Expulsion and the European Union – a challenge to theorizing federation?

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> "Knowing how something comes apart, or is allowed to come apart, tells us much about how or why it is put together."[1]

1. Introduction: Why expulsion?

When Singapore gained its independence, Lee Kuan Yew cried. The prime minister's tears, shed publicly on August 9, 1965, were historically unique: Yew cried because Singapore's independence did not occur voluntarily. Singapore is the only country to have ever been expelled from a federal state. Less than two years after the post-colonial merger of Malaysia and Singapore, given their ongoing conflicts over political and ethnic equality,[2] the federal government left Yew no choice but to sign a definitive separation agreement. There had been little to no negotiation. Singapore was, in nuce, kicked out of the federation.[3]

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[1] Wayne J. Norman, *Negotiating Nationalism. Nation-Building, Federalism, and Secession in the Multinational State* (Oxford: Oxford University Press, 2006), 171.

[2] Abdul Aziz Bari, "Malaysian Constitutional Perspectives on the Admission and Separation of Singapore," in *Across the Causeway: A Multi-Dimensional Study of Malaysia-Singapore Relations*, 2008, 159.

[3] The constitutional amendment to the Malaysian constitution, hurried through parliament just in time for the expulsion in 1965, said: „Parliament may by this Act allow Singapore to leave Malaysia and become an independent and sovereign state and nation separate from and independent of Malaysia." Masking the unilateral political move of expulsion, the Malay government apparently pressured the Singapore prime minister and cabinet to sign a bilateral agreement, maintaining the façade of consensus. ("Independence of Singapore Agreement 1965," Singapore Statutes Online § (1965), http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=CompId%3A7e4244fe-8573-40b0-a08c-2dbd99ea16d7;rec=0;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fbrowse%2FtitleResults.w3p%3Bletter%3DConstitutional%2520Documents%3Btype%3DactsAll;whole=yes#legis). It was only the federal parliament that voted on the matter on the basis of an equally unilateral constitutional amendment, not the state legislature. For a detailed official recap of the succession of events from the Singapore perspective see http://eresources.nlb.gov.sg/history/events/dc1efe7a-8159-40b2-9244-cdb078755013 (last accessed 1/15/2017).

Interestingly, the Malaysian government tried to maintain a façade of voluntary exit:[4] The separation was not officially presented as expulsion,[5] i. e. the ejection of a member state through the decision of the federal government or the remaining states – an interpretation that has been shared and reinforced in various historiographical accounts of the event until the present day. The conceptual smoothing over of Singapore's expulsion seems symptomatic of much of current federal theory and practice: Though political scientists and theorists have extensively examined the dynamics of federal arrangements for decades - reflecting on the ways in which federations can be formed, changed or dissolved -, they have consistently omitted constellations of expulsion; and no federal constitution provides for the possibility of expulsion. At first glance this might seem unsurprising, given its historical rarity. If so far there have been – with exception of the case of Singapore - no incidents of expulsion, why examine, prepare for, or even enable such a contingency? A possible answer lies in the intrinsic instabilities of many – especially heterogeneous – polities and the search for stabilizing safeguards: In federations facing the repeated non-compliance of a member state with agreed upon laws, norms, and obligations, in a way that potentially threatens the functioning and survival of the rest of the union, a provision for expulsion could be the last bulwark standing between stability and political paralysis or even civil war. In an era of heightened national division and attempts to heal ethnic tension through new federalization[6], it seems sensible to examine the possibility of safeguards for these federal projects. It falls upon political theory to consider such constellations – even in the face of historical precedent, and even if the option of expulsion seems like little more than a second-best solution.

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[4] It has been suggested – but not sufficiently proven - that prime minister Yew had in fact worked towards a de facto secession for months. Cf. Bill K. P. Chou, "Singapore: Expulsion or Negotiated Secession," in *The Ashgate Research Companion to Secession*, ed. Aleksandr Pavkovic and Peter Radan (Farnham, 2013).

[5] There is no agreed upon term for the process of a member state's involuntary separation from a federation. Expulsion is the most frequent term, but Luzius Wildhaber, for example, speaks of exclusion, Aziz Bari of eviction and separation (Aziz Bari, "Malaysian Constitutional Perspectives on the Admission and Separation of Singapore"; Luzius Wildhaber, "Territorial Modifications and Breakups in Federal States," *Canadian Yearbook of International Law* 33 (1995): 41–74; Aleksandar Pavković, *Creating New States: Theory and Practice of Secession* (Aldershot, Hampshire, England; Burlington, VT: Ashgate, 2007), 34.) This terminological confusion is, however, not a sign of conceptual contestation, but merely of theoretical disregard, as will be discussed in section 3.

[6] Such designs have lately been implemented in Iraq and South Sudan and are being considered for Yemen and Cyprus.

This paper investigates the reasons behind and implications of this blind spot in political theory as well as constitutional practice. It argues that the omission of expulsion constitutes a problematic oversight, the roots of which lie in methodological limitations of theories of federalism as they are currently conducted. It will be argued that this omission must be remedied through a more comprehensive theorization, which could offer guidance on the plausibility of an expulsion clause as a constitutional last resort in a specific federal constellation. The following two sections highlight the distinct disregard of flexible membership in federations in federal theory *and* practice and argue why this is problematic. Based on this diagnosis, the fourth section will consider the circumstances under which an expulsion clause could be considered as an option of last resort. A number of criteria for a more comprehensive theorization will be introduced that can help determine if specific federations, such as the European Union – discussed in the last section –, might benefit from a carefully designed expulsion clause.

2. Not an option? Expulsion in federal practice

In current federations around the globe, constitutional arrangements for the exit of a member state from a federation are extremely rare – even though secessionist movements themselves are a frequent phenomenon in modern history. No state constitution contains a procedure for expulsion, and of the 27 currently sovereign *de iure* federal countries, only Ethiopia, St. Kitt's and Nevis,[7] as well as newly established South Sudan, have adopted constitutional provisions for consensual or unilateral secession. Even though there has been no scarcity of secessionist movements in modern history, governments have typically dealt with these separatisms on an ad-hoc basis and by extra-constitutional or quasi-constitutional means - secessionists have been either rebutted or accommodated through custom-tailored solutions. One example is the case of Spain, where separatism has induced *de facto* federalization with the goal of preventing secession. Great Britain has pushed forward devolutionary measures; most prominently, the legislative authorities have devolved to regional parliaments in Scotland, Northern Ireland, London and Wales. In the unique case of the Quebequois demand for independence from Canada, the Canadian Supreme Court outlined a process for

[7] Cf. Norman, *Negotiating Nationalism. Nation-Building, Federalism, and Secession in the Multinational State*, 176. Historically, the USSR, Yugoslavia and Burma constitutions contained a secession provision.

potential secession through mutual agreement effectively reading a secession clause into the constitution – and prohibiting unilateral exit. Secession ultimately did not occur, but the judgement *Reference Re Secession* of 1998 served as a basis for increased regional autonomy.[8]

This exceptionality of formal secession clauses and absence of expulsion clauses, however, does not mean that the issues of internal tension and non-compliance of member states are not legally addressed at all. A number of constitutions contain sanctions that federal governments can impose on states in the case of recurring violation against certain laws, norms and obligations. These sanctioning mechanisms seem to prioritize the member state's re-integration by creating incentives for renewed cooperation within the union. Such measures include the suspension of a number of rights and privileges, but in some cases also the overtaking of certain state functions by the federal government in the case of actual non-compliance. The Swiss constitution of 1999, for example, contains an imperative for cooperation between the federal government and the cantons (article 44), which is sanctioned through additional provisions in the cantonal constitutions.[9] The German Basic Law, by contrast, contains a more punitive article on "federal coercion." According to this (never enforced) safeguard in article 37, the federal government is entitled to coerce a state into fulfilling its obligations as prescribed in the constitution and other federal laws.[10] While legal scholars agree that this provision contains far-reaching rights to intervene, all of these sanctions and coercive measures are considered temporary and do not encroach on the state's political rights in the federal union. The state's voting rights in the Bundesrat may not be impaired, nor may the military intervene, or the state be dissolved.[11] The strategy implied

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[8] Cf. Reference Re: Secession of Quebec, No. 2 SCR 217 (Supreme Court of Canada August 20, 1998); Pavković, *Creating New States*, 226–32.

[9] Cf. Fabian Wittreck, "Die Bundestreue," in *Handbuch Föderalisrnus. Band 1: Föderalisrnus Als Demokratische Rechtsordnung Und Rechtskultur in Deutschland, Europa Und Der Welt*, ed. Ines Härtel (Berlin/Heidelberg: Springer-Verlag, 2012), 504.

[10] There is a structural connection between federal coercion and its guiding norm, federal loyalty, under which both the federal and the state level are obligated to cooperate and adhere to the federation's principles – the violation of federal loyalty can be seen as the legitimation of the use of federal coercion. For a comparative constitutional perspective cf. Wittreck, "Die Bundestreue."

[11] Hans Bernhard Brockmeyer, Hans Hofmann, and Bruno Schmidt-Bleibtreu, *GG, Kommentar zum Grundgesetz* (Köln: Heymann, 2014), 1146; Hans D Jarass, Bodo Pieroth, and Verlag C. H. Beck, *Grundgesetz für die Bundesrepublik Deutschland*, 2016, 732f. It remains contested whether the federal government would have the right to replace a non-compliant state's government. A

in this provision is to force the non-compliant member state back into the functioning federal union through temporary, closely circumscribed measures. Like its predecessors in the German Bund and the Reich, the provision is less a bulwark against an existential threat to the union's integrity than a procedure to ensure efficient government.[12]

The U. S. case is more complicated. Although James Madison had hoped to introduce powers of coercion into the institutional framework of the young nation[13]; The United States constitution remains vague on the issue of state noncompliance; it does contain, in article 4, section 4, the so-called "Republican Clause" – a republican requirement for federalism, not dissimilar to arguments by Montesquieu and Kant according to which each state within a federation must adhere to republican government.[14] This clause, formulating that all states require and are entitled to republican government, is unspecific and of largely appellatory character – and it has been juridically ignored.[15] In a seminal ruling, the Supreme Court declared the clause non-justiciable – and left it, as a solely political matter, to the discretion of Congress and the President.[16] The requirement of republican government thus remains too vague and unspecific to qualify as a material provision for dealing with – and potentially expelling – member states in violation of this principle. While the United States' Organic Law has – through the Northwest Ordinance of 1787 – since its inception imposed a republican conditionality on new states, there is no sanctioning mechanism for ensuring the continued republican character of these states.[17]

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precedent for this is the explosive "Preußenschlag" in Weimar Germany on the basis of article 48.

12 Cf. Foroud Shirvani, "Die Bundes- Und Reichsexekution in Der Deutschen Verfassungsgeschichte," *Der Staat* 50, no. 1 (2011): 112.

13 Madison had formulated the need for coercion of a state in violation of its federal duties in a 1781 report for the Continental Congress, and – with a bit more hesitation – in his summary of the Vices of the Political System of the United States in April 1787. An according provision in the draft of the Virginia Plan was, however, quickly dropped. Cf. Jack N. Rakove, "'A Real Nondescript'. James Madison's Thoughts on States' Rights and Federalism," in *Union and States' Rights*, ed. Neil Cogan (Akron: Akron University Press, 2013), 13–29.

14 This imperative has been formulated by Montesquieu, though with reference to a loose confederal arrangement, as well as albeit vaguely, by Kant in his writing on world federation (Montesquieu, The Spirit of the Laws, Book IX, chapter II; Immanuel Kant, "Toward Perpeutal Peace," in *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, Ed. Paul Guzer and Allen W. Wood (Cambridge: Cambridge University Press, 1996), 325f.)

15 For example, the non-republican form government in Rhode Island ended only in 1841 due to a popular rebellion within the state itself, not in reaction to federal sanctions or an activation of the Republican Clause. I am grateful to Alison LaCroix for alerting me to this.

16 "Luther v. Borden 48 U.S. 1 (1849)," *Justia Law*, accessed January 15, 2017, https://supreme.justia.com/cases/federal/us/48/1/case.html.

17 Cf. Matthew J. Hegreness, "An Organic Law Theory of the Fourteenth Amendment: The Northwest Ordinance as the Source of Rights, Privileges, and Immunities," *The Yale Law Journal* 120, no. 7 (2011): 1820–84.

While, in sum, some federal constitutional frameworks allow for secession or consider the possibility of sanctioning non-compliant members, the unilateral detachment of a member state is constitutionally unheard of. The political problem of federal instability, due to a member's violation of basic norms and laws within the union, is addressed only under the assumption that the member can, through sanctions and incentives, be motivated to return to compliant behavior.

3. Political theory and expulsion

Theories of federation, by contrast, have the methodological liberty of considering the possibility of expulsion even in the absence of historical precedent. Yet, here we also encounter a distinct disregard for the very possibility, let alone potential benefits, of excluding a member from the union. This gap is striking especially in comparison with the extensive theoretical and empirical attention for another variant of membership flexibility, secession.

Generally, for many accounts of the dynamic dimension of federalism, the formation and stabilization of federalism have been consistently of higher interest than the corrosion and disintegration of federations. Federal formation is often described with reference to Alfred Stepan's concepts of "coming together" and "holding together" federalisms – the formation of a political unit by sovereign polities with strong identities versus the federalization of a polity through devolution.[18] Koen Lenaerts has proposed a similar typology with the distinction between "integrative" and "devolutionary" federalism.[19] The former denotes a centripetal move towards unity among formerly independent or confederated states, whereas the latter describes a centrifugal tendency in a previously unitary state. Both movements can prove ruinous for the delicate balance between unity and diversity necessary to maintain a federation. While Stepan and Lenaerts acknowledge the possibility of an overly centripetal federalization towards unitary statehood, they especially warn of the danger inherent in centrifugal federalization, i.e., excessive

[18] Alfred Stepan, "Toward a New Comparative Politics of Federalism, Multinationalism, and Democracy: Beyond Rikerian Federalism," in *Federalism and Democracy in Latin America*, ed. Edward L. Gibson (Baltimore; London: Johns Hopkins University Press, 2004), 33f. Stepan adds a third variant, coercive "putting together" as in the case of the Soviet Union, though he admonishes the incompatibility with democracy. This coercive type of federal formation is only very infrequently noted in current scholarship on federalism.

[19] Lenaerts himself varies a tripartite typology by Edward McWhinney in 1965 as monistic, pluralistic and dualistic: Koen Lenaerts, "Constitutionalism and the Many Faces of Federalism," *The American Journal of Comparative Law* 38, no. 2 (1990): 206.

devolution of powers ultimately resulting in a complete breakup of the union. And in his highly regarded book on *Political Stability in Federal Governments*, political scientist Jonathan Lemco acknowledges with reference to Ronald Watts' federal theory the problem of member states' intransigence and the importance of political compromise and shared interest, highlighting various scenarios of instability,[20] but fails to even mention the scenario of expulsion. Even though membership flexibility therefore figures in some typologies, the exclusive focus lies on various worst-case scenarios except for expulsion. Federal dissolution is seen as structurally limited to accession, secession, and complete breakup.[21]

The interest in the formation and stability of federations, paradoxically along with the neglect of the possibility of expulsion, is visible in some of the most influential theories of federal dynamics. As a brief survey can serve to highlight a central reason why expulsion does not figure in typologies of federal dynamics lies in guiding methodological assumptions. These assumptions can be described as voluntarist (a), organicist (b), and positivist (c) and exemplified along some of the canonical works of federalism theory.

(a) In a chapter from his 1968 book on *Trends of Federalism in Theory and Practice*, Carl Friedrich – one of the pioneers to comprehensively reflect on the dynamics of federal polities – famously examined federalism as a process. His argument included a strong emphasis on the importance of continuous "federal loyalty" after the formation of a federation;[22] yet he does not reflect on any response to betrayed loyalty besides secession and civil war. In an early survey essay on *The Admission of New States, Secession and Territorial Adjustments*, Friedrich had even rejected the plausibility of secession: "The creation of a federal state involves a permanent commitment to collaborate according to the terms set forth in the constitution. That the terms include the right not to collaborate is self-contradictory. Each federal constitution provides that federal law is supreme in its own sphere and operates directly on individuals. States cannot be made the judge of the

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[20] Jonathan Lemco, *Political Stability in Federal Governments* (New York: Praeger, 1991), 16, 166. For the distinction between different dimensions of stability, including territorial stability, see Leo A. Hazlewood, "Concept and Measurement Stability in the Study of Conflict Behavior Within Nations," *Comparative Political Studies* 6, no. 2 (July 1, 1973): 171–95.

[21] "Federations can die in two ways. The state can break into multiple parts and cease to exist, or the state can become unitary." (Brian D. Taylor, "Force and Federalism. Controlling Coercion in Federal Hybrid Regimes," *Comparative Politics* 39, no. 4 (2007): 423).

[22] Friedrich here evokes the German term, "Bundestreue". Carl J Friedrich, *Trends of Federalism in Theory and Practice* (New York/Washington/London: Frederick A. Prager, 1968), 175.

legitimacy of federal law if, in fact, there is to be federal government."[23] According to Friedrich, it is with good reason that constitutions do not encourage secession; the United States had to learn this lesson through a disastrous war. As a result, in all cases after the Civil War, the Supreme Court denied the right to secession, insisting instead on the "indestructible Union composed of indestructible States".[24] Membership flexibility, in Friedrich's account, has clear limits: In his vision of an ultimately free and equal federation,[25] accession is voluntary, so the only imaginable – if clearly undesirable - scenario of federal dissolution is also voluntary. A severing of federal ties without the consent of the state in question transcends the normative horizon of this voluntarist view of federalism.

(b) As one of the most eminent proponents of a free and voluntary federalism, Daniel Elazar sees federation as a covenant of independent political communities forming a new polity. He describes the importance of stability in federations in a similar voluntarism-oriented, though somewhat differently oriented vein as Friedrich: A truly covenantal federation, such as the United States, constitutes a new nation – a "network of cooperative communities"[26] that is intimately interwoven across state boundaries. Elazar's notion of federalism is therefore not only too normatively thick to allow for expulsion, but it also too deterritorialized: The political ideal he considers to be realized in the United States is one of indissoluble fusion. In Elazar's view, proponents of secession, most famously John C. Calhoun, misunderstand the true nature of federalism when they consider it an expedient but finite contract among continuously independent members. Rather, it is a compact under a moral, even divine[27] aegis, destined to last in its completion, and not up for renegotiation. Accordingly, decentralizing tendencies, just like centralizing tendencies, must be controlled through political and institutional accommodations in order to prevent separatist or disintegrative inclinations.[28] Elazar thus goes in his assumptions beyond an Friedrich's insistence on the voluntary nature of

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[23] Carl J. Friedrich, *The Admission of New States, Secession and Territorial Adjustments*, Studies in Federalism (Cambridge: Harvard Law School, 1952), 12.
[24] Cit. in Ibid., 9.
[25] Cf. Michael Burgess, *In Search of the Federal Spirit: New Comparative Empirical and Theoretical Perspectives* (Oxford: Oxford University Press, 2012), chap. 5.
[26] Daniel J. Elazar, *Covenant & Constitutionalism. The Great Frontier & The Matrix of Federal Democracy*, Volume III of the Covenant Tradition in Politics (New Brunswick; New York: Transaction Publishers, 1998), 177.
[27] Daniel J. Elazar, *Covenant & Constitutionalism. The Great Frontier & The Matrix of Federal Democracy*, Volume III of the Covenant Tradition in Politics (New Brunswick; New York: Transaction Publishers, 1998), 105.
[28] Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa/ London: University of Alabama Press, 1987), 222.

federalism. Although he emphatically refuses organicist notions of neo-Jacobin uniformity, Elazar's federal vision is one of complex fusion in which the extraction of one part would be an injury to the whole. Once the covenant between autonomous polities is agreed upon, no single state should desire, or be capable of autonomy. What makes secession, and even more so expulsion, irregular to the point of impossibility is the organic nature of the union. While in rare cases one part might desire to reverse the fusion, it is unimaginable to Elazar that majority of members might decide to sever a federal "limb." To be sure, even the federal idealist Elazar acknowledges that a federation might fail through secession, centralization, the dictatorial "ascendancy of a strong man"[29] or an overall "breakup", but the possibility of expulsion plays no role in this seemingly comprehensive survey of constellations of federal collapse. It is simply unimaginable to him that a federation might exist in which the members could agree to expel another member for persistently violating their covenant. This, however, reveals a theoretical inconsistency. When Elazar insists on the sacred and inviolable character of an covenantal union, it would be precisely this belief in a federal project or mission providing "for joint action or obligation to achieve defined ends (limited or comprehensive) under conditions of mutual respect"[30] that should render the issue of federal loyalty and compliance quite central. This omission becomes manifest in Elazar's presentation of Singapore's forced independence in 1965 as an example of secession; once expulsion is an issue, he reinterprets it to fit into his normative framework.[31]

(c) In a third vein, since the 1980s, comparative politics and the study of political organizations have shown a strong positivist interest in the workings of federal dynamics. Arthur Benz, among others, has explored the dynamics of federal change, with a clear focus on the dialectical oscillation between decentralization and centralization.[32] In a study of federal dynamics in Germany, for example, Benz identifies obstacles within the system such as the blockage between federal and state actors with regard to education policy. Precisely such issues, however, elicit gradual reforms, i.e., an "adaptation or

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[29] Ibid., 241.

[30] Elazar, *Covenant & Constitutionalism. The Great Frontier & The Matrix of Federal Democracy*, 7.

[31] Elazar, *Exploring Federalism*, 243. This normative imperative to present federal dynamics as consensual, egalitarian and fair seems to be crucial for the political language of the only historical case for expulsion, i.e. of Singapore from Malaysia.

[32] Arthur Benz, "Zur Dynamik Der Föderativen Staatsorganisation," *Politische Vierteljahresschrift* 25, no. 1 (1984): 57.

change of the structures of power and influence in the system", [33] and thus mitigate fundamental changes to the system itself that could amount to membership changes. When, in a recent comparative volume, Arthur Benz and Jörg Broschek similarly ask "*What* changes within federal systems?" [34], they reiterate the agenda of exploring dynamics *within* stable federations rather than the structural and territorial transformations of the overall system. An analysis of intra-federal change, with existing federations as the subject of analysis, is arguably of crucial importance considering the ongoing tensions in various federal countries today. Yet the underlying observation of the fundamental dynamics of federalism does not allow for the consideration of membership flexibility: "To argue that federal systems are dynamic does not imply that they are necessarily unstable."[35] "Not necessarily" here means that the analyses operate on the assumption of stabilizing self-correction, disregarding the possibility of collapse. The positivist focus on the multidimensional and dialectical "interplay between continuity and change" excludes scenarios where the dialectic may not work towards reform but instead towards federal membership changes – even though a multidimensional approach might be very capable of describing and explaining the complexity of ruptures such as secession and expulsion.

The reasons for this shared disregard for expulsion in canonical theories of federal dynamics – Friedrich's theory of federalism as a voluntary process, Elazar's idea of the organic covenant, and Benz' and Broschek's multidimensional framework of federal dialectics – lies in their conceptual assumptions. Federations, as highly integrated heterogeneous states, are for normative or methodological reasons assumed to be *ipso eo* durable and permanent. They are frequently juxtaposed with looser and less stable confederal arrangements – a definitional tool most influentially employed in the founding documents of the United States. Friedrich and Elazar's rejection of any right to secession, which at the most considers, as in the case of Friedrich, territorial regrouping, is founded in this belief in the longevity and durability of the polity by virtue of *not* being a loose confederation. But why do even theorists of federalism – who are in their theorization not tied to historical precedent - only consider the scenario of secession,

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[33] Ibid., 61. Cf. Fritz Scharpf's work on federal joint decision traps, for example Fritz W. Scharpf, "The Joint-Decision Trap: Lessons from German Federalism and European Integration," *Public Administration* 66, no. 3 (September 1, 1988): 239–78.
[34] Arthur Benz and Jörg Broschek, *Federal Dynamics: Continuity, Change, and the Varieties of Federalism* (OUP Oxford, 2013), 3.
[35] Ibid., 382.

and not at all that of expulsion? While Friedrich and Elazar reject the right to secession, they acknowledge its possibility since they assume the voluntary nature of all federations. Within a federal framework, regions and states are considered important carriers of strong identities, which, although they may no longer be sovereign, are the location of a certain degree of autonomy. As such, they have joined the federation on a free and voluntary basis. [36] In the case of Benz' and Broschek's framework of federal dynamic, the assumption of federal stability is mainly due to methodological considerations focusing on the internal dynamics of federations as a more or less closed political system. They assume the extent and membership of a federation as an independent variable. The result, however, is similar to the stances of Elazar and Watts. The positivist focus on narrowly understood and previously observed federal states results in neglecting the scenario of expulsion in a presumably comprehensive theoretical framework.

This overall absence of any reflection on expulsion in recent theories of federation, especially their integration and disintegration, is surprising as well as problematic. A comprehensive theory of how dynamics of vertically shared and territorially segmented power evolve should be expected to offer a framework of *all* possible configurations – not only those that have occurred in the recorded past or those that are legally possible or normatively desirable in the present. Beyond the taxonomic requirement, even if from a normative standpoint expulsion is seen as a harmful or extremely unlikely event, this argument should be made explicitly - as theorists have done in their repeated rebuttals of secession, instead of tacitly omitted –, and they should consider it in relation to other undesirable outcomes such as civil war or federal collapse.[37] The failure to consider the scenario of expulsion does not only result in unsatisfactory theorization. "Wishful theorizing" can ultimately affect political agency. If political scientists and theorists do not supply practicable advice on why far-sighted constitutional design is expedient, and what it would look like, this might leave political institutions unprepared for

[36] Assuming the continued autonomy of single states within an integrated federation of course ignores the very process of a fusion of states into a new polity that Elazar so vividly illustrates; and yet, this seems to be the only route to make secession imaginable at all, as a process of voluntary uncoupling. Cf. Daniel J. Elazar, "Introduction: The Meaning of American Federalism," in *The Politics of American Federalism* (Lexington: D. C. Heath and Company, 1969), xv.

[37] In debates on secession, for example, it has been a subject of explicit discussion whether a right to secession exists as a peremptory norm in international law, even absent its constitutional codification. Cf. David Armitage, "Secession and Civil War," in *Secession as an International Phenomenon*, ed. Don H. Doyle (Athens: University of Georgia Press, 2010), 43.

unprecedented constellations. One could argue that the very task of theorists is to highlight possible scenarios, even if they are unlikely, and *especially* if they are undesirable.

4. How to consider expulsion

Recent political developments suggest that the implications of this omission – even if maintained with the best normative intentions – are not purely academic. The European Union, possibly the largest and most experimental federal arrangement in contemporary politics, is facing not only a process of secession in the case of Brexit, but continuous violations of the very rules and norms that are constitutive to its admission process – and it lacks both a legal and an analytical framework to face this crisis. Would an expulsion clause be an appropriate option for this federal system? Determining whether a specific federation - with the EU as one possible case among many - would benefit from further reflection on expulsion requires, first and foremost, that political theory starts to consider the implications and applicability of such a provision. Which dimensions must be considered in evaluating federal expulsion, which mistakes avoided? In this section, instead of offering a full-fledged theory of federal dynamics, several key criteria towards theorizing expulsion will be explored. These preliminary criteria can serve as useful conceptual guideposts towards seem normative discussions of the desirability of expulsion – either as a general rule for all federations, as a clause for some federations, or as a recommendation for a specific federal conflict.

Conceptualizing federalism

A dynamic account of how federations form, develop and dissolve should first offer a plausible conception of federation.[38] What are its driving and stabilizing forces? How many levels of power division can there be? Does a distribution of competences have to be constitutionally enshrined? Is the power and competence division territorially segmented? How durable, comprehensive and stationary is a federal arrangement? Here, the shortcomings of current theories elaborated so far should be avoided. One issue here is the definitional scope between normativism and positivism. To be sure, as federalism remains a contested concept, a conception does not necessarily have to be very broad in

[38] Here, Preston King's seminal distinction between federalism, as a tendency or attitude, and federation, as an institutional arrangement, is of considerable importance (Preston King, *Federalism and Federation* (London & Canberra: Croom Helm, 1982)).

order to be viable. While, however, a definition of federation can plausibly be confined to a narrow phenomenological scope – ranging somewhere between a transhistoric and a presentist approach -, within this scope they should, qua theoretical comprehensiveness, go beyond a mere positivism that only acknowledges federalisms of the kind that has historical or current precedent. All possible constellations within the federal process should be explored, not just those observable under the current or previously existing legal status quo. In addition to this positivist fallacy, a plausible conception of federation should avoid normative reductionism, unless it is fully substantiated and consistently supported. For example, the insistence on voluntariness seems to not fulfill this condition. It rather leads to a possibly inconsistent reductionism that renders the conceptual framework unable to account for phenomena directly concerning a large number of federations, such as the formation of federations under external pressure,[39] the accession of members under unequal conditions[40] or the drastic asymmetry within many federal systems that undermines a state's ability to secede; political reality is interpreted to fit the theoretical framework. The danger of "wishful theorization" thus lies in the exclusion of unwelcome implications of conceptual assumptions – including, but not limited to expulsion. Avoiding inconsistent conceptual limitations also means that a plausible definition of federation should use counter-concepts carefully. The dominant dichotomy between sovereign federation and non-sovereign confederation is misleading in this regard: The presumption that a confederation is inherently weak and temporary with regard to its extent and existence, and always on the brink of either dissolution or federal centralization, constructs ex negativo the image of a federation as immune to any such fundamental territorial fluctuations and adaptations in membership. This juxtaposition according to quality - i. e. weakness vs. strength - is ultimately counterproductive to designing a federation that is realistically durable. It denies the inclusion of possibly stabilizing flexibility.

A more realist attempt[41] at theorization that acknowledges the political and not just normative or positivist content of federal dynamics could focus on the question of what

[39] Relevant examples are the formation of the current constitution of Iraq, various post-colonial constitutions, but even the German Grundgesetz.
[40] The expansion of the United States is a possible example.
[41] Broadly understood as the attempt to counteract the "displacement of politics in political theory", in the words of Bonnie Honig (cf. for a discussion of the unifying features of realism William A Galston, "Realism in Political Theory," *European Journal of Political Theory* 9, no. 4 (October 1, 2010): 386.)

functionally holds a federal arrangement together – and at what point functional factors might prompt it to change.[42] Numerous factors for federal cohesion have been proposed in the past: a shared history, identity or values, stronger common defense and trade, or a desire for other political and economic gains such as efficiency or mobility. Shifting the conceptual focus away from narrow institutional markers towards push and pull factors within federalism, such as shared vs. competing interests or commonly faced problems,[43] might provide better answers to the question of how federations develop and transform -[44] and how such factors might interact in determining federal stability. In a perspective on federation as a political arrangement for conflict resolution and the pursuit of shared interests in a territorial constellation of particular and shared identities, federal cohesion can be weakened if conflicts are not resolved but heightened, or if interests are not furthered but undermined by the federal union. In such contexts, membership changes can potentially prevent more conflicts and retain functional benefits. Secession, for example, might be a plausible consequence of a persistent disconnect between a member's interests from that of the overarching federation. Conversely, in cases where non-compliant members persistently undermine the factors of cohesion, expulsion can serve as an option for safeguarding the remainder of the federation. In such a

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[42] On possible elements and markers of political stability see Lemco, *Political Stability in Federal Governments*.

[43] A conceptual framework that acknowledges the political dynamic of push and pull factors can be found in recent debates on integration and disintegration. The concept of disintegration refers to dynamics running counter ongoing integration processes which can, in the most extreme case, lead to complete dissolution. To be sure, also here, membership dynamics are largely ignored, despite the improved focus on dynamic factors beyond the institutional status quo (Henrik Scheller and Annegret Eppler, "European Disintegration – Non-Existing Phenomenon or a Blind Spot of European Integration Research?," *Institut Für Europäische Integrationsforschung Working Paper*, no. 2 (2014) Douglas Webber, "How Likely Is It That the European Union Will Disintegrate? A Critical Analysis of Competing Theoretical Perspectives," *European Journal of International Relations* 20, no. 2 (June 1, 2014): 341–65.) Daniel Kelemen, describing the (dis-)integration process with a partly federal vocabulary, maps out the following scenarios for disintegration: total dissolution, limited secession under Art 50, gradual atrophy, variable geometry, and even civil war; they are, in his view, variants of centrifugal "explosion", and possibly of "state shirking", but even this very non-status quo oriented analysis omits expulsion (R. Daniel Kelemen, "Built to Last? The Durability of EU Federalism," in *Making History: State of the European Union*, ed. Sophie; McNamara Meunier Kate, vol. 8 (Oxford: Oxford University Press, 2007), 61ff.). Cf. Benz, "Zur Dynamik Der Föderativen Staatsorganisation"; Franz C. Meyer, "Of Blind Men, Elephants and European Disintegration – What Could and What Should Legal Academics Do against the 'disintegration' of Europe?," *Verfassungsblog*, accessed December 22, 2016, http://verfassungsblog.de/von-blinden-maennern-und-elefanten-was-kann-und-sollte-die-rechtswissenschaft-gegen-die-desintegration-europas-tun/.

[44] Cf. Turkuler Isiksel's proposal to analyze the EU framework along criteria of functional constitutionalism: Turkuler Isiksel, "On Europe's Functional Constitutionalism Towards a Constitutional Theory of Specialized International Regimes," *Constellations* 19, no. 1 (2012): 102–20.

constellation of a mismatch of interests or of latent conflict, integrating an expulsion clause into the constitution has a twofold potential – deterring members from non-compliance,[45] and providing a contingency plan for preventing complete collapse in case a non-compliant member refuses to exit voluntarily. This would provide an option for resolving internal federal tensions outside of forced cohesion or complete disintegration, and for retaining the functional benefits of federalism for those members still interested in it.

Determining applicability

To be sure, expulsion is not a suitable or necessary option for all federations covered by a broad definition. Many federal constellations are incompatible with flexible membership. How can one determine when an expulsion clause would be even feasible as a fail-safe mechanism for a federation, or when it might fundamentally clash with the structure and goals of a specific polity? In order to examine the applicability of expulsion, it is crucial to evaluate the constraints within each constellation, both in terms of the defining features of the feder*ation* as outlined above, as well as in terms of ideological constraints of federal*ism*.[46]

For a specific federation, one must determine if the separation of a state from the federal union is feasible. Are the two entities separable, or are they too institutionally entangled? Additionally, do the member states in question possess a high enough degree of autonomy and distinct identity to be able to form self-contained polities? This latter criterion connects to the specifically political character of federation. Membership in a federation shapes the political identity of the states and its citizens in a more fundamental way than treaty obligations do. This is why an analogy between federations and loose economic or military treaty systems or international organizations – many of which contain expulsion clauses[47] – is incomplete. Membership in these organizations does not

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[45] Cf. Wayne Norman's argument that a constitutionalization of secession has the potential of reducing the incentives for secession by tying it to a specific set of rules (Norman, *Negotiating Nationalism. Nation-Building, Federalism, and Secession in the Multinational State*, 208).

[46] Cf. King, *Federalism and Federation*; Jörg Broschek, "Conceptualizing and Theorizing Constitutional Change in Federal Systems: Insights from Historical Institutionalism," *Regional & Federal Studies* 21, no. 4–5 (December 1, 2011): 547.

[47] International organizations struggling with the enforcement of rule and norms and the sanctioning of non-compliant members have in the past experimented with expulsion, albeit with mixed results. Historically, the League of Nations is a central example for both the existence of an expulsion clause and the irrelevance of expulsion, as in the case of Soviet Russia in 1939, due to the overall weakness of the union. The United Nations, by contrast, have only threatened an

affect the political character of the respective state in the same manner as membership in a federal polity. The federal character of elements such as citizenship affects the level of difficulty through which such bonds can be released. Very tightly-knit federal arrangements can be too constitutive for the political existence and identity of its members, and involuntary separation can run into both practical as well as significant normative problems if the expelled state is unable to form a sustainable and autonomous polity. Indeed, in long-standing federations such as the United States, the centripetal fusion of the member states might have progressed beyond the point of a possible dissolution – because of the dominance of a shared identity of "one people", as evoked by the Framers, and because of a strong entanglement of competences that would leave an expelled state hard-pressed to govern itself independently. If the federation is too tightly integrated,[48] stabilizing measures have to be limited to devolution or sanctions, rather than membership flexibility. If there is a strong consensus barring these issues from the debate, it will be all but impossible to introduce flexible membership to the federation.

In order to capture the constraints of federal*ism* in a specific federal constellation, one must consider its basic constitutional principles as well as the attitudes towards federation, or what Jörg Broschek has called the "ideational layer",[49] among the population and the political elite. At first glance, constitutionally enshrined and upheld principle of durability and permanence seems like a particularly relevant ideological constraint on federal flexibility. If Dan Doyle writes with regard to secession that "it is difficult to imagine any nation-state presenting itself as a transient, temporary arrangement that it intends to dissolve in the future",[50] this might appear to be true for

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activation of the Charta's article II towards South Africa in 1974, followed by a suspension of voting rights that was reversed after the democratic elections in 1995. (Cf. Konstantinos D Magliveras, *Exclusion from Participation in International Organisations: The Law and Practice behind Member States' Expulsion and Suspension of Membership* (The Hague; Boston: Kluwer Law International, 1999; Louis Sohn, "Expulsion or Forced Withdrawal from an International Organization," *Harvard Law Review* 77, no. 8 (1964): 1381–1425.; CN Patel, "The Politics of State Expulsion from the United Nations — South Africa a Case in Point," *The Comparative and International Law Journal of Southern Africa* 13, no. 3 (November 1980): 310–23. On democratic standards within regional organizations, specifically the Organisation of American States, see Jorge Heine and Brigitte Weiffen, *21st Century Democracy Promotion in the Americas: Standing up for the Polity*, 2015.

[48] Presumably this is what Friedrich means when he speaks of „closedness": "Closed federal systems usually exclude secession, but many federal systems have had to face the problem of the admission of new members. […]. It stands to reason that the looser a federal order is, the more readily will it admit new members and allow old members to secede." (Friedrich 1968, p. 85)

[49] Broschek, "Conceptualizing and Theorizing Constitutional Change in Federal Systems," 547.

[50] Doyle 2010, p. 4.

expulsion as well. However, the goal of durability is not crucial here – indeed most political projects aspire to long-term stability, and very few are framed as temporary projects. Where they vary is with regard to the subject of stability, and thus in their preparedness for compromise in order to achieve this stability. A prevalent notion of territorial and membership permanence in the spirit of Elazar's organic notion of federalism would render expulsion impossible: To constitutional framers, politicians or the wider population insisting on keeping the polity unchanged, it might be preferable to give up the federal project altogether rather than sparing one "limb." In this case, the option of expulsion is no valuable addition to the political and legal repertoire, perhaps until a new consensus can be reached. If, however, the federation's self-conception can be plausibly understood as aiming for the endurance of the *overall federal project*, even if this requires a change in extent, constitutionalized expulsion could serve as an instrument of stabilization – especially if the goal is to preserve the federation even at the cost of flexible membership. Such a federation aiming at flexible permanence might be well-advised to include the possibility of expulsion in order to avoid the collapse of the entire union, when put in danger by a non-compliant member state. In deciding whether a polity should consider the possibility of an expulsion clause, the critical question is thus not whether it is a federation or a confederation, but instead whether structural rearrangement is institutionally and ideologically possible. The reply to this could be positive even in cases of closely integrated federations with members that have long relinquished central elements of their sovereignty, but retained important components of regional identity and autonomy.

Three caveats

Once expulsion seems like it could be applicable, at least two objections with regard to the desirability and the related cautious design of an expulsion clause must be considered. First, there is a danger of centralism inherent to expulsion. One could argue that federations must be voluntary and not shaped by strong power relations, especially not by coercion of the states by the center - and expulsion, understood as a coercive act of the sovereign center against an inferior member state, would contradict this goal.[51]

[51] Such relationships can certain approximate colonial hierarchy, as in the relationship between the United States and Puerto Rico. As Christina Duffy Burnett has shown, an forced exit of Puerto Rico would be constitutionally possible, but only from an already very unequal union, and in the form of deannexation initiated by Congress instead of the remaining states (Christina Duffy Burnett, "Untied States: American Expansion and Territorial Deannexation," *The University of Chicago Law Review* 72, no. 3 (2005): 797–879).

However, in the system of expulsion outlined above, expulsion would require the shared decision of the federal members. In order to ensure this, the decision mechanism for expulsion must be collective instead of centralist. The remaining members collectively must decide to expel an intransigent member state, not the federal government. The federal government's role should lie in the execution of the decision, not in its formation. In a two-chamber system, this would mean that the upper chamber has to partake in the decision, not just the lower chamber; votes from the single member states – except for the one under consideration for expulsion – should be taken into account. A guideline that is too vague or an inadequate transition period could result in just what the clause is designed to prevent: an orderly and mutually bearable detachment.

Finally, how do these considerations on expulsion relate to those on secession, as discussed extensively in recent debates? Both mechanisms share important parallels: Both processes of membership change be related to the goal of orderly disintegration instead of chaos and potentially civil war. In addition, neither is tied to an idea of the polity as territorially stationary and organic: Just as "peaceful secession might provide a rational means of ending irreconcilable differences that come to light in "marriages" that were arranged by imperial rulers or forced by circumstances that have changed over time",[52] expulsion can be seen as a mechanism to divorce a marriage gone awry in a manner that cuts both parties' loss. Yet, expulsion is not a precise mirror image of secession: Firstly, secession can occur in unitary as well as federal states,[53] whereas expulsion seems to only apply to federal states in which there is a plausible notion of existing territorial sub-units. Secondly and more importantly, both mechanisms pursue very different normative goals: While arguments for secession rely on norms of self-determination and collective choice,[54] arguments for expulsion more plausibly evoke the realization of other norms through a political project that needs to be persevered, such as rule of law, liberal democracy, and distributive justice. The two mechanisms thus do not necessarily go hand in hand; a constitution containing a secession clause thus must not necessarily – but could - contain an expulsion clause or vice versa.

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[52] Doyle 2010, p. 3.

[53] As Pavkovic and Radan have argued, secession is more likely in federal states, but secession from a unitary state is not impossible Pavković, *Creating New States,* 13f.

[54] Cf. Allen E Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder: Westview Press, 1991); Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005).

5. Conclusion: A safeguard for the European Union?

The European Union is currently, in both a constitutional and institutional sense, underequipped to resolve its internal tensions. These tensions are characteristic for challenges confronted by federal governments as outlined above, i.e. the securing of compliance – especially to central norms and values – while adhering to a consistent and legitimate legal framework. In the European case, the current secession clause of article 50 – providing even for unilateral, and not just consensual, exit – is insufficient to resolve these tensions: The centrifugal tendencies transcend secessionism. The Polish and Hungarian governments are backtracking on their internal rule of law and democratic legitimacy, thus coming into conflict with article 2 of the Treaty of the European Union on the union's value framework, which includes "values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" as well as "pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men". In addition, the members' willingness to cooperate towards common solutions for shared problems, as in the area of refugee agreements, seems to be in decline, not least among the members of the "Visegrad group". However, the member states concerned are – unlike Great Britain – not seeking to "take back control" through unilateral exit. Under these circumstances, the centrifugal forces within the union, emanating especially from more recently admitted members, not only endanger the EU's overall capacity to act in key areas such as migration policy and foreign policy. In the view of many observers, they endanger existence of the Union as a project of liberal norms and values.

In a heated political debate on these tensions, Luxembourg's foreign minister Jean Asselborn suggested in 2016 that Hungary should "be excluded temporarily or forever from the EU"[55] in light of its inhumane treatment of refugees. With this suggestion, he went beyond the treaty's "nuclear option" [56] in article 7. Article 7 regulates sanctions against an EU member in case of a serious and persistent "breach of values" as described

[55] "Exclude Hungary from EU, says Luxembourg's Asselborn", BBC News, September13, 2016, http://www.bbc.com/news/world-europe-37347352, last accessed on February 17, 2017.

[56] Laurent Pech and Kim Lane Scheppele, "The EU and Poland: Giving up on the Rule of Law?," *Verfassungsblog*, accessed December 22, 2016, http://verfassungsblog.de/the-eu-and-poland-giving-up-on-the-rule-of-law/. On Barroso's dramatic description of article 7 as the "nuclear option" cf. Bojan Bugaric, "Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge" (St. Louis, United States: Federal Reserve Bank of St Louis, 2014), 3.

in article 2, to be activated by an unanimous decision in the Council and consent by the European Parliament. In reality, the Council seems hesitant to activate article 7,[57] even though the tool seems relatively measured. The sanctions themselves entail, in a mirrored version of Germany's article 37, no direct intervention, but instead focus on a temporary suspension of voting rights. Thus the EU's framework against a member's neglect of the rule of law is very limited in its scope. There is no provision for the event of a country's permanent and unrepentant violation of community values. The same limitation applies to violations of other instruments of the community. A member repeatedly blocking initiatives or challenging EU regulations can only be fined, not expelled. Although the union is not indissoluble, the right to dissolution lies solely with the single member states, as enshrined in article 50. The increasingly frequent – though usually parenthetic - demands from politicians and scholars to consider expulsion has therefore, so far, no legal grounding or extensive theoretical recourse.[58]

Would it be appropriate to adapt the framework outlined by this article, and is the EU – if the occasion for change in the treaty arises – possibly in need an expulsion clause? If the criteria mentioned above are applied – the applicability of expulsion based on the institutional landscape of federation, the states' preparedness to be separated, and the ideological component of federalism in terms of self-conception – it seems plausible that the EU could benefit from an expulsion clause. It has integrated beyond what could be seen as confederal, and yet fulfills the posited criteria for membership flexibility. It is especially clear that this political project aims at stability through flexibility, preserving certain norms and principles without insisting on a static territorial extent. In the worst

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[57] Triggering article 7 has been considered so far only concerning Poland and its government's intervention in the judicial system: After having received a warning under the Rule of Law Framework in 2016 - which had been introduced just two years earlier precisely to protect the value framework through a more practicable tool –, the Polish government seems unprepared to further comply with the Commission's demands - apparently relying on Hungary's support against an activation of article 7. Cf. Dimitry Kochenov and Laurent Pech, "Better Late than Never? On the Commission's Rule of Law Framework and Its First Activation," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, February 29, 2016); Dimitry Kochenov and Laurent Pech, "Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality," *European Constitutional Law Review* 11, no. 3 (December 2015): 512–40; Laurent Pech, "Systemic Threat to the Rule of Law in Poland: What Should the Commission Do Next?," *Verfassungsblog*, October 31, 2016, http://verfassungsblog.de/systemic-threat-to-the-rule-of-law-in-poland-what-should-the-commission-do-next/.

[58] Wojciech Sadurski, "Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, January 4, 2010), 5, https://papers.ssrn.com/abstract=1531393; Jan-Werner Müller, "Safeguarding Democracy inside the EU: Brussels and the Future of Liberal Order," 2012-2013 Paper Series (Berlin: German Marshall Fund, February 2013), 23f.; Bugaric, "Protecting Democracy and the Rule of Law in the European Union," 3.

case scenario, i. e. if it came to the triggering of an expulsion procedure of a member persistently violating the values and rules of the union that they had agreed to upon accession, this procedure could safeguard the existence of the political project. Procedurally, article 7 in principle contains a sound procedure not just for sanctions but for expulsion, as it attributes the right to decide to the remaining members instead of a central governmental unit. To be sure, it also illustrates an important difficulty: An expulsion clause, similar to a sanctions clause, should include a high but not impossible threshold for activation; and the recent conflict with Poland indicates that even the threshold for the sanctions article's triggering might be too high. It thus remains debatable whether the principle of unanimity is too demanding for an effective and functional expulsion clause. Instead, it could be an option to transfer the decision about sanctions, and possibly expulsion, to the increasingly important European Parliament. Here, all member states are represented in a genuinely federal institution that transcends intergovernmental decision making mechanism

As for the challenge of ensuring a well-structured, non-chaotic process of disentanglement – a main objective of an expulsion clause as a safeguard against federal chaos – the EU's experience with article 50 in the case of "Brexit" could prove instructive. If a drastic last resort option such as secession or expulsion is made available, it should include provisions that make it practicable and transparent once triggered. If the opportunity to remodel the EU's treaty framework were to arise, an expulsion clause could be designed in a more refined way than article 50 and article 7, allowing for a more structured and well-planned separation process. It would certainly defeat the benefits of an expulsion clause if it created additional unnecessary confusion as has been observable between London and Brussels since 2016.

An expulsion clause could be a useful safeguard for the continued existence of the European project – and moreover, it might even present an opportunity for the federation under pressure to reaffirm, as well as newly commit to, shared norms and interests. Conversely, the EU's federal experiment could be an arena for evolving federalism further – as neither a loose confederation with arbitrarily fluctuating membership, nor a state-like federation with no flexibility during crisis, but as the value-oriented project as which many hope to see it in a time of destabilized world order.

Even beyond the European Union, expulsion should at least be discussed – not as a carte blanche political recommendation, but as a possible institutional tool available to newly

established or amended federal constitutions. New constitutions, especially federal ones, continue to be designed on a regular basis, and some might benefit from a brief consideration on whether such a clause would match the spirit, and possible enhance, the new political project. To this end, at the very least, political theory should strive to not overlook constellations only because they are without precedent or – at the first glance – beyond established normative horizons.