefully be analyzed in terms of Type I and Type II errors. A Type I error is for secession to occur when it is *not* a good idea. A Type II error is for secession *not* to occur when it *is* a good idea. In this framework, if secession is never a good idea, or is always a good idea, life is simple. It appears, however, that secession is beneficial in some cases, not in others.

Whether a given case of secession ends well or badly depends heavily on the country's institutional structure. Well designed institutions should make it easier, *ceteris paribus*, to discover into which category an actual case of secession falls. Further, well designed mechanisms should make it easier and cheaper, *ceteris paribus*, for secession to occur when it is a good idea, and should make it harder and less attractive for secession to arise as an issue when it is a bad idea.

Secession is likely to occur in many countries. Well handled secession can lead to improved outcomes for both the seceding state and the remaining country, and poorly handled secession can be highly costly for both. It is thus worthwhile for constitution writers to consider institutional arrangements for secession that are designed to carefully balance costs and benefits of secession.

*Long Horizon for Dealing with Pressures for Secession.* The interest in these general conclusions arises from the necessity to make decisions far in advance to reduce the likelihood of secession that should not occur. By the time a region is on the verge of secession, there is often little that can be done. Instead, any effective steps likely must be taken far in advance, under a good deal of uncertainty about the conditions that might surround a secession threat. A constitution can try to forestall a secession crisis in two ways. First, by limiting and enumerating federal powers, the constitution can try to prevent issues from arising at the federal level that have the potential to precipitate a secession crisis. From U.S. history, among the policies that helped precipitate crises were trade policy, “internal improvements,” and defense and foreign policy. On the one hand, constitutional prohibitions against the federal government acting at all on trade, foreign and defense policies would have vitiated the Constitution; the Constitution would have been no advance on the Articles of Confederation. On the other hand, the Framers could have adopted provisions that might have ameliorated at least some problems. “Internal improvements” might have been explicitly authorized in the Constitution, though with provisions to limit the total of such public works.<sup>20</sup> Further, the Framers might have adopted provisions hindering protectionist policies. Finally, the Embargo of 1807-1809 was a costly failure; language forbidding such *generalized* embargoes might have been included in the Constitution.

Second, the Constitution writers can try to forestall secession crises by settling some contentious issues at the federal level, once and for all. Some issues lend themselves to ab initio settlements. No protectionist tariffs is one, no generalized embargoes is another. Historians are split, but it is at least possible that the issue of slavery could have been solved at the Constitutional Convention of 1787 had enough convention members insisted on tackling it.

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<sup>20</sup> The Federal government spent tax funds on public works, but only those that could be justified as needed for national defense or as part of the regulation of international and interstate trade. For example, the federal government might build a road that had military purposes, or dredge a coastal harbor or build a lighthouse. Many

Likely the only solution that could have worked was gradual emancipation of all slaves over two or three decades. Any attempted solution that left slavery in place, no matter how strongly guaranteed by the Constitution, could easily lead to protracted, bitter controversy.

Preeminently, the Constitution could have been amended to restrict or prohibit slavery.

Further, in practice slave agriculture was hard on land and slave-owners viewed it as most profitable when fresh land was available. More generally, federal legislation could either facilitate or harm slavery; an example is fugitive slave laws.

The European Union has evolved in a very different way. Two quotes give an extreme version of a common view.

A senior German diplomat [argues] that the big decisions in the European Union have always been made by elites, and have then gained popular acceptance later. "If we had had a referendum on the treaty of Rome, people might have rejected it on the grounds that it raised the price of bananas." (*Economist*, Oct. 5, 2002, p. 36.)

Jean-Claude Juncker, Luxembourg's prime minister, once described the E.U.'s "system." "We decide on something, leave it lying around and wait and see what happens," he explained. "If no one kicks up a fuss, because most people don't understand what has been decided, we continue step by step until there is no turning back." (*Economist*, Sept. 14, 2002, p. 33.)

Drafts of the new EU constitution suggest it is likely to leave great scope for this type of decision-making by elites, decision-making where people end up surprised about what has been agreed. This is the exact opposite of what this paper suggests on the basis of U.S. history.

In hindsight, many failed federations (and unitary states) appear doomed from the start to fall apart. Beginning in the nineteenth century, forces of nationalism tore apart many countries. The lesson is not that a polity with multiple nationalities is doomed. Rather, once nationality problems push a state near to break-up, finding a compromise that all nationalities will accept appears almost impossible. The Slavs in the Austro-Hungarian Empire, especially the Czechs, likely would have settled for nothing less than the autonomy "deal" the

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in the Southern and Western states felt they did not get their fair share of federal public works. Proposals for extensive works on the Mississippi River system passed Congress, but were vetoed as unconstitutional.

Hungarians had got. By the time the nationalities problem became pressing, many Austrians, and particularly Hungarians, were deeply reluctant to strike any such deal.

In contrast, the Swiss Federation struck a long-lasting constitutional settlement among its ethnic German, French, Italian and Romansch citizens, split among Protestants and Catholics. It is perhaps revealing that the individual Swiss cantons have a good deal of decisions left to them, with limited powers at the federal level.

For decades, *Mademoiselle Magazine—For Women* carried the feature, “Can This Marriage Be Saved?” The very question suggests that the answer in at least some cases is “no.” In some cases where the question of secession arises, it is in fact the best solution. Opponents to secession often envisage a world in which the aggrieved region is prevented from leaving and reverts to being a brotherly, cooperative part of the country. But regions coerced into staying by force, or by threats of force, or by severe sanctions or other threats tend to become more rather than less aggrieved.<sup>21</sup> (This neglects the case where the seceding state has natural resources the union wants to retain. In this case, the union may care little about the seceding population’s grievances; far more than reconciliation, the federation wants the region’s wealth.)

*Forestalling the Causes of Possible Future Secession.* American history suggests that by the time a region has decided to secede, there is little hope to dissuade it through practical compromise between the region and the rest of the country. In general, all sides in the debate know what the issues are and what the various points of view are on the issues. Often, each side has made whatever concessions it feels it can make, and on all sides are angry citizens who think too many concessions have already been made. At best, each side would require concessions that other parties would view as “deal breakers.” Very likely the reservoir of good

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<sup>21</sup> With the final partition of 1796, Poland disappeared from the map. But the Poles would not assimilate to be Germans or Russians, and Poland reappeared in 1918. In 1939, the Germans and Soviets invaded Poland, and the Soviets enslaved Poland in 1945. After more than 40 years, Poland was free again. A lesson from history, perhaps: If Poland wants to secede, let her go; try to part as amicably as possible.



will among the parts of the federation has been greatly depleted; each side may not trust that concessions made to it will be carried out in good faith, and no guarantees are convincing when good will is gone. At least one side sees separation as the only credible guarantee of its rights.

If secession in such a case is judged truly to be a “bad idea,” the judgment that it is a bad idea should be made from the viewpoint of someone looking back at what might have been in practice. With enough forethought, this unbridgeable gap could have been avoided. Looked at this way, the optimal time to take action to prevent unwanted secession is often in drafting the constitution. If one wants to avoid “bad” secession, the constitution should be drafted in way as to minimize the likelihood of the fatal issues arising. Looking back, the new U.S. could have saved much trouble if the constitution had ruled out protective tariffs. As best as can be judged, ratification did not depend in any state on the opportunity for Congress to pass protective tariffs in the future. Once protective tariffs were in place, however, the states that benefited were unwilling to give them up. Without a protracted, costly struggle, they proved unwilling to agree to substantial reductions in the protective tariffs. Similarly, it might have been foreseen that the dubious constitutional status of “internal improvements” would lead to some states thinking that they paid a good deal more into the federal budget than they received. This future problem could have been forestalled in a number of practical ways.

The issues of defence and foreign policy that arose would have been hard to forestall, and the Framers did the best they could. The undeclared war with France in the 1790s, the Embargoes against Britain and France starting in 1807, and the War of 1812 (1812-1815) were key issues of defence and foreign policy that rocked the union. It is hard to see how the Constitution could allow the scope required for federal defence and foreign policies, and also substantially reduce the likelihood of these instances. As for the question of the legality of the Louisiana Purchase, however, the Constitution could reasonably have made provision for the

possibility that the Union acquire more territory in the future. From the Mississippi to the Pacific, population was very sparse, and westward migration was an obvious, continuous drive in America.

Slavery was the great difficulty. If it had been faced at the Constitutional Convention, perhaps the coming conflicts could have been avoided. Possibly, however, there was no set of constitutional provisions that could forestall the problems with slavery, and at the same time allow the Constitution to win ratification of nine states, as required by the Constitution (and also ratification by all the large states, as seemed necessary as a practical matter for the Union's viability).

The key difficulty in settling slavery at the convention was that the two sides to the slavery debate were not nearly as polarized in 1787 as they were 40 years later, and thus not as motivated to find a solution. A massive change in sentiment caused some people to come to look on slavery as a moral wrong with which they could not compromise. If the Framers could have foreseen the coming strife over slavery, they might have made stronger efforts in the Constitution to prevent the strife.

Many delegates at the constitutional conventional viewed slavery as a moral evil; none defended it there as a moral good, though such defenses later arose, especially after 1830.<sup>22</sup> Nevertheless, slavery was seldom explicitly addressed at the constitutional conventional. Delegations from at least two deep-South states, Georgia and South Carolina, made it clear that they would not sign a draft constitution that endangered slavery, and argued that their states would surely not ratify such a constitution. The South was not solid on slavery, however, in 1787. Among the Virginia delegates, James Madison spoke at the convention

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<sup>22</sup> Some defenses relied on interpretations of religion and the Bible. Others relied on economic arguments. For example, *Cannibals All! Or Slaves Without Masters* argued southern slaves were better off than free northern labor.

against slavery,<sup>23</sup> George Mason was known to favor abolition<sup>24</sup>, and George Washington freed his slaves in his will, and made provisions for their financial security.<sup>25</sup> It appeared to some that the convention would fail if restrictions on slavery were addressed in a serious fashion—and restrictions were not. This omission left slavery as an on-going source of tension among the states; over time, it became a growing divide between the northern and southern states.<sup>26</sup> At the time the American Revolution began, slavery was legal in every state; at one point, New York had more slaves than some southern colonies. Slavery was still legal in most states at the time of the constitutional convention. No European country had outlawed slavery. Britain would not outlaw it until the 1820s, France until the 1840s.

During the first three decades of the 1800s, moral revulsion against slavery grew greater and greater, in those American states and European countries where slavery was not important. In those countries and states where slavery was economically important, little such revulsion arose. Indeed, residents of these states came to see themselves as increasingly under

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<sup>23</sup> In his retirement, Madison was president of the American Colonization Society, which supported emancipation and transport of the freed slaves to Africa. He believed that "To be consistent with existing and probably unalterable prejudices in the United States, the freed blacks ought to be permanently removed beyond the region occupied by, or allotted to, a white population." He argued that slave owners could be compensated by sales of western lands owned by the United States. *James Madison's Plan for the Emancipation of Slaves* (1819). Madison did not prosper financially and never freed his slaves. The man who became Madison's father-in-law had freed his slaves, based on his religious faith, and had paid fines for doing so (Bent, n.d.).

<sup>24</sup> George Mason was the author of *The Virginia Declaration of Rights*, adopted by the Virginia Constitutional Convention on June 12, 1776. Its first section declares "[t]hat all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Thomas Jefferson drew on this for *The Declaration of Independence*: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness -- That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive to these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness." In his *Draft Instructions* for the Virginia delegates to the (first) Continental Congress, Jefferson (1774) charged that Britain was preventing the colonies from emancipating the slaves: "The abolition of slavery is the great object of desire in those colonies, where it was unhappily introduced in their infant state. But previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa, you our repeated attempts to effect this by prohibitions, and by imposing duties which might amount to a prohibition, have been hitherto defeated by his majesty's negative."

<sup>25</sup> He did not, and could not, order manumission for slaves at Mount Vernon owned by his wife, Martha.

<sup>26</sup> The New England states were heavily involved in the slave trade at the time of the convention and both before and after. On some matters regarding slavery, Connecticut formed alliances with Georgia and South Carolina (Miller 1992).

attack from other states and countries. The conflicts over slavery were complicated by social and “scientific” views of the time about race. Many whites were unwilling to accept the idea of social equality with blacks, and were unwilling to have large numbers of free blacks near them. Many southerners viewed northern anti-slavery people as hypocritical. By say 1830, changes to the institution of slavery could not be discussed politically in the South, or indeed in open social settings there.

*Bitter Splits and On-going Hostility.* If even one member state secedes, this sets a precedent and may well begin a process that has great dynamic effects. To begin, however, neglect these precedent and dynamic effects. Instead, concentrate on the static costs and benefits for the seceding and remaining states. In 1860, secession of single American state would likely have had modest economic effects on the remaining states. For example, the first state to secede was South Carolina, a small agricultural state with a relatively small population and wealth. Secession might have substantially affected cross border trade with its neighbors, North Carolina and Georgia, but other states would likely have felt small effects. Secession by another, larger state—for example, Virginia—might have caused more important economic effects, but no single state appears to have been of overwhelming importance.

On economic grounds, breaking the United States into parts need not have been harmful for the individual surviving federations. For example, had New England broken off into a separate federation, it would still have been eager to offer its commercial and mercantile services to the Western and Southern states, and these states would still have had need for such services. The split might be bitter, however, and relations might be damaged. If say two federations resulted from such a split, the federations might be unwilling to trade as before; the West and South could have bought mercantile and commercial services, for example, from Great Britain, which already supplied the majority of financial services in the American cotton industry. Moreover, the successor federations could easily become rivals and even political

and military enemies. Viewed this way, secession's major danger was not that there would be a Velvet Divorce, as when Czechoslovakia split into the Czech Republic and Slovakia, but rather that two (or more) hostile federations of relatively equal power would share extensive boundaries.

To be sure, in the years leading up to the secession of states in 1860 and 1861, and even during those years, many observers thought that seceding states would after a time come to their senses and either rejoin the Union, or live in close, peaceful harmony with the surviving, truncated Union (Wright 1973). This was always naïve. After secession, warlike acts from either side had at all times the potential for creating great animosity and setting off hostilities. It is generally thought that when the South fired on Fort Sumter in Charleston Bay, South Carolina, it played into Abraham Lincoln's hands and gave him the pretext for calling up troops to protect Federal property<sup>27 28</sup>. At the time of secession, many Northerners had neutral or friendly feelings towards the seceding states (for the Middle-Atlantic states, see Wright, 1973), and in particular were reluctant for the Union to use force against them. Many Southerners gravely misread this as implying there would be substantial support in the Union if the South were to use force against the Union.

If secession or expulsion ends in a "velvet divorce," as with Czechoslovakia, costs are manageable and the issue is not dreadfully important. High costs are likely to arise in a case where a federation splits into mutually hostile regions. Perhaps the majority of splits lead to dangerous hostility. Examples are attempted secession by the American southern states from the United States, attempted secession by Biafra from Nigeria, by Katanga from The Congo,

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<sup>27</sup> This is with hindsight. The Confederacy was eager to negotiate outstanding issues, such as Union forts, property and agents in Confederate states. Lincoln refused any gesture of recognition towards the Confederacy and would not negotiate at all. There is no assurance that these issues could have been satisfactorily negotiated had Lincoln so desired. Many Southerners were determined that the federal government would get little. Even had the federal government obeyed the abolitionist motto, "Go in peace, my erring sisters," the Union and Confederacy may well have developed hostile relations. Certainly, recurrent hostility was the pattern among large European powers before into the twentieth century, especially those with lengthy common borders.

the break up of Yugoslavia, and the collapse of the Ottoman Empire. Related, the breakup of the Austro-Hungarian Empire left many Germans in Czechoslovakia, and many Hungarians in Czechoslovakia or Romania, and this led to internal ethnic problems and external conflicts. The breakup of British India into Pakistan and India led to four wars and on-going hostility; the secession of Bangla Desh from Pakistan precipitated one of these wars. The division between West and East Germany was part of a hostile confrontation between the NATO and Warsaw-country Pacts. The successful revolt and establishment of the Irish Republic led to tensions with the United Kingdom, for example, Irish neutrality in World War II. Many more Middle Eastern neighbors have hostile relations than long-term friendships. Latin American armed forces have almost no conceivable enemies save each other.<sup>29</sup>

In the case of one federation splitting into two or more large, hostile federations, secession is likely to have large negative consequences, rather than being benign or low cost. Still, making secession difficult when the feelings for secession are strong may lead to high-cost attempts to preserve a union that is doomed or in any case better off dissolved, whatever the consequent hostility. Making secession high-cost may end up causing even more hostility among the successor states.

Even if secession is thwarted by civil war, the region that tried to secede is seldom reconciled with the rest of the country. The reconciliation of the defeated South with the Union was the very rare exception rather than the rule (Catton, 1967, Foote 1986); in major part, this arose from General Robert E. Lee's refusal to countenance guerilla war.<sup>30</sup> This

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<sup>28</sup> In fact, South Carolina troops had already seized Federal property, including Fort Moultrie and Castle Pinckney, and a U.S. revenue cutter, on December 27, 1860 (Davis 1995, p. 188). Firing on Fort Sumter was a step too far.

<sup>29</sup> To be sure, Argentina precipitated war with the U.K. by seizing the Falklands (Malvinas). In the post-world-war-two period, the U.S. invaded Grenada and Panama; note that no Latin American armed forces could offer more than token resistance to U.S. force.

<sup>30</sup> Foote (1974, p. 942) writes that Lee asked his generals, Longstreet, Mahone and Alexander their "opinion of on the question of surrender. Countering with a question of his own, [Longstreet] asked whether sacrifice of the Army of Northern Virginia would in any way help the cause elsewhere. Lee said he thought not. 'Then your situation speaks for itself,' Old Peter told him. Mahone felt the same.... Alexander disagreed.... [H]e proposed that the troops take to the woods, individually and in small groups, under orders to report to the governors of their

means, then, that the union is well advised to adopt a constitution that minimizes the likelihood that regions of the union will come to look to secession as the last, best solution.

A constitution cannot be thought of as deal that wraps up all contingencies at the start. Over time, the problems facing the union will evolve, and so will the member states' situations and views. Rather, the framers of a constitution can hope to draw up a document that embodies checks and balances, protections for minorities, and limitations on the federal government that keep problems from becoming severe enough that regions turn to secession. Limiting the issues that can be taken to the federal level helps prevent arguments over federal actions. No matter what, unforeseen issues will arise that have to be worked out. The best that can be done is for the constitution to put in places mechanisms that let unforeseen issues be dealt with in an effective way—if they can be.

Some member states in the EU are more equal than other member states. The EU can and does get along without Norway and Switzerland. If Estonia said “no” to joining the EU, the EU would survive. Similarly, if Norway, Switzerland and Estonia joined the EU and later dropped out, it seems unlikely that this would much injure, let alone cripple, the EU. By themselves, these three countries would have little bargaining power; threats to secede would likely meet massive indifference. Indeed, it is not clear that current members of the EU would be willing to give much to keep the UK in the EU.

France and Germany are exceptions, but not because of their GDPs or populations. Losing the equivalent to the GDP and population of Germany by say having several smaller, politically less central countries secede would not have the same effect. The *raison d'être* of

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respective states. That way, he believed, two thirds of the army would avoid capture by the Yankees... Lee heard the young brigadier out, then replied in measured tones to his plan. 'We must consider its effect on the country as a whole,' he told him. 'Already it is demoralized by four years of war. If I took your advice, the men would be without rations and under no control of officers. They would be compelled to rob and steal in order to live. They would become mere bands of marauders, and the enemy's cavalry would pursue them and overrun many sections that they may never have occasion to visit. We would bring on a state of affairs it would take the country years to recover from. And as for myself, you young fellows might go bushwacking, but the only dignified course for me would be to go to General Grant and surrender myself and take the consequences of my acts....' [Alexander long

the EU was and is to bind Germany and France into a peaceful federal union. Benelux was almost a throw-in in the Treaty of Rome, and Italy enhances the EU but is not now crucial to the EU if it ever was. If Germany and France were to split, chances would be importantly increased of blocs forming around each, with the blocs prone to hostility towards each other.

Some may argue that the ties between Germany and France are so strong that there is no danger of a split. That the ties between Germany and France are so strong that they will always work things out between the two of them may be no more than a pious hope. More useful is to design an EU constitution that minimizes the likelihood of a split.

Others may argue that if issues arose that threatened a split, then the potential consequences would be so serious that all sides would have to reach accommodations to preserve the relationship. More concretely, working things out between the two may require adjustments of the EU as a whole, and it is unclear that other member states will make major sacrifices to keep Germany and France together in the EU. If the EU is unlikely to give much to keep the U.K. as a member, why should the U.K. give much to satisfy France and Germany?

On the one hand, the French-German relationship is the major political-defense externality of the EU. Member states, and non-members of the EU, “ought” to be willing to make sacrifices to preserve the relationship. On the other hand, Germany and France already reap major benefits from the relationship. If they are not willing to sacrifice to preserve it by themselves, why should the U.K. or Estonia make sacrifices? Further, many EU member states are likely to feel that they have made all the sacrifices for France and Germany that they are going to make.

The best strategy is to treat all member states as equals when it comes to threats of secession and expulsion. The EU cannot rely on member states agreeing to treat the French-

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afterwards wrote], ‘I had not a single word to say in reply.... He had answered my suggestion from a plane so far above it that I was ashamed of having made it.’”



German relationship as special and thus worth extra concessions; the relationship may be special and worth a lot, but the EU cannot count on member states always seeing things that way. Designing the constitution to make sure every member is well treated and is unlikely to have fatal issues arise, is likely to make the EU is as well off as possible.

It is worthwhile that secession or expulsion be costly to the decision maker, as a type of transaction cost. It focuses the decision maker's attention, and warns him that he cannot lightly threaten to leave the EU or to expel others. The threatened transaction costs must, however, be believable and time consistent. Threatening to seize ten percent of a seceding state's wealth is not believable if the EU is not likely to resort to force to inflict this penalty. Further, if a member state reaches the conclusion that secession is the only solution, the EU may find that letting the disaffected member go with no penalty is better than keeping the member in the union through threats. That is to say, the policy of making secession high cost may well be time-inconsistent—when it comes to it, imposing the penalty is not worth the cost to the EU.

### **Section 5. Summary and Conclusions**

The United States and the European Union are different in many ways, of course, and both are substantially different from the United States of the period 1789 to 1861. Secession was a major issue in the U.S. throughout this period, however, and is an issue under intense discussion in connection with a new constitution for the EU. With due caution, it is worthwhile trying to draw lessons from the history of secession in the U.S. to help design an EU constitution.

In principle, breaking the United States into parts need not have been harmful for the individual surviving federations. For example, had New England broken off into a separate federation in 1814 or 1815, it would still have been eager to offer its commercial and mercantile services to the Western and Southern states, and these states would still have had

need for such services. The split might be bitter, however, and relations might be damaged. If say two federations resulted from such a split, the federations might be unwilling to trade as before; the West and South could have bought mercantile and commercial services, for example, from Great Britain, which already supplied the majority of financial services in the American cotton industry. Moreover, the successor federations could easily become rivals and even political and military enemies. Viewed this way, secession's major danger was not that there would be a Velvet Divorce, as when Czechoslovakia split into the Czech Republic and Slovakia, but rather that two (or more) hostile federations of relatively equal power would share extensive boundaries.

A federation that splits into two or more federations need not be hostile, of course. In the years leading up to the secession of states in 1860 and 1861, and even during those years, many observers thought that seceding states would after a time come to their senses and either rejoin the Union, or live in close, peaceful harmony with the surviving, truncated Union. This was always naïve. After secession, warlike acts from either side had at all times the potential for creating great animosity and setting off hostilities.

High costs are likely to arise if a federation splits into mutually hostile regions. Perhaps the majority of splits lead to dangerous hostility. Examples are attempted secession by the American southern states from the United States, attempted secession by Biafra from Nigeria, by Katanga from The Congo, the break up of Yugoslavia, and the collapse of the Ottoman Empire. Related, the breakup of the Austro-Hungarian Empire left many Germans in Czechoslovakia, and many Hungarians in Czechoslovakia or Romania, and this led to internal ethnic problems and external conflicts. The breakup of British India into Pakistan and India led to four wars and on-going hostility; the secession of Bangla Desh from Pakistan precipitated one of these wars. The division between West and East Germany was part of a hostile confrontation between the NATO and Warsaw-country Pacts. The successful revolt

and establishment of the Irish Republic led to tensions with the United Kingdom, for example, Irish neutrality in World War II. Many more Middle Eastern neighbors have hostile relations than long-term friendship.

In the case of a federation splitting into large, hostile federations, secession is likely to have large negative consequences, rather than being benign or low cost. Still, making secession difficult when the feelings for secession are strong may lead to high-cost attempts to preserve a union that is doomed or in any case better off dissolved, whatever the consequent hostility. Making secession high-cost may end up causing even more hostility among the successor states. Even if secession is thwarted by civil war, the region that tried to secede is seldom reconciled with the rest of the country. The reconciliation of the defeated South with the Union was the very rare exception rather than the rule. (For a discussion of the uniqueness of post civil war reconciliation in the U.S., see Sweeney (2003). This means, then, that a federation is well advised to adopt a constitution that minimizes the likelihood that its regions will come to look to secession as the last, best solution.

A constitution cannot be thought of as deal that wraps up all contingencies at the start. Over time, the problems facing the union will evolve, and so will the member states situations and views. Rather, the framers of a constitution can hope to draw up a document that embodies checks and balances, protections for minorities, and limitations on the federal government that keep problems from becoming severe enough that regions turn to secession. Limiting the issues that can be taken to the federal level helps prevent arguments over federal actions. No matter what, unforeseen issues will arise that have to be worked out. The best that can be done is for the constitution to put in places mechanisms that let unforeseen issues be dealt with in an effective way—if they can be.

Some member states in the EU are more equal than other member states. France and Germany are different from other states, but not because of their GDPs or populations. Losing

the equivalent to the GDP and population of Germany by say having several smaller, politically less central countries secede would not have the same effect. The *raison d'être* of the EU was and is to bind Germany and France into a peaceful federal union. Benelux was almost a throw-in in the Treaty of Rome, and Italy enhances the EU but is not now crucial to the EU if it ever was. If Germany and France were to split, chances would be importantly increased of blocs forming around each, with the blocs prone to hostility towards each other.

Some may argue that the ties between Germany and France are so strong that there is no danger of a split. That the ties between Germany and France are so strong that they will always work things out between the two of them may be no more than a pious hope. More useful is to design an EU constitution that minimizes the likelihood of a split.

Others may argue that if issues arose that threatened a split, then the potential consequences would be so serious that all sides would have to reach accommodations to preserve the relationship. Another pious hope. More concretely, working things out between the two may require adjustments of the EU as a whole, and it is unclear that other member states will make major sacrifices to keep Germany and France together in the EU. If the EU is unlikely to give much to keep the U.K. as a member, why should the U.K. give much to satisfy France and Germany?

On the one hand, the French-German relationship is the major political-defense externality of the EU. Member states, and non-members of the EU, "ought" to be willing to make sacrifices to preserve the relationship. On the other hand, Germany and France already reap major benefits from the relationship. If they are not willing to sacrifice to preserve the EU by themselves, why should the U.K. or Estonia make sacrifices?

The best strategy is to treat all member states as equals when it comes to threats of secession and expulsion. The EU cannot rely on member states agreeing to treat the French-German relationship as special and thus worth extra concessions; the relationship may be

special and worth a lot, but the EU cannot count on member states always seeing things that way. The best strategy for the EU is to design constitution to make sure every member is well treated and is unlikely to have fatal issues arise.

**Table 1. Pressures for Secession, Expulsion, Nullification and Interposition**

Presidents:

Washington 1789-1797	Jefferson 1801-1809	Monroe 1817-1825			Harrison & Tyler 1841-1845	Taylor & Filmore 1849-1853
	Adams 1797-1801	Madison 1809-1817		Jackson 1829-1837	Polk 1845-1849	Pierce 1853-1857
			Quincy Adams 1825-1829	van Buren 1837-1841		Buchanan 1857-1861

Decades:

<b>1790-1799</b>	<b>1800-1809</b>	<b>1810-1819</b>	<b>1820-1829</b>	<b>1830-1839</b>	<b>1840-1849</b>	<b>1850-1859</b>
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Events:

1789-1815: French revolution, Napoleonic Wars, War of 1812

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-Conflict between Britain and France	-Louisiana Purchase (1803)	-War of 1812 (1812-1815)
-Undeclared war against France	-Embargo on trade	-Hartford Convention (1814)
-Alien and Sedition Acts		

Kentucky Resolutions  
Virginia Resolutions  
(interposition asserted)

Mid-1820s to mid-1840s: Conflicts over tariffs and internal improvements  
←----->

-“Tariff of Abom- inations” (1828)	-Tariff compromise (Walker tariff, 1846)
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-Nullification doctrine

-Federal lands ceded  
to states to finance railroads

Mid-1830s to late-1840s: Texas War  
of Independence, Mexican War  
←----->

-Texas War of Independence (1836)	-Annexation of Texas (1845)
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-Pressure to annex Texas	-Mexican War (1846-1848) Cession of CA, AR, NM, UT to U.S. -“Manifest Destiny” fulfilled
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**Table 1. Pressures for Secession, Expulsion, Nullification and Interposition (cont.)**

Presidents:

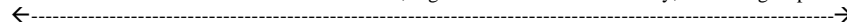
Washington 1789-1797	Jefferson 1801-1809	Monroe 1817-1825		Harrison & Tyler 1841-1845	Taylor & Fillmore 1849-1853
	Adams 1797-1801	Madison 1809-1817	Jackson 1829-1837	Polk 1845-1849	Pierce 1853-1857
			Quincy Adams 1825-1829	van Buren 1837-1841	Buchanan 1857-1861

Decades:

<b>1790-1799</b>	<b>1800-1809</b>	<b>1810-1819</b>	<b>1820-1829</b>	<b>1830-1839</b>	<b>1840-1849</b>	<b>1850-1859</b>
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Events:

1820s to 1861: Growth of abolition sentiment, regional fractures over slavery, hardening of positions



			-Growth of serious abolitionist sentiment			-Compromise of 1850
			-Missouri Compromise (1820): No slavery above MO's southern border	-No public Southern political or social opposition to slavery		-Bleeding Kansas (1854-)
			-Gag rule on discussion of slavery in House			-John Brown's raid (1859)
			-Calls for Southern secession on fringes			-Fugitive Slave Act of 1850
				-Calls for Southern secession become more respectable		-Northern interposition against Fugitive Slave Act
						-Abolitionists' calls for secession (or expulsion)

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