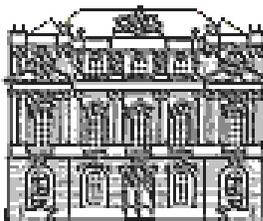


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Multilevel citizenship and territorial borders in the EU polity

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abstract:

The paper explores norms for the determination of membership and territorial borders in different types of polities. The European Union is a nested polity composed of member states that are themselves nested polities with autonomous municipalities and regions. The rules for acquisition of citizenship and for changes of external borders through enlargement or secession are essentially different in member states and in the Union. The distinct normative boundary structures of the Union indicate that it is neither a state nor an international organization but a new type of supranational polity. The paper suggests nevertheless that political integration of the Union has significant impacts on the way member states define their own boundaries and proposes some modest reforms that could strengthen a supranational conception of democracy in the Union, such as a harmonization of nationality laws in the member states or a procedural secession clause in a new constitution of the EU.

1. Introduction: states and polities

The notion of ‘statehood’ is useful for discussing the present features and future prospects of the European Union because it implies a conceptual distinction between polity and state. Describing France as a state means *prima facie* simply that France is an exemplar of a class of entities called states. Being a state is, however, not like being blue-eyed or choleric, it is more like being a human person. That is to say, being a state is not an accidental attribute, but an essence. France does not *have* a state, it *is* essentially a state. By contrast, *statehood* can be understood as an attribute rather than an essence. Using this concept allows us to distinguish various *features* of states that some political entities may possess to different *degrees*.

If statehood is a cluster of non-essential attributes then we need to call the entity that may or may not possess these attributes with a different name. I will use the term polity to designate the genus of which states are a species, i.e. as a generic concept that includes states as one subcategory, but applies also to other entities. Among the several definitions of polity offered by the Oxford English Dictionary, the following one comes closest to my present concerns. A polity is “an organized society or community of men (sic!)” Yet, this does not capture the *political* nature of the entity. I suggest therefore defining a polity as a politically organized society or community with its own institutions for making collectively binding decisions for a specified group of persons and/or within a bounded territory.

This definition does not imply core features of modern statehood such as a territorial monopoly of violence or external sovereignty in an international system of polities of the same type. We can apply the term polity to the political organization of pre-modern societies, such as tribal chiefdoms, city polities or empires. In the present world we can also use it for political entities

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below or above the level of independent states that are sufficiently organized and autonomous to have their own legislative, judicial and administrative institutions whose decisions apply directly to their respective populations. This disqualifies certain political entities or jurisdictions from being called polities. Purely administrative territorial subdivisions, such as the English boroughs or the French départements, or electoral constituencies formed for parliamentary elections are not distinct polities. Neither are international organizations (such as the UN or the WTO), military alliances (NATO) or free trade zones (NAFTA, APEC, MEROSUR) properly called polities. Although some of these organizations have institutions that can make binding decisions for their members, these members are states represented by their governments rather than individual human beings. This already suggests that the EU qualifies as a polity because its institutions take decisions that have “direct effect” on the citizens of Member States. For the same reason, one can characterize autonomous provinces within federal states as distinct polities, because a federal constitution creates a division of powers between various levels of government in which each level can take final decisions in certain policy matters for those populations that fall within its jurisdiction (Riker 1975). Stretching the notion of polity a bit further we may also describe autonomous municipalities in this way, even if their powers are not always constitutionally enshrined. A local government that is elected by, and accountable to, the residents of a municipality and provides them with essential public services and goods is different from a territorial unit that serves merely the administrative purposes of a higher level entity. A municipality that is autonomous in this sense may be regarded as a polity in its own right.

Notions of statehood have been variously applied to both substate and suprastate polities. As Michael Keating (2003) recalls, Georg Jellinek introduced the term “*Staatsfragmente*” (fragments of states) to describe the special statelike characteristics of provinces or territories that are not sovereign but enjoy strong political autonomy (Jellinek 1929: 647-660). Keating suggests the terms ‘partial states’ or incomplete states’. A similar approach can be useful when discussing an emerging statehood of the European Union. We can, first, discuss in which respects the European polity is already *similar* to a state, and, second, in which ways it is still *dependent* on the states that form the Union and is thereby prevented from becoming itself a state.

This last remark calls for a little explanation. States are very special kinds of polities that are not only defined by their internal powers to rule over a population within a given territory, but also by their external relations to other states. A basic characteristic of modern states is that their territorial jurisdictions are mutually exclusive. Overlapping territorial jurisdictions of independent states (condominiums) are strange irregularities in the international system and nested independent states are a historic and conceptual impossibility. Once a union of states turns itself into an independent state its constitutive entities may still be called “states” and may retain internal features of statehood but cannot enjoy the same external status as their union does. This would be as true for the United States of Europe as it has been historically true for the United States of America. If Europe were alone in the world, or if all the world were like Europe, we could imagine a European post-sovereign polity in which neither the member countries nor the Union itself can be identified as states. However, the international state system is an external environment that imposes the strict alternative: there must either be real states in Europe or Europe must itself become a state. This is not an eternal necessity. The species of polities that we call states are a rather recent product of European history and may eventually become extinct. In this case the international state system would give way to a global political order of a different kind. Yet, in spite of what globalization theorists have suggested during the 1990s, this new order has not yet emerged at the horizon.

While states require strictly exclusive territorial jurisdictions, there is no difficulty in imagining, and in finding in the real world, nested and overlapping polities. Every federal democracy is a nested polity. And while state territories do not overlap, their polities, in the sense of societies or communities of citizens, overlap as a result of international migration, which creates external citizens living abroad, foreign immigrants living within the jurisdiction of the host country, as well as increasing numbers of persons who possess multiple formal citizenships.

The focus of this paper is not the question to which extent the EU already has acquired important attributes of statehood, nor the more speculative debate about whether it will eventually become itself a state in the full sense of the term. I will instead discuss the EU as a multilevel polity whose constituent units are states. My main interest is in the norms that apply to membership and political boundaries at the different levels, i.e. in the rules for acquiring or losing citizenship and those for changing the borders of territorial jurisdictions through expansion or shrinking. I will argue that these norms are significantly different for sub-state local and regional polities, for states, and for the supranational Union, but also that political integration in Europe has a significant impact on the evolution of these norms at each level. I will not discuss at any length the content of membership in terms of rights and duties or the extent and internal distribution of decision-making powers within each type of polity. My argument will be both descriptive and evaluative. I want to understand how the normative boundary structures that we find in the European polity have evolved, but I also want to scrutinize them and consider how they ought to be reformed to make this polity overall more democratic, inclusionary and pluralistic.

‘Normative boundary structures of polities’ is a concept I use to describe the object of such an analysis. Polities are essentially defined by their internal and external *boundaries*; by the way they organize human populations into distinct political communities with their own institutions of self-government. These boundaries are a *structural* feature of polities in the sense that they generally form a relatively stable and taken-for-granted background and are relatively independent of individual choices and ongoing collective decision-making within the polity. These boundaries are *normative* because they can be understood as institutionalised responses to questions of the following kind: Whom should we admit to our territory, whom should we grant the protection of our laws and whom should we admit to full membership? When should a group have the right to secede from our polity, when should it be recognized as a separate polity within our polity and when should we unite with another group to form a new polity? These questions are normative in two different senses. First, when they are raised in political discourses they are understood as referring to a communal ethos, i.e. to a normative conception of the polity and not merely to the interests of individuals or groups. This specific normativity is articulated through combining “we” and “should”, i.e. a first person plural perspective for normative propositions that apply to the polity as a whole. Second, the questions are normative in the sense of calling for an answer within a normative theory of democracy and self-government. One can, of course, discuss the boundary norms applied in various polities in a purely comparative and analytical perspective without passing any judgement. However, within a normative theory of democracy the question of how the boundaries of polities are defined and modified will be important for assessing the legitimacy of political rule.

In this paper I will consider the questions I have just raised within the context of the emerging multilevel Euro polity. In section 2 I examine the rules for admission of newcomers to citizenship

in the member states and in the Union. Section 3 discusses the permeability and stability of territorial borders of European states. Section 4 defends restrictive norms for the secession of minorities from states in which they enjoy political autonomy. Section 5 argues that in this regards, too, boundary norms are different for the Union and for its member states.

2. Multilevel citizenship: linking the states with the Union

All member states of the Union have their own nationality laws that regulate access to, or loss of, citizenship. The mechanisms that are used for regulation of membership at state level are the same everywhere, but their combination and the underlying norms differ significantly across the fifteen countries. All states have laws for naturalization that require that first generation adult immigrants must apply for citizenship rather than getting it automatically or being forced to adopt it. Strong differences prevail when it comes to the conditions attached, such as the required period of residence, language skills or cultural assimilation, absence of criminal record, financial means, the need to renounce the previously held citizenship, the costs of naturalization itself, or facilitating circumstances such as being a spouse of a citizen. Moreover, in some countries, naturalization is regarded as an entitlement of the applicant who meets the criteria, whereas in others it remains a discretionary decision of public authorities in most cases. All states possess also rules for the acquisition of their citizenship at birth through descent from citizen parents (*ius sanguinis*). Only some European states, although their number is growing, add to this elements of *ius soli*, i.e. automatic citizenship at birth or at majority for those who have been born in the state's territory of non-citizen parents.

The rules for citizenship of the Union are much simpler. There is really only a single one: automatic acquisition or loss with the acquisition or loss of a member state citizenship. Citizenship of the Union is strictly derived from member state citizenship. This is an interesting reversal of the usual pattern in federal states, where citizenship of constituent units (if there is such a formal status) is derived from citizenship in the federation. The general rule that the encompassing polity must control access to membership also at the lower levels is to a certain extent weakened in states like Germany or Austria, where public administrations of federal provinces are in charge of implementing the federal nationality law and can use discretionary elements in these laws for controlling the access to immigrants to citizenship. The case that comes closest to the EU model is Switzerland, where federal citizenship is formally derived from municipal and cantonal citizenship. However, even the Swiss Confederation has a federal law that defines the general conditions for becoming a Swiss and constrains thus the power of lower level units to control individual membership in the encompassing unit. No constraint of this sort exists in the EU with regard to the nationality laws of its member states. While the existence of direct Union citizenship with a specified set of rights indicates that the Union is already more than a mere confederation of states, the mode of access to this common citizenship remains a strictly confederal one.

In evaluating this arrangement we ought to distinguish three basic features: the strict linkage between citizenship at the two levels, the derivation of "higher" level from "lower" level citizenship, and the variety of rules at the controlling level that produce unequal conditions for entry and exit in the different polities.

Some NGOs representing migrants in the EU have suggested abandoning the first rule by giving third country nationals direct and automatic access to Union citizenship after five years of

residence in the territory of the Union (Migrants' Forum 1995). I have objections to this idea for both prudential reasons and as a matter of principle. Turning third country nationals into EU citizens without naturalization in a member state would further devalue Union citizenship in the eyes of the native population and would provide a welcome pretext for certain governments to maintain restrictive nationality laws (Bauböck 1997). For a theory of federal democracy the idea of decoupling citizenships raises a more fundamental question. In a federal democracy (in contrast with an intergovernmental confederation) every citizen is a full member of one (and only one) constitutive unit and of the federal polity; she is directly represented in legislative institutions at both levels; and the citizenry of a province is additionally represented in a second federal chamber or through power-sharing arrangements that involve the provincial governments in federal decision-making. In such a system of triple representation individuals who are only represented in the federal polity are not equal citizens. The proposal to hand out automatic Union citizenship to migrants is only plausible in the current context where the European Parliament has very weak legislative powers and where there is no federal chamber representing the citizens of member states directly rather than through their governments. Introducing such a rule could therefore become an obstacle for the further evolution of federal democracy in the Union.

If the linkage between member state and Union citizenship can be defended from the perspective of keeping open a federal future, the direction of derivation *prima facie* seems to be an obstacle on the path towards this same goal. In a federal democratic state it seems natural that citizenship should be determined at the level of the encompassing polity. However, even in the United States this principle has been enshrined in the constitution only after the Civil War in the 14th amendment of 1868 according to which “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside”. The question of derivation reminds us of the initially stated impossibility of independent statehood at two levels within a nested polity. Here again, although there can be shared powers in the administration of naturalizations, either the one or the other citizenship will be dominant if strict linkage is a requirement. Deriving member state citizenship from Union citizenship would not only have strong symbolic significance in the sense of giving priority to a European *demos* over the national *demos*. It would also have a radical impact on democratic rights within the states: Citizens of the Union residing in other member states would have to be admitted to all national elections instead of voting only in municipal and European Parliament elections. This is a basic democratic right of citizens in federal states: freedom of movement throughout the federal territory includes not only access to residence and employment but also to the franchise in all constituent units. Such a drastic disempowerment of national *demos* would indeed indicate that the Union has become a federal state. I do not want to argue that this development will never be feasible or desirable, but I suggest that it is neither normatively required by some imperative of democratization nor an inevitable outcome of stronger political integration. Instead of holding up the model of democratic citizenship in federal states as the relevant standard, the priority of member state citizenship over Union citizenship can be regarded as one of the hallmarks of supranational democracy.

Taken together, linkage and derivation specify a conception of membership that is neither intergovernmental nor statist, but seems adequate for a federally nested polity built from independent states. To make this model also an inclusionary one, the third feature of the current arrangement, i.e. unequal access to Union citizenship, ought to be rejected. The common citizenship of the Union for which the member states act as gatekeepers must also have an impact on the norms that apply to their nationality laws. Some member states may respond to this that

they already take this argument into account by facilitating naturalization for Union citizens. This is, however, not nearly enough. Union citizens are rarely interested in acquiring the citizenship of other member states in which they reside. They already enjoy a full panoply of rights there and the franchise in national elections of their host states is hardly a sufficient incentive for most of them. The much more important question concerns access of third country nationals to Union citizenship via the acquisition of member state nationality.

Taking Union citizenship seriously means that the rules under which it can be obtained, i.e. the nationality laws of member states, should be harmonized. Democratic inclusion does not require that access to citizenship must be regulated by a single federal law, but it does require that (a) citizenship should be accessible under fair conditions to all long-term residents in the member states and (b) that conditions for access should not differ strongly across states. Current nationality laws in several member states can only be described as illiberal and exclusionary. If these states were not members of the Union such normative critique would be exclusively addressed to their respective legislative bodies. However, since they also control access to the common citizenship of the Union, this must be a matter of concern for the Union as a whole. Some governments may in fact be more concerned about liberal naturalization practices in other member states because these create new Union citizens with rights of access to their labour markets and welfare systems. Such interests may help to bring harmonization of nationality laws onto the agenda of the institutions of the Union, but from a democratic perspective the task is clearly to introduce liberal minimum standards that facilitate access to citizenship for third country nationals and reduce in this way Europe's democratic representation deficit that results from the exclusion of millions of immigrants from democratic representation at all levels of the EU polity.

While the EU has shied away from establishing the priority of Union citizenship over member state citizenship by granting Union citizens the national franchise in other member states, it has asserted the very same priority with regard to local citizenship at the municipal level. Union citizens enjoy voting rights in local elections. A more audacious move to include third country nationals in a purely residence-based local franchise was not only suggested by NGOs representing migrants but also in a 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level. In the Maastricht Treaty negotiations the governments of the member states turned local voting rights instead into a privilege of Union citizens (Shaw and Day 2002). While it makes sense to reserve the right to vote in European Parliament elections to citizens of the Union, I cannot see any sound reason for applying the same rule to local government. The EP represents citizens of the Union and is involved in governing this supranational (con)federation. But municipalities are not institutions of the Union and they should represent all residents who are affected by their decisions. Why would a Union citizen who has just moved into a city of another member state qualify better for voting in local elections than a third country national who has lived there for many more years?¹

¹ One possible interpretation is that the member states of the Union grant each other reciprocal voting rights at local level as an extra benefit of Union citizenship. However, reciprocity is not a plausible criterion for the allocation of voting rights. Portugal, for example, grants the local franchise to Norwegian citizens, although Norway is not in the EU, because Portuguese immigrants can vote in Norwegian local elections. But why should this give the very few Norwegians who live in a Portuguese city stronger rights to political participation than are enjoyed by the many more immigrants from other non-EU countries? Reciprocity is a proper standard for intergovernmental relations but not for those rights of foreign residents that promote their integration into the host society.

These brief considerations on rules of citizenship illustrate my general argument that norms governing the boundaries of a multilevel democracy are different for each level, but that there is also an impact across levels that results from political integration into a federal polity. Access to citizenship is still predominantly controlled at the state level where it ought to be optional for newcomers and automatic for subsequent generations. Citizenship of the Union is derivative from member state citizenship and therefore acquired automatically with the member states acting as gate-keepers. While these two levels must be strongly linked to ensure the triple representation of citizens in a federal polity, local governments are not involved in governing the encompassing units in which they are territorially included. Since the self-government of the local polity is in this way disconnected from the other levels, it may adopt its own independent norms for determining membership. In the municipality citizenship should be acquired automatically, but derived from residence, i.e. from *ius domicilia* rather than *ius soli* or *ius sanguinis*. The European Union might have taken the lead in promoting this idea, which meets resistance in those member states whose constitutions exclude third country nationals from the local franchise. What it did instead was to establish a direct link between membership at the Union and local levels that creates two classes of foreign residents in the local community.

3. The permeability and malleability of territorial borders

The territorial borders of a polity serve two different purposes that need to be analytically separated: the demarcation of jurisdictions and the regulation of flows. A border determines the territory within which the political institutions of a polity have the power to make and implement laws. And a border is a geographic and institutional site where flows of goods and movements of human beings are subjected to control and regulation by public authorities. These two functions do not necessarily go together. All territorial polities need borders that demarcate their jurisdictions, but not all polities control flows across these borders. While border controls were essential for maintaining autonomy in walled city-states from ancient to medieval times, in the modern state provinces and municipalities have lost virtually all regulatory competencies in this regard. Yet in spite of this loss the modern city is still a distinct territorial jurisdiction within which certain powers are exercised by the city's own political authorities.

Within the Schengen area, member states of the EU seem to have become almost like cities in the modern state – almost, but not quite. They retain emergency powers to reintroduce border controls – temporary suspension of the Schengen accord has in fact become quite frequent and is now routine practice for occasions such as meetings of heads of states or anti-globalization demonstrations. They also have not transferred the external border control of the Schengen territory to the Union, but have merely harmonized it and participate with their own forces in the policing of these borders. Since the border is not merely a geographic but also an institutional site, the regulation of movement may also be located inside the country through controlling the access of non-nationals to legal residence and employment. For Union citizens both external and internal controls have been greatly weakened even if not yet fully removed, but they are firmly in place for third country nationals. The Commission plans to introduce a Union-wide status for long-term resident third country nationals that would include the same mobility rights as for Union citizens.² This directive would extend the basic principles of free movement and non-discrimination within liberal democracies to the territory of the Union, but it would not remove

² See Commission document 501PC0127 “Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents.”

external and internal border controls over new inflows. I am not sure that controlling flows across borders is a necessary criterion of statehood. But in this area the member states of the Union are still recognizably states that have pooled their territorial sovereignty without abandoning it.

Changes in the demarcating function of borders raise more complex questions about the nature of the Union. While internal borders in the EU have become highly permeable for movements of goods and people, these borders themselves are assumed to be stable. If borders start to move this affects the demarcation of jurisdictions, the stability of their institutions of government and in some cases the very identity of the polity. Yet the malleability of borders varies strongly between different types of polities. Compared with the constantly moving borders of pre-agrarian nomadic societies of hunters and gatherers and with the expansive territorial borders of empires and settler states in their early stages the borders of contemporary states are exceptionally rigid (see O'Leary 2001a).

Territorial integrity of states is a deeply entrenched norm in the international state system. Since there is no more *terra nullius* geographic expansion of one state always means shrinking or total obliteration of another state's territorial scope. After the end of colonial empires, nationalism has provided the major force and ideology for shifting state borders. The nationalist imperative of matching the boundaries of a historic and cultural community with those of states can lead to several types of territorial changes: irredentism, i.e. state claims to another state's territory for the sake of unifying with a kin group living within that state; secession, i.e. a unilateral attempt by a group living within a part of state to establish an international border that separates it from this state; voluntary separation, i.e. an agreement to divide a state's territory into two or more independent states; and voluntary unification, i.e. an agreement between two or more independent states to merge into a single one.

It is useful to distinguish these four types both for analytical and normative purposes. However, in real politics there are obviously many mixed cases. For example, secession that is initiated by a national minority that strives for unification with a neighbouring kin-state will be regarded as irredentism by the state in which the minority presently resides. If a "parent state" puts up little resistance against secessionist demands, then the process can also be regarded as a voluntary separation. Other border changes, such as annexing a foreign territory or partitioning a territory under a state's control into several independent states are possible but cannot be easily legitimated by nationalist ideology. The most significant changes in Europe's political map have, of course, come about before and after the two world wars as a result of partitioning and population transfers that were motivated primarily by geopolitical interests even if "national self-determination" was invoked as an ideological justification.

I have ranked the four types of border change that are motivated by nationalist ideologies according to the conflict potential they create for peaceful international relations. By and large irredentism, which is the most dangerous phenomenon in this respect, has been overcome in the European context. Swedish claims to the Åland islands, Austrian claims to South Tyrol, Greek claims to "Enosis" with Cyprus, claims of the Irish Republic to Northern Ireland and other demands of this kind have been settled in a way that poses no immediate threat to the other states concerned. This seems to be even true for the Eastern and Central European candidates for accession to the EU even if the potential for symbolic politics with irredentist overtones is still there, as recent conflicts about Hungary's "status law" for ethnic Hungarians in neighbouring countries shows.

Secession is a different matter. From the Basque country to Flanders, from Northern Ireland and Scotland to South Tyrol radical nationalists have never abandoned what they see as their nation's right to self-determination, which they interpret as a unilateral power to determine themselves the international status of the territory and population that they claim as their nation. European states have reacted quite differently to these demands. The British government has agreed explicitly to letting the people of Northern Ireland themselves decide the international status and affiliation of their province and has informally signalled that it would accept the outcome of a Scottish referendum on independence (Keating 1999, 2001: 163). By contrast, article 2 of the Spanish constitution asserts not only the right of nationalities and regions to autonomy, but also "the indissoluble unity of the Spanish nation". Generally, the attitude of European constitutions and governments towards secession is clearly closer to the Spanish stance than to the British one. Ian Lustick's theory of state contraction (1993, 2001) helps to explain why this is so. In most European countries, state building has reached the "ideological hegemony stage" where regional concentrations of national minorities in the mainland are regarded as an integral part of the larger nation's territory. Abandoning these territories would not merely shake the political regime, but would deeply affect the collective identity constructed for the larger state. This stage has never been reached in Northern Ireland.

Voluntary separations have occurred several times in Europe's history as a result of demands of large territorial minorities for independence. The best-known and most peaceful cases were those of Norway's separation from Sweden in 1905 and the Czechoslovak "velvet divorce" in 1992. Voluntary separation may still be a possible outcome of nationality conflicts not only in Britain, but also in Belgium. The likelihood of this response depends on the absence of a unifying national ideology, but also on the number and concentration of self-governing communities. Bipolar federations are more likely to disintegrate than states with small and relatively dispersed national minorities (Horowitz 1985, O'Leary 2001b). Among present member states and accession candidates the United Kingdom, Belgium and Cyprus may eventually fall apart in a Czechoslovak manner although this is certainly not an inevitable outcome in any of these cases. Currently the most likely candidate for voluntary separation in Europe is the rather loose confederation between Serbia and Montenegro whose establishment in January 2003 marks the end of Yugoslav state building projects since 1918.

The prime example for voluntary unification is, of course, the merger of East Germany into the Federal Republic. This was in many ways the take-over of a state that had been abandoned by its old regime rather than a mutual agreement on unification. However, in contrast with serious doubts about popular support for the Czechoslovak divorce, this move was at the time obviously welcomed by the great majority of both populations concerned. There have been demands for unification in Europe's past (e.g. in interwar Austria before the *Anschluss* in 1938) and there may be scenarios for future cases, such as unification between an independent Kosovo and Albania, but currently there are no candidates for voluntary unification that would not also involve irredenta or secession from a parent state. Successful irredentism and unification are relatively rare events. In both cases there are fewer incentives for the leaders of the minority or the smaller state who will turn from "big fish in a small pond" into "small fish in a big pond" (Horowitz 1997: 424-5). And while irredentism poses an immediate threat to the territorial integrity of other states, unification has often been opposed for geopolitical reasons in order to preserve a certain regional balance of power between states. Both reasons together are incentives for secessionists to opt for the creation of independent states instead of joining a neighbouring one.

4. Normative grounds for secession

The overall picture is that the external borders of Europe's independent states are rather firmly entrenched with a strong presumption against any changes, but especially against those brought about unilaterally by the actions of external "homelands" or internal secessionist minorities. This is not yet a sufficient argument for endorsing the claims of states to territorial integrity. From a normative perspective of liberal or democratic theory voluntary separation and unification pose the fewest problems. The basic condition for legitimacy of these border changes is mutual consent on both sides. This agreement should be expressed through proper democratic procedures, such as a concurrent majority requirement in a referendum that is held in both territories separately. (In the Czech and German cases this procedural legitimation was not provided.)³ Irredentism is also easy to judge (and condemn) if it involves the sheer territorial expansion of one state at the cost of another. Restitution of recently stolen territory to the original "owner" is, of course, a different matter. Morally more complex are those cases where a state intervenes into the "internal affairs" of another in order to protect a kin minority from severe oppression. If there is no other remedy, interventions of this sort may be justified, but they ought to be limited to the purpose of protection and must not serve as a pretext for the seizure and annexation of another state's territory.

The most complex case for a normative theory is unilateral secession. In recent years there has been a lively and somewhat inconclusive debate among political theorists about the legitimacy of secession.⁴ In this debate, which I cannot summarize here, Alan Buchanan has suggested convincing arguments why the territorial integrity of states should be seen as a necessary condition for the integrity of the domestic democratic process and as a progressive principle of international law (Buchanan 1998). Against libertarian arguments that would allow any regional majority to secede as long as it grants the same liberty to any group within its own territory (Beran 1984, 1998; Gauthier 1994; Pogge 1992), and against liberal nationalist theories that regard secession as legitimate in deeply divided multinational states if it produces more homogeneous nation-states (Miller 1995, 2000), Buchanan defends a "grievance theory" that justifies secession only as a response to persistent oppression and as a last remedy if there is no other option to secure the equal treatment of all citizens under a common government.

I have suggested elsewhere that a grievance theory of secession is only plausible if it is derived from a primary right of the group concerned to self-government (Bauböck 2000a, 2000b). Liberal nationalist theories generally argue the other way round. They defend a primary right of nations to self-determination that includes a (however qualified) right to unilateral secession. As Michael Keating (2001) has pointed out, national minorities can exercise their right to self-determination by opting for territorial autonomy or even for full integration into their present state. Full independence has its costs that may often deter a minority from secession. However, the idea of self-determination declares this to be a unilateral decision of the minority in which the rest of the population has no legitimate voice. The question who ought to be included in democratic

³ Apart from conditions for primary legitimation through an appropriate majority decision, there ought to be also side-constraints such as special protection for the rights of minority groups that may be negatively affected by the change. These side-constraints will be similar for secession, separation and unification.

⁴ See, for example, Buchheit (1978), Beran (1984, 1998); Brilmayr (1990), Buchanan (1991, 1997, 1998), Sunstein 1991, 2001, McKim and McMahan (1997) Moore (1998, 2001), Lehning (1998), Miller (1995, 2000), Philpott (1995), Margalit and Raz (1990), Pogge (1992).

decisions about the borders of a democratic polity is a puzzling one (Jennings 1956: 56-7). I suspect that it is possible to formulate a logical paradox similar in structure to Kenneth Arrow's famous impossibility theorem, which would mean that there is no solution to this puzzle that satisfies a number of plausible conditions for procedural democratic legitimacy (Bauböck 2000b).

So I want to suggest here another type of argument that appeals to the conditions for mutual trust among the citizens and communities of a democratic polity. The idea is that the political leaders of a minority who believe that their community has a right to self-determination of its international status will always regard political autonomy as a second-best solution that they may have to accept if independence is too costly or is likely to be strongly resisted by the central government or the international community. That is, they will accept political autonomy only on prudential grounds but never as a fair solution that satisfies their basic demand for self-determination. This makes it, however, irrational for the central government to keep making concessions that will remove some of the obstacles for full independence. Under such circumstances any arrangement for devolution and power-sharing will be regarded by both sides as the outcome of a temporary balance of power that each side has reasons to overturn when it is strong enough to do so.

If a national minority enjoys instead a primary right to self-government and only a derivative and remedial right to self-determination the conditions for developing relations of trust that can back stable arrangements may be better. Suppose a minority elite accept that secession is only justified when their community has been violated in its autonomy rights and has no other means to restore its self-governing political institutions. Once the minority's leaders commit themselves to this idea they can give credible assurances to the central government that granting special recognition and political powers can lead to a lasting settlement. This is, however, no sell-out of minority interests since the group retains a remedial right of secession. Deriving the right of self-determination from a primary right to self-government in this way offers at least a possibility that devolutionary arrangements can be regarded as fair by both sides rather than as an unstable *modus vivendi*.

This proposal for reversing the order between the rights of self-determination and self-government remains a normative argument at the level of political theory until its implications for international and domestic law and politics are spelled out. This is a task far beyond the scope of this paper. Here I want to point out only one practical consequence that will be relevant for discussing the difference between secession from the Union and from one of its member states. Some theorists who support a grievance theory of secession have suggested that multinational democracies should nevertheless introduce a secession clause into their constitutions (Norman 2002, Weinstock 2001).⁵ The idea is that an assurance for the national minority that it has a right to opt out may help to build trust between the communities and could thus stabilize their union. Such a clause may also specify certain constraints on secession, such as supermajority or repetition requirements for plebiscites in the secessionist province. Finally, it could help to lay out in advance the rules for dividing up the country and could thus contribute to building peaceful relations between post-secession states. If my above argument is correct, the first and most important of these effects cannot be expected. On the one hand, A *procedural* secession clause is unlikely to build trust between national communities because it will inevitably be understood as grounded in a primary right of self-determination that trumps the state's right to territorial

⁵ For objections see Sunstein (1991, 2001).

integrity. On the other hand, a *substantive* secession clause that operationalizes a grievance theory and spells out which violation of self-government rights would morally entitle a national minority to secede would be similar to a constitutional right to revolution. Such a right is purely declarative. Once such a violation takes place no domestic parliament or constitutional court will be accepted as an impartial body whose decisions are binding for the parties to the conflict. The implication of this is that the moral grounds and practical modalities of secession must be specified in international law and should ideally also be implemented by international bodies rather than by domestic ones in all cases where secession is resisted.

5. Changing the territory of the Union: norms for enlargement and secession

Let me now, once again, contrast the practices and norms that apply to changes of territorial borders at the level of independent states with those that emerge for the European Union. The Union obviously has no irredentist aspirations, i.e. no ambitions to free some other European peoples that languish under a non-European regime. However, it has a remarkable record of territorial expansion through a process that is correctly described as enlargement rather than unification. The European Community has grown from originally six to currently fifteen members and may soon have twenty-five. The limits of the territory that could eventually be included are currently hotly debated with Turkey serving as the test case. Some observers have drawn the comparison between the territorial expansion of the EU and that of the great empires of the past (van Creveld 1999). As with these empires the limits for moving the external borders into new lands appear to be of two kinds (O’Leary 2001): first, an overstretch of internal resources required to achieve a sufficiently uniform administration of an ever-growing territory and, second, civilizational borders with societies whose cultural and economic features make them difficult to “digest” within a European polity. I am somewhat sceptical about the latter claim, but the only point I want to make here is that the European Union’s constant territorial expansion without clearly defined outer limits makes it not only very different from a consolidated nation-state but blocks also the internal consolidation of whatever state-building projects the Union might pursue.

The obvious and important difference between the EU and an empire is the mode of territorial enlargement through consensual accession of new states. In this respect the Union is a voluntary association of states. And since the world is not divided into regional blocs of supranational polities, enlargement of the Union does not come at the expense of another polity that suffers territorial shrinkage. The process is therefore not normatively constrained in the way that state expansion is.

The interesting question is which norms govern the admission process of new states. As with the naturalization of immigrants, decisions on new membership in the Union could be either conceptualised as discretionary and requiring therefore strictly mutual consent, or as an entitlement of the applicants once they have meet all the requirements. Formally, the process allows for both interpretations. Individual member states have several veto points where they can block the admission of a new country. The no-majority in the first Irish Referendum on the Nice Treaty was interpreted by some observers, probably falsely, as a move of this kind. And anti-European populist parties like the Austrian Freedom Party have repeatedly threatened to block the required ratification of accession of the Czech Republic by the Austrian government and parliament. Yet this would be clearly regarded as a severe breach of the spirit of cooperation that keeps the Union going. The process of enlargement has been sustained by the idea that candidates

have a right to join and not just an option to apply. This implicit norm may come under severe strains after the current round of enlargement when further candidates knock on the door.

If entry into the Union is governed by principles of voluntary association is the same also true for exit? So far the Union has not faced the question how to handle the secession of a member state – no independent state that has joined the Union has ever tried to leave.⁶ The European Treaties are silent on this question except for the famous formula in the preamble of the Treaty of Rome in which the member states commit themselves to building “an ever closer union among the peoples of Europe”. Some might suggest that by signing up to this clause, the member states have waived their right to secede from the Union. This type of argument was invoked by Abraham Lincoln in his first inaugural speech: “... in 1787, one of the declared objects for ordaining and establishing the Constitution, was ‘to form a more perfect union’. But if destruction of the Union, by one, or by a part only of the States, be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity” (Lincoln 1861/1989: 218).

There is little doubt that if a member state decided to secede from the EU it could do so under international law, which regards the Union as nothing but a treaty among independent states that remain free to renounce their previous commitments. And it is hard to imagine that the European Court of Justice or any institution of the EU would interpret the Treaty of Rome as an entitlement to resist a serious secession effort. In this sense, too, the Union remains an association of states rather than forming a state whose territorial integrity would be protected under international as well as domestic constitutional law.

Yet positive law cannot answer the normative question. Should normative presumptions against a right of unilateral secession be as strong in the context of the Union as I have argued they should be for independent states? Lincoln’s “perfectionist” interpretation of the US constitution could be used to derive from the “ever closer union” formula a similar teleological argument against a right to secede. Just as a national minority may threaten to secede from an independent state if it regards a proposed transfer of powers to a central government as a fundamental violation of its right to self-government, so a member state of the Union might do the same in order to block some further transfer of sovereignty. However, the ever-closer-union commitment implies that no state can simply define its present scope of powers as an entrenched possession that it has the right to defend by all means. Since member states have agreed in advance that they regard political integration as a *telos* without a predetermined end-state they must be willing to trade in reduced sovereignty for increased power-sharing in the Union. This specification is important. The ever-closer-union formula cannot be read as a *carte blanche* for introducing majoritarian decision-making across the board. Power-sharing arrangements that will give individual states an important voice (although not necessarily a veto) in collective decisions are the essential condition under which member state governments can be expected to honour their commitment to promote political integration.⁷

However, if the willingness of governments to trade sovereignty for power-sharing is the basic political commitment that limits their moral right to secede from the Union, then this is still a

⁶ Greenland had entered the EC as a dependent state associated with Denmark but withdrew in 1985 during a process that led to expanded home rule.

⁷ This normative conjecture is backed by Brendan O’Leary’s conclusion from a comparative study of multinational federations: “...to have a fully-fledged European federation ... may be a recipe for institutional disaster unless such calls are accompanied by strong commitments to consociational governance devices” (O’Leary 2001a: 292).

rather weak constraint that certainly does not legitimate any sustained resistance by the other states or the institutions of the Union against secession. Power-sharing arrangements that are at the core of the Union's decision-making procedures do not warrant imposing the will of the majority on a minority that is determined to leave.

Why would the same reasoning not also apply to multinational federal states? The basic difference is that the Union has no fundamental interest in its territorial integrity. Several arguments back this claim:

(1) Since the Union is not a state in the sense of being a member of the international state system international law protects the territorial integrity of its member states rather than of the Union itself. A common European defence system would not yet fundamentally alter the binary logic of statehood in the international system that I have mentioned in the introduction. An attack by a foreign power would then trigger the duty of military assistance by all other member states, but it would still be interpreted as an attack on an individual state rather than on the Union's territorial integrity. A secession of an entire member state from the Union does not affect any state's territorial integrity and is therefore not covered by norms of international law.

(2) In multinational democracies there is always a historically dominant majority whose nation-building project extends to the territory of the state as a whole and includes those regions inhabited by national minorities. At Lustick's "ideological hegemony stage" a secession of the minority deeply affects the identity of the majority. This is one reason why it is not plausible to regard secession as a unilateral right of the minority to determine its status (unless the inclusion of the minority is so coercive that the state itself lacks basic legitimacy). Under Napoleon, Hitler and Stalin Europe has witnessed its own hegemonic nation-building projects. The European Union is nothing of this sort. There is no single nation in Europe that extends territorial aspirations to the Union as a whole. This means that the secession of one member state would be a severe setback to the project of achieving a political unification of all Europe, but would not affect and violate any particular national identities in Europe.

(3) The argument that unilateral secession rights seriously undermine the integrity of the domestic democratic process does not apply to the Union. As long as a central government has a fundamental stake in the territorial integrity of the state, a minority can abuse a right to secede as a veto power that will allow it to impose its will upon the majority (Buchanan 1991). Since there is no European majority that has a fundamental interest in the territorial integrity of the Union this type of blackmail is unlikely to work. The other way in which a secession right may undermine the democratic process is by enabling the minority not to veto legitimate majority decisions, but to nullify their application within their own territory. Nullification powers for national minorities in policy areas that concern their vital interests are often an essential ingredient in fair multinational arrangements. However, if the minority can freely opt out of any collective decision this may lead to an irreversible territorial fragmentation of federal laws that seriously undermines equal citizenship. This argument, too, does not apply to the Union. The possibility to opt out of common policies (and to rejoin at a later stage) is built into the rules of the integration process. Moreover, if enlargement does not undermine the integrity of the democratic process at Union level, it is hard to see why secession should have this effect. Strengthening effective democratic participation and representation in a polity with moving boundaries is a challenge both for theorists and practitioners. But it may be possible to meet it if we better understand the difference between states and supranational polities. Democracy in the

Union depends on the internally democratic structure of its member states and their territorial stability. Starting from these solid building blocks it should be possible to construct a federal democratic architecture at Union level, in which both member states and European citizens are directly represented and which does not collapse if a few blocks are added or removed.

(4) The nature of the Union as a voluntary association shows in its provisions for the suspension of membership rights. The European Union has no mechanism for expulsion, but Article 7 of the Treaty on European Union, which was substantially modified by the Nice Treaty, spells out the procedures for temporarily suspending membership and voting rights of states that persistently and seriously violate the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law (listed in Article 6.1). Imagine what it would mean to introduce an analogous provision in a federal democratic state. If an autonomous territory of a federation persistently violates such basic principles the central government would assume that it has a power or even a duty to intervene and restore the constitutional order.⁸ No state has a right to expel a part of its territory, depriving thereby a whole group of its population of their citizenship. Even a temporary suspension of representation and voting rights of an autonomous province in the federal government could only be justified if the state authorities lack an effective power to intervene. The fact that such direct intervention is utterly inconceivable in the European Union serves as one further indicator that the EU is still quite far from becoming a state. The implication is that, as a voluntary association of states, the Union must grant its members a right to withdraw. This right is not even correlative to the right of the association to expel or suspend membership. It simply follows from the nature of a voluntary association. The reasons for expulsion and withdrawal need not be symmetric. That is, expulsion will generally be justified only as a sanction against a serious violation of the associations purposes and rules, whereas members can withdraw without claiming that their basic interests or rights have been violated by the association. This argument still allows that the right to withdraw from the Union will be morally constrained by a duty derived from the benefits of past cooperation and the future-oriented commitment towards an “ever closer union”. However, in a voluntary association this is no sufficient reason for the central authorities to block a member’s exit.

This still leaves open the other question I have mentioned towards the end of the previous section. Should a new constitution of the Union introduce a secession clause that turns the implicit right into an explicit one? Today this is no longer a purely speculative and academic issue. The first “skeleton” draft for a European constitution submitted by Convention president Giscard d’Estaing includes the proposal for an article “that would mention the possibility for establishing a procedure for voluntary withdrawal from the Union by decision of a Member State and the institutional consequences of such withdrawal”.⁹

As we have seen above, there are theorists who argue against a unilateral right to secession in multinational democracies but think that a procedural secession clause will help to reduce the likelihood of secessions. If my argument that the Union has no fundamental interest in its territorial integrity is accepted, then one might think that such a provision is entirely superfluous for the converse reason. As long as all member states understand that they do in fact enjoy such a

⁸ In the Indian federation, such powers of the central government to intervene and take over provincial governments are extensive and have been routinely used in a way that seriously undermines the federal promise of provincial self-government (Hewitt 1999, Stepan 2001).

⁹ CONV 368/02, 28 October 2002.

right under international law there is no need to introduce it explicitly into the constitution. Doing so could merely serve as an incentive for anti-European populist parties to mobilize for actual withdrawal. I want to suggest, however, that at the current stage of political integration a constitutional secession clause may be supported by specific reasons that highlight, once again, differences between the boundaries of states, international organizations, and supranational polities.

In contrast with a consolidated state, the EU is a project that has been constantly evolving pushed by a double imperative of enlargement and deeper political integration. Some observers fear that designing a new constitution for the Union will have the undesirable effect of arresting this dynamic by choking constitutional and cultural pluralism in Europe and closing options for the future (Weiler 2001, Keating 2003). I think that this will depend on the quality of the outcome. The need for a new constitution can be argued on several grounds. One is enhancing the transparency of the basic institutional arrangements and defining more clearly the division of powers. If the new constitution succeeds in these goals, this should improve the quality of the democratic process. Another reason is that simultaneous enlargement and deepening of political integration signals a new step in the evolution of the project at which it is necessary to introduce some changes to the basic rules. My question is then whether a secession clause makes sense at this particular juncture of the project although there has not been any need for such a provision up to now. My tentative answer is that it does.

With the communitarization of more and more policy areas and an extension of majoritarian decision-making the incentive for member states to opt out of particular integration projects becomes stronger. Although the states have agreed to form an ever closer union they cannot be seen to have in advance agreed to every particular step in the process. However, closing down some of the nullification options is essential for the process of political integration to proceed. Under these conditions, a suitably specified secession clause may provide a fair substitute for diminished nullification rights and could serve to build trust. It should, paradoxically, be understood as a way of raising the stakes for states that are likely to block further integration. They will be faced with an alternative. If a government defines some state interests as fundamental but fails to convince the other members within a fair scheme of power-sharing that its position should be adopted by all or should at least not be overruled, then it may have to consider withdrawing from the Union altogether. This ought to be decision that cannot be taken by the government itself but needs to be supported in a referendum by a clear majority in the state in question. The point of introducing a secession clause would then be to signal that there will be less opportunities for having your Union cake and eating it alone. Since secession carries much higher costs for the states concerned than partial nullification of Community decisions, few countries are likely to seriously threaten with secession, or to be taken seriously if they do. But a secession clause would also signal that those states whose citizens think that they can no longer realize their aspirations to govern themselves within this Union have an opportunity to withdraw.¹⁰

¹⁰ Other benefits of a procedural secession clause would be that it allows specifying in advance the consequences of withdrawal and the conditions for readmission. Such provisions may indeed have a beneficial effect for peaceful relations between post-secession states, but they still require an impartial arbiter who can implement them. As I have argued above, in a secession crisis constitutional courts of states will hardly be accepted in this role. This difficulty could also be somewhat diminished in the European context, where there are separate constitutional courts of member states who have incorporated the supremacy of European law into their own constitutional doctrines and are more likely to concur with the European Court of Justice on the interpretation of a secession clause.

So there is, first, no principled objection against making explicit a right of self-determination that member states in the Union enjoy anyway because of its character as a supranational polity. Second, introducing such a clause into the constitution could at the present point in time allow to push forward more vigorously with projects of political integration without dramatically increasing the risks of actual secession or of a strategic use of secession threats as a veto against Union decisions. Both types of arguments do not apply to multinational federal states, whose cohesion would be fatally undermined by a primary right of self-determination of their provinces and whose constituent units also cannot be seen as having committed themselves to a project of continuously stronger political integration. Proclaiming such a project in a multinational state would be rightly seen by its minorities as a pretext for the arrogation of powers by the central government. Of course, similar fears abound in the member states of the Union as well. But the very fact that their states retain full self-determination rights including a right to withdraw from the Community considerably weakens the normative force of such objections to the goal of ever closer union.

6. Conclusions

All polities are bounded communities, and in modern societies they require dual boundaries of membership and territory in order to constitute themselves as self-governing entities. In this paper I have sought to explore the peculiar nature of the EU as a multilevel polity whose basic building blocks are independent states but whose efforts of political integration have an impact also on autonomous national minorities, provinces and municipalities within its member states.

I have argued that the norms that actually regulate the boundaries of the Union as a supranational polity are fundamentally different from those operating at the level of its member states. This concerns the acquisition of citizenship as well as the flexibility of its external borders for enlargement and secession. Citizenship of the Union is one of the most important indicators that the European project has already passed the stage of purely intergovernmental confederation. Yet, at the same time, this citizenship remains derived from that of member states and I have argued that this may be appropriate for a supranational democracy. Similarly, the Union has committed itself not only to unifying Europe through enlargement but also to building an ever closer union among the peoples of Europe. These two basic goals of the Euro polity make it essentially different from a limited-purpose-association of states such as a free trade zone or military defence alliance. The Union's external borders are not determined merely by voluntary decisions of governments to join but also by the idea of unifying a particular political community under common institutions of self-government. The more political integration proceeds the more difficult and problematic secession from the Union will become. However, the territorial boundaries of the Union are still essentially more flexible than those of independent states. The Union cannot claim a fundamental interest in its territorial integrity; a right of member states to secede or withdraw temporarily is therefore built into a proper conception of a supranational polity.

What is the impact of political integration on the normative boundary structures of other polities nested within the Union? My general proposition is that this impact can neither be one of complete subordination nor of laissez-faire pluralism. Subordination would mean that the Union imposes uniform rules for all features of the external and internal boundaries of member states, provinces and regions and municipalities, and asserts its right as an ultimate arbiter in all

boundary conflicts. Laissez-faire pluralism would accept that all polities can have their own rules and the activities of the Union would be limited to coordination in order to avoid conflict. What emerges instead from my analysis is that all normative impacts of political integration fall somewhere on a continuum between these two extremes. In some areas there is a need for stronger harmonization whereas in others there ought to be a positive recognition of diversity of approaches and historically grown differences.

Since the promotion of free movement has been at the core of the EU project the regulation of flows across external and internal territorial borders of the Union is the area where the greatest uniformity has been achieved. The Union's border regime is, however, still based on a pooling of sovereignty rather than on subordination of member states to Union authorities. With regard to citizenship acquisition I have suggested that harmonization ought to be put on the agenda. This should lead to liberal standards of inclusion, with birthright citizenship for the children of immigrants, reasonably short residence requirements for the naturalization of newcomers and a toleration of dual citizenship. Member states would remain free to lower the hurdles for access but not to raise them above these common standards.

In other areas the impact of integration on boundary norms within the member states will be less strong but nevertheless visible. The right of national minorities to political autonomy, for example, is currently not recognized by the Union. It would be difficult to conceive of a uniform regime for national minority rights. Each case has its historic specificities and arrangements within the member states must take these backgrounds into account (Keating 2003). Yet this is no reason for the Union to adopt a hands-off approach. There are several forms of involvement that could strengthen the pluralistic character of the Union. The EU could, for example establish an ombudsman with a mandate to monitor and combat discrimination of old minorities as well as new immigrant groups. It could also become active in the arbitration and settlement of national minority conflicts that involve two or more of its present or future member states (such as the conflicts in Northern Ireland and Cyprus). This would help to avoid the fear of irredentist ambitions that arise whenever states become engaged in the protection of co-ethnic minorities across the border. These and other ideas for strengthening minority recognition in the Union fall, however, short of a general solution that would turn sub-state regions into constitutive units of a European federation. In this multilevel polity there is a direct link between citizenship of the Union and of member states, but not with membership in an autonomous region or municipality. This is a plausible reason why the need for harmonizing boundaries is stronger at the state level than at sub-state levels.

In trying to specify norms for political boundaries for the various levels of the European polity I am not necessarily advocating their inclusion in the current effort at constitutionalizing the Union, which so far focuses instead on the reallocation of powers between the institutions of the Union and member state governments. Developing a complete set of constitutional rules for all levels from the local to the supranational is an impossibly complex task that could only be resolved at the price of an undesirable homogenisation of the wide variety of internal arrangements in the member states. However, in order to avoid constructing a new roof that does not fit the existing structure underneath, the framers of a European constitution should pay more attention to the many different polities within the states of the Union and to their aspirations for self-government. There is a need to introduce into the constitutional debate a sense for the plurality of levels and types of autonomy and membership.

The attempt to take seriously the supranational character of the Euro polity leads to scepticism towards some radical reform proposals that would make the European polity more like a state, such as direct access for third country nationals to Union citizenship or constitutional restrictions on secession of member states from the EU. Although I think there is much reason for critique of some current practices and rules, e.g. concerning restrictive nationality laws or the absence of an explicit policy on national minorities, I have found that normative theories of democracy give us no reason to depart from the fundamental principles of supranational democracy as they have evolved over time within the Union.

One reason for this may be that we still lack a standard model for supranational democracy against which we could evaluate the achievements and failures of the EU. This comes as no surprise, since there has been no effort in modern history to build a truly democratic supranational federation of states that could serve as a model. Critics of the Union therefore constantly fall back on the two alternative models that we know, the democratic federal state and the international organization or alliance of states, and they use the well-established norms for legitimate decision-making in these two contexts as a benchmark for assessing the European project. In my view this is a misguided approach. Normative theorists of democracy should allow for the possibility that the institutional arrangements in the new type of multilevel polity that we see emerging in Europe may also have their own normative standards that cannot be derived from either the nation-state model or the international alliance model. What we need then for a normative theory of supranational democracy is a fair amount of inductive theorizing that tries to comprehend how this new type of polity has developed a set of norms for its boundaries and membership. While all normative political theory starts from certain fundamental principles and values that inform our judgements and critiques of institutions in the real world, there is also a need for understanding how these principles must be modified when they are applied in different contexts.

The discourse about statehood in Europe has long been dominated by a stale debate about confederation versus federation, which focuses almost exclusively on the vertical and horizontal division of powers between levels of governments. Multilevel governance is, however, only one aspect in the formation of nested multilevel polities. I hope to have shown that focusing on the norms that determine the boundaries at each level of the European polity helps us to get a clearer sense of its specificity. We should be open for the possibility that the EU represents really a new animal species in the Hobbesian jungle of the global state system. When spotting an animal that seems utterly unfamiliar to us we will first try to classify it by looking at its external shape and appearance rather than at its intestines. This may also be a good research strategy for scholars studying statehood in Europe.

References:

- Bauböck, Rainer (1997) "Citizenship and National Identities in the European Union", in: Eugen Antalovsky, Josef Melchoir and Sonja Puntischer-Riekman (eds.) *Integration durch Demokratie. Neue Impulse für die Europäische Union*, Metropolis, Marburg: 297-331.
- Bauböck, Rainer (2000a) "Why Stay Together? A Pluralist Approach to Secession and Federation", in Will Kymlicka and Wayne Norman (eds.) *Citizenship in Diverse Societies*, Oxford University Press, Oxford:366-394.
- Bauböck, Rainer (2000b) "The Limits of Self-Determination", *CSD Bulletin*, vol.7, No.2, summer 2000, Centre for the Study of Democracy, Westminster University, London: 6-8.
- Beran, Harry (1984) A Liberal Theory of Secession, *Political Studies*, vol. xxxii: 21-31
- Beran, Harry (1998) A democratic theory of political self-determination for a new world order, in: Percy Lehning (ed.) *Theories of Secession*, Routledge, London: 32-59.
- Brilmayer, Lea (1991) Secession and Self-Determination: A Territorial Interpretation, *Yale Journal of International Law*, vol.16: 177-202.
- Buchanan Allan (1991) *Secession. The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Westview Press, Boulder, Co.
- Buchanan, Allen (1997) Theories of Secession, *Philosophy and Public Affairs*, vol.26, No.1:31-61.
- Buchanan, Allen (1998) Democracy and Secession, in: Margaret Moore (ed.) *National Self-Determination and Secession*, Oxford University Press, Oxford: 14-33.
- Buchheit, Lee C. (1978) *Secession. The Legitimacy of Self-Determination*, Yale University Press, New Haven.
- Gauthier, David (1994) Breaking Up: An Essay on Secession, *Canadian Journal of Philosophy*, vol. 24, Nr. 3: 357-372.
- Hewitt, Vernon (1999) India. The State, Ethnicity and Nationalism, in: Don MacIver (ed.) *The Politics of Multinational States*, Macmillan, Houndsmills, UK: 35-62.
- Horowitz, Donald (1985) *Ethnic Groups in Conflict*, University of California Press, Berkeley
- Horowitz, Donald (1997) Self-Determination: Politics, Philosophy, and Law, in: Ian Shapiro and Will Kymlicka (eds.) *Ethnicity and Group Rights*, Nomos XXXIX, New York University Press, New York: 421-463.
- Jellinek, Georg (1929) *Allgemeine Staatslehre*, Springer, Berlin, 5th ed.
- Jennings, Ivor (1956) *The Approach to Self-Government*, Cambridge University Press.
- Keating, Michael (1999) Britain. The United Kingdom? in: Don MacIvor (ed.) *The Politics of Multinational States*, Macmillan, Houndsmills, UK: 215-236.
- Keating Michael (2001) *Plurinational Democracies*, Oxford University Press, Oxford.
- Keating, Michael (2003) Plurinational Democracy and the European Order. Paper presented at the conference: Transformations of Statehood in European Perspective, Austrian Academy of Sciences, Vienna, 23-25 January 2003.
- Lehning, Percy B. (ed.) (1998) *Theories of Secession*, Routledge, London.
- Lincoln, Abraham (1861/1989) First Inaugural Address, in: *Speeches and Writings Abraham Lincoln*, 2 vols., Library of America, New York, N.Y., vol. 2 (1859-1865): 215-224.
- Lustick, Ian (1993) *Unsettled States, Disputed Lands: Britain and Ireland, France and Algeria, Israel and the West-Bank-Gaza*, Cornell University Press, New York.
- Lustick, Ian S. (2001) Thresholds of Opportunity and Barriers to Change in the Right-Sizing of State, in: Brendan O'Leary, Ian Lustick and Thomas Callaghy (eds.) *Right-sizing the State. The Politics of Moving Borders*, Oxford University Press, Oxford: 74-101.

- Margalit, Avishai and Raz, Joseph (1990) National Self-Determination, in Raz, Joseph (1994) *Ethics in the Public Domain. Essays in the Morality of Law and Politics*, Clarendon Press, Oxford:125-145.
- McKim, Robert and McMahan, Jeff (eds.) (1997) *The Morality of Nationalism*, Oxford University Press, New York.
- Migrants' Forum (1995) Proposals for the Revision of the Treaty on European Union at the Intergovernmental Conference of 1996, May 1995, at: <http://europa.eu.int/en/agenda/igc-home/instdoc/ngo/migrant.htm>, retrieved 30 October 2002.
- Miller, David (1995) *On Nationality*, Oxford University Press, Oxford. Moore, Margaret, (2001) *The Ethics of Nationalism*, Oxford University Press, Oxford.
- Miller, David (2000) Nationality in Divided Societies, in: Miller, David (2000) *Citizenship and National Identity*, Polity Press, Cambridge: 125-41.
- Moore, M. (ed.) (1998) *National Self-Determination and Secession*, Oxford University Press, Oxford.
- Norman, Wayne (2003) Domesticating Secession, in: Alan Buchanan and Stephen Macedo (eds.) *Secession and Self-Determination, Nomos XLV*, forthcoming.
- O'Leary, Brendan (2001a) 'An iron law of nationalism and federation? A (neo-Diceyan) theory of the necessity of a federal Staatsvolk, and of consociational rescue', *Nations and Nationalism*, vol. 7, no. 3: 273-296.
- O'Leary, Brendan (2001b) The Elements of Right-Sizing and Right-Peopling the State, in: Brendan O'Leary, Ian Lustick and Thomas Callaghy (eds.) *Right-sizing the State. The Politics of Moving Borders*, Oxford University Press, Oxford: 15-73.
- Philpott, Daniel (1995) In Defense of Self-Determination, *Ethics* 105 (January 1995): 352-385.
- Pogge, Thomas (1992) Cosmopolitanism and Sovereignty, *Ethics* 103 (October 1992): 48-75
- Riker, William H. (1975) 'Federalism', in: Fred Greenstein and Nelson Polsby (eds.) *Handbook of Political Science*, vol. 5, Addison-Wesley, Reading, Mass.: 93-172.
- Shaw, Jo and Day, Stephen (2002) European Union electoral rights and the political participation of migrants in host polities, *International Journal of Population Geography*, vol. 8.
- Stepan, Alfred (2001) Towards a New Comparative Politics of Federalism, (Multi)Nationalism, and Democracy: Beyond Rikerian Federalism, in: Stepan, Alfred (2001) *Arguing Comparative Politics*, Oxford University Press, Oxford: 315-61.
- Sunstein, Cass (1991) Constitutionalism and Secession, *The University of Chicago Law Review*, vo. 58, No.2: 633-670.
- Sunstein, Cass (2001) Debate: Should Constitutions Protect the Right to Secede? A Reply to Weinstock, *The Journal of Political Philosophy*, vol. 9, no. 4: 350-355.
- van Creveld, Martin (1999) *The Rise and Decline of the State*, Cambridge University Press, Cambridge, UK.
- Weinstock, Daniel: Constitutionalizing the Right to Secede, *The Journal of Political Philosophy*, vol. 9, no. 2, June 2001: 182-203.