BREAKING UP IS HARD TO DO

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I don't know about you, but my education did not include how the State of West Virginia was created. That includes a full year of constitutional law in law school. I assumed it was created like any other state. I assumed it was an existing territory which petitioned Congress.

On a recent trip to West Virginia, I became aware that West Virginia was admitted to the Union in 1863 by the secession of certain counties in the State of Virginia. Wasn't that during the Civil War when Virginia had seceded from the Union? That struck me as odd. So I became curious to study up on the history of West Virginia's statehood and the broader issue of the concept and legality of the act of secession within the United States and the legal basis and consequences of the United Kingdom leaving the European Union (Brexit).

The literal definition of secession is the formal withdrawing of membership in an organization. The term organization at least implies a number of member organizations like the United States of America or the European Union that have formed into an interlocking relationship.

When looking at the issue of secession, one must first look at how the united organization was formed in the first place. Was it forced or voluntary? By forced, it is meant one governmental unit conquering another. When the unity is forced, a separation can only occur by force or, in some instances, like the United Kingdom, finally creating independent governments in India and Pakistan, by moral suasion or no longer caring. This would be true of Scotland and Catalonia where recent referendums undertaken had no legal effect.

Where the unity is voluntary, one must look at the agreement which created the voluntary association. More specifically, one must look at whether the document creating the voluntary association contains a provision for a member seceding. As we will discuss later, the European Union is such an association that provides for the withdrawal of a member.

In the case of the United States, we have a Constitution. The U.S. Constitution contains no provisions for secession, either that one can or cannot. The U.S. Constitution is a form of contract. The member states agreed to form together for mutual benefit and give up certain states' rights in exchange for the national or federal advantages of unification. Being a form of contract, one can and should utilize legal contractual analysis to interpret it.

Now let us consider a simple contract. One contracts with the Chicago Tribune to pay X to have the paper delivered each day. If someone came to me as a lawyer and asked if and how I could terminate that contract, the first thing I would do is look to see what, if any, termination provisions are contained in the contract. If it had none, I would research the law on the legal right to terminate a contract which contains no termination clause. The same analysis can be applied to an employment contract. How does it end if there is no termination clause?

Where there is no termination clause in a contract, there are three possible alternatives. One can say it never ends. A second is to say that it ends when either party says it's over. A third approach allows for termination upon reasonable notice.

In the English common law, which the U.S. early adopted, the majority rule for a long time was that there was a presumption of perpetuity which had to be rebutted. In other words, it would be presumed that the contractual relationship could not be terminated. Over time, the case law has built in various types of categories where some reasonable basis for termination should be implied. Moreover, in the employment context, the U.S. has interpreted that employment contracts are terminable at will where there is no termination clause. Thus, contract law does not provide clear guidance on the subject of how a contract can be terminated when there is no termination clause. In Charles Dickens' *Oliver Twist*, Mr. Bumble is told that the law supposes that one's "wife acts under your direction". Mr. Bumble says, "If the law supposes that, the law is an ass -- an idiot". Thus, the law may be an idiot where it comes to providing guidance on contract terminations.

With that background, I would next like to address how certain counties within the State of Virginia were allowed to secede from Virginia and form the separate State of West Virginia.

The Constitution of Virginia was passed in 1776 and is the oldest of our state constitutions. It contains no provision one way or the other regarding the concept of secession. It also must be kept mind that, at the time the Virginia constitution was enacted, Virginia belonged to no broader

organization which could possibly regulate this issue. In other words, there was not yet a United States.

The next development with possible relevance to the concept of secession was the passage of the Articles of Confederation in 1781, to which Virginia was a signator. We have all been taught about the weakness of this Confederation, but four points remain relevant. First, at the outset, it makes reference to a "perpetual Union" between the states. Second, in Article XIII, it says the "Union shall be perpetual". Third, not surprisingly, in light of the first two points, it makes no provision for secession. Finally, as will be discussed when dealing with the right of a state to secede from the United States, the Articles were never formally abolished, but simply superseded by the passage of the Constitution.

The next area to consider before going into specifics of Virginia and West Virginia is the U.S. Constitution which, in respects relevant to our discussion, remains the same today as at passage. First, the U.S. Constitution does not refer to the Articles of Confederation whatsoever and does not deal with the concept of whether the Articles are in any way binding after the ratification of the Constitution. Second, the Constitution does not contain any language regarding perpetual union as referenced in the Articles of Confederation. Third, the Constitution is silent on the right of a state to secede. Finally, Article IV, Section 3 of the Constitution in part provides:

> New States may be admitted by Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the jurisdiction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as Congress.

Thus, while the Constitution does not address the issue of secession, it does address one state becoming two states. It requires approval of the old state, and the new state and Congress.

It is interesting to note that the reason for this clause being in the Constitution was that, shortly after the Revolutionary War, some of the frontier regions of North Carolina, who felt they were not being properly represented, voted to secede from North Carolina and form a new state, first called Frankland and later Franklin. They even created their own currency based on animal skins. The Governor was paid 1,000 deer skins and the Secretary of State received 450 otter skins. The movement eventually fizzled, but this is the reason why the U.S. Constitution has the language specifying how regarding one state can split into two.

Getting back to West Virginia and Virginia, not long after Abraham Lincoln was elected President, South Carolina and soon several other states announced their secession from the United States and formed the Confederate States of America. I will later discuss the alleged legal justification upon which South Carolina based its act of secession. Initially, Virginia did not secede. In fact, it was not until after the attack on Fort Sumter when Lincoln called on each state, including Virginia, to supply troops to fight against the "rebellious" states, that Virginia initially approved secession.

The initial legislative vote was on April 17, 1861. The statewide election was to occur on May 23, 1861. However, before the May 23 election, the governor of Virginia entered into a treaty of alliance with the CSA, sent delegates to its convention, and formally entered the CSA on May 7,

1861. Thus, Virginia joined the CSA before the required vote. Lincoln and many in Congress, even apart from whether secession was permissible under any circumstances, viewed the procedure Virginia followed as an illegal act.

Possibly one of the reasons Virginia delayed secession was that the western portion of the state was both anti-slavery and pro-unionist. Unionist sentiment was so high in the northwestern counties that civil government began to disintegrate, and the *Wheeling Intelligencer* newspaper called for a convention of delegates to meet in the city of Wheeling to consider secession from the Commonwealth of Virginia. Delegates duly assembled, and at the First Wheeling Convention (also known as the May Convention), held May 13 to 15, the delegates voted to hold off on secession from Virginia until Virginia formally seceded from the United States. Concerned that the irregular nature of the First Wheeling Convention might not democratically represent the will of the people, elections were scheduled for June 4 to formally elect delegates to a second convention, if necessary. Virginians voted to approve secession on May 23. On June 4, elections were held and delegates to a Second Wheeling Convention elected. These elections were irregular as well: Some were held under military pressure, some counties sent no delegates, some delegates never appeared, and voter turnout varied significantly among the counties. However, on June 19, the Second Wheeling Convention declared the offices of all government officials who had voted for secession vacant, and reconstituted the executive and legislative branches of the Virginia government from their own ranks. So, in other words, the Unionists created a shadow government of Virginia which they argued was the legitimate body.

The newly Reorganized Governor, Francis Harrison Pierpont, asked President Lincoln for military assistance, and Lincoln recognized the new government. The region elected new U.S. Senators and its two existing Representatives took their old seats in the House, effectively giving Congressional recognition to the Reorganized Government as well. Thus, while most of the State of Virginia deemed itself as part of the CSA, the U.S. considered the Reorganized Government as part of the U.S. We could have been left with essentially two States of Virginia, one in the CSA and one in the USA.

After reconvening on August 6, the Second Wheeling Convention again debated secession from Virginia. However, the delegates adopted a resolution authorizing the secession of 39 counties, with additional counties to be added if their voters approved, and authorizing any contiguous counties with these to join the new state if they so voted as well.

On October 24, 1861, voters in the 41 counties voted to secede from the Commonwealth of Virginia. In eleven counties voter participation was less than 20%, with two counties showing only 5% and 2% voter turnout respectively. Several other counties were added to the newly named government of West Virginia, which did not even vote at all. They were under the military control of the seceded State of Virginia.

Governor Pierpont then recalled the Reorganized State Legislature, which voted to approve the secession (and include Berkeley, Frederick, and Jefferson counties if they approved the new West Virginia constitution as well). After much debate over whether Virginia had truly given its

consent to the formation of the new state, the United States Congress adopted a statehood bill on July 14, 1862, which contained the proviso that all blacks in the new state under the age of 21 on July 4, 1863, be freed. President Lincoln was unsure of the bill's constitutionality, but, pressed by the northern senators, he signed the legislation on December 31, 1862. The state's voters ratified the slave freedom amendment on March 26, 1863. On April 20, President Lincoln announced that West Virginia would become a state in 60 days, which occurred.

Fast forwarding, the Civil War comes to a close in 1865, and Virginia is restored to the Union. But what about West Virginia?

On December 5, 1865, the Virginia Assembly passed legislation repealing all the acts of the Reorganized Government regarding secession. The State of Virginia then sued the State of West Virginia in the U.S. Supreme Court, which has original jurisdictions of such suits, to return West Virginia back to Virginia.

Considering that Congress had already approved the admission of West Virginia and that it sent soldiers to fight on behalf of the Union, what was the likelihood the Court would rule West Virginia was formed illegally and say it no longer existed? Although it seemed clear that there were irregularities in the secession voting and the State of Virginia arguably never agreed, the Court ruled that, even if there was fraud, the fact that the Governor certified the election made it binding. The Court also ruled that it was proper that a Reorganized Government gave its consent on behalf of the State of Virginia.

In appellate law, there is a concept called "harmless error". It allows a Court to acknowledge legal mistakes were made at the trial court level, but were not serious enough to reverse the decision. In some ways, the Supreme Court ruling in this matter was similar. They simply were not going to undue what was done.

Before leaving Virginia v. West Virginia, I should point out that there was another Virginia v. West Virginia before the U.S. Supreme Court in 1911. Prior to its secession, the State of Virginia made many road and other improvements which became part of its state debt. In fact, the Constitution of West Virginia provided that the State of West Virginia assume an equitable portion of the public debt of Virginia. West Virginia later tried to argue it was the sole arbiter of what was fair. Essentially, Virginia said West Virginia should pay that portion of the public debt which could not simply be transferred. In 1911, forty years after its first decision, an unanimous Supreme Court Justice, Oliver Wendell Holmes, Jr., ruled that West Virginia owed one-third of the public debt, plus reasonable interest. Interestingly, none of the CSA states made that offer to the USA.

Since we know the secession of the CSA led to war, two questions emerge. Why didn't Virginia wage war against West Virginia to stop it from seceding? And why did war have to break out between the North and South?

I believe the answer to the first question is that the State of Virginia had "bigger fish to fry" and would wait to see how the "Civil War" or, as the CSA called it, "the War between the States" would pan out. The answer to the second question leads us to an examination of the issues relating to the secession of the CSA.

As alluded to earlier, South Carolina was the first state to secede by resolution dated December 24, 1860. It is beyond the scope of this paper to examine why the CSA states wanted to secede, but it is instructive to examine the declaration by which South Carolina claimed to have seceded. While Southern historians have tried to argue that it was based on states' rights, not slavery, the rhetoric of the seceding states leaders makes this argument incredulous. The preservation of slavery was the key driving issue.

The South Carolina secession declaration notes that the state initially sought to secede on April 26, 1852, but delayed in deference to the other slave-holding states. In summary, its justification was premised on the numerous violations of the Constitution by the United States. It relied on both the Declaration of Independence and the Articles of Confederation.

More specifically, it stated that, while the Constitution specifically guaranteed the rights of states to allow its citizens to own slaves and that non-slave states had a legal obligation to enforce the return of slaves, the various Northern states had ceased to enforce these laws and that the newly-elected president was on record as saying that a government could not be half slave and half free and that, ultimately, we would see the extinction of slavery. The declaration also noted that the

Constitution, by its terms, would take effect upon the ratification by nine states which lead to the acknowledgement of a United States consisting of nine states among four independent nations. It also noted that the actions taken by the federal government violated the sovereign rights of slave-holding states. No argument was made that a legal right to secede existed in and of itself.

The declaration then concluded that the union heretofore existing is dissolved and that the State of South Carolina has resumed her positon among the nations of the world as a separate and independent state with all rights and powers of which independent states may of right do.

Mississippi quickly adopted a similar resolution, followed by Florida and Alabama. On January 10, 1861, Senator Jefferson Davis implored the Senate to allow for a peaceful secession. He then bade farewell to the Senate followed by five other senators of the aforementioned states.

The Senate was then forced to decide whether these senators left the Senate because their states were no longer part of the USA or whether they should be treated as having simply resigned and needed to be replaced. This debate by necessity required a positon as to whether a state could unilaterally secede from the USA. On July 11, 1861, the Senate passed a resolution denying the right of any state to secede.

Implicit in the Senate's resolution was that anyone acting inconsistent with this positon was participating in an act of rebellion against the USA. Indeed certain Southern legislators made the

same argument. Thus, since the states could not secede, they remained as part of the USA, but anyone who acted in support of this right was acting in violation of the Constitution and from the perspective of the USA, there was not a state of war between the two nations, but a lot of criminals violating the law (i.e., treason). Thus, prior to Fort Sumter, there was no fighting. The USA was essentially in denial. There was never a formal declaration of war by either side. Similarly, there was neve a surrender or treaty executed. We all know that the official fighting began with Fort Sumter, but why?

The state/federal system in the United States, by necessity, resulted in various federal organizations existing within the states. This would involve federal courts, post offices and military installations, including arsenals. Thus, property belonging to the federal government of the U.S. now sat in territory which now sat outside the U.S.

Unlike the West Virginia secession, whose secession resolution acknowledged some responsibility for reparations to the State of Virginia, the State of South Carolina made no such acknowledgement. Rather, the seceding countries began seizing various buildings and arsenals belonging to the U.S.

Fort Sumter was an active army installation which needed to be periodically re-supplied. When newly-elected President Lincoln notified the governor of South Carolina, Francis W. Pickens, of his intent to re-supply Fort Sumter, Pickens called for its immediate evacuation, which led to its subsequent bombardment and surrender. This lead to Lincoln's calling of volunteers to fight.

And we were off to war. However, nothing legally changed and no formal declarations of war were made.

Short of Lincoln losing re-election, it is doubtful any resolution could have been achieved which granted secession. Moreover, although Lincoln was willing to offer concessions on the issue of slavery, the CSA felt such concessions could not be guaranteed in the future.

As an aside, apart from losing the war, there are two ironies about the decision to secede. The first is that Lincoln was a strict believer in the Constitution and well understood the legal basis for slavery under the Constitution. Moreover, although he was elected because the Democratic Party nominated two candidates, the Democratic party actually gained seats and controlled both chambers in the 1860 election. Therefore, there was no likelihood, in the short term at least, of action being taken adverse to slavery.

The other irony is that the South had three major concerns regarding the preservation of slavery while remaining in the Union: the North's opposition to slavery into the territories, resistance to the returning of fugitive slaves and traveling with slaves safely to non-slave states. Oddly, the minute these states seceded, the CSA lost viz a viz to the North on all three issues and, if fact, were worse off.

So how did the war end and what did resolve? Many equate Lee's surrender at Appomattox as the end of the war. Indeed, it was largely treated as such by the citizens and even Lincoln. But, in reality, there were still other CSA armies fighting and Jefferson Davis favored the continuation of the war through guerilla war tactics. Happily, after his capture, these efforts never took hold. After the surrender of the other major armies still in operation, President Andrew Johnson signed a unilateral proclamation on August 20, 1866 declaring that peace now exists. This was 16 months after Lee's surrender. Incidentally, an excellent book on this latter topic is *April 1865* by Jay Winik.

So did the Civil War resolve whether a state could secede? It did from the perspective of force, but not in a legal context. But as Paul Harvey would say, that is not "the rest of the story".

In 1869, the State of Texas sued a brokerage firm over the validity of bonds which were granted by the USA to Texas as part of the Compromise of 1850. Some of the bonds had been sold by the Texas confederate state legislature during the Civil War.

The United States Supreme Court ruled that all acts by the confederate government were void and that the State of Texas had never ceased being part of the USA. The 5 - 4 decision was issued on April 12, 1869 and authored by Salmon Chase, Secretary of the Treasury under Lincoln, and the opinion cited the perpetual union language in the Articles of Confederation, which I referenced earlier. The Court noted that the Articles had never been formally abolished. Thus, the court ruled Texas could not and had not legally seceded. Even though Texas was not

even a state when the U.S. Constitution was ratified, it was the failure to abolish the Articles which settled this issue.

Some have criticized this decision as being result-oriented, both from the perspective of the underlying bond issue, but from the legally weak basis to conclude secession was not legally permitted. On the other hand, although not discussed in the decision, was the Supreme Court going to conclude the Civil War, with all of its dead, was fought on a false premise? You can be the judge.

Although beyond the scope of this paper, it is interesting to conjecture how the two countries would have interacted with each other had the South won and the North accepted a compromise. Would slavery still exist in the South? Would we be back as one country today?

Now that we can see the difficulty of seceding when there is no provision for it, two questions arise. Why didn't the Constitution address it? And is it easily handled when it is allowed?

I believe the most likely reason that constitutions or treaties do not address this is the lack of consensus. There is not enough support to provide that there could never be secession, and the consensus is also that it is dangerous to provide a secession clause.

To address the issue of how easy or difficult it is to secede when it is allowed by the compact, let us now review the most significant example, at least in modern times, of a so-called agreed upon secession procedure: in a word, "Brexit".

We all know something about the EU. But what is it really? While NATO was an alliance aimed at the USSR, in 1950, the Western Allies wanted to ensure no future war among themselves, so France, Germany and four others entered into an agreement to pool steel and coal resources. Seven years later, in 1957, the European Economic Community was created. The UK was not an initial member as de Gaulle exercised his veto. The UK ultimately joined in 1973.

As it has evolved, the EU is a system of treaties and institutions: The European Commission, The European Parliament and the Court of Justice. Today, it consists of 27 countries, excluding England. Oddly enough, when initially formed, no opt-out provision existed. Article 50, which is the opt-out provision, was not added until 2009 as part of the Treaty of Lisbon. It seems this was added to counter-balance some of the other features of this treaty whereby the EU was given greater control over Member Countries.

Before examining why the UK voted to leave the EU and the complications that ensued as a result of Brexit, it is worth considering why the UK joined in the first place. No less a personage than Winston Churchill said "We are with Europe, but not of it". England has always cherished its separateness. But, after World War II, the British empire disintegrated and with it so did much of the trade benefits. With the EU uniting the most developed European countries, the UK

needed greater trade access. Once de Gaulle's resignation opened the door, England was very eager to join.

Besides trade, and as part of it, the single greatest advantage of EU membership is moving across borders. As we will discover in a moment, many also believe it is why England voted to leave.

When we think of freedom of border crossing, we often think of tourism and immigration, but at least just as important is the moving of goods with ease and bringing in much-needed labor. As I write this, many fear the chaos that will result when, all of a sudden, trucks, trains and ships cannot move freely.

Employment is another benefit. I recently stayed at a very upscale hotel in London. After a couple of days, I noticed that, starting with the manager, there wasn't one English person working there. I asked about it and was told that no English person would want to work in a hotel. So all the employees had easy access to live in London.

So given the benefits, what caused the people to narrowly vote to leave? It appears it is tied to two issues: freedom of travel and bureaucracy. The flipside of the benefit of open travel is unwanted immigrants. While England has long welcomed many different nationalities, it appears that issues relating to terrorism seem to make the older generation almost xenophobic. In fairness, however, immigration is just not a terrorism issue. It is economic. While the

freedom of movement fills many jobs that Brits do not want, starting with the economic crisis of 2008 and the amount of refugees entering other EU countries, many voters felt England is receiving a disproportionate percentage of immigrants and greatly taxing its welfare system. Also, the Eurozone has struggled economically, and workers from Eurozone countries such as Ireland, Italy, and Lithuania (as well as EU countries like Poland and Romania that have not yet joined the common currency) have flocked to the UK in search of work and the benefits of the UK's social welfare system. Some have also argued that the flood of immigrants from Southern and Eastern Europe has depressed the wages of native-born British workers.

While many Brexit supporters simply want to reduce the amount of immigration overall, others argue that the UK could have a more sensible immigration system if it didn't have the straitjacket of the EU. EU rules require the UK to admit all EU citizens who wants to move to Britain, whether or not they have good job prospects or English skills.

"Leave" advocates argued that the UK should be focused on admitting immigrants who will bring valuable skills to the country and integrate well into British culture. They mention the point-based immigration systems of Canada and Australia, which award potential migrants points based on factors like their language and job skills, education, and age. Brexit advocates argue this would allow the UK to admit more doctors and engineers who speak fluent English, and fewer unskilled laborers with limited English skills.

But the other issue is that the EU had become too big for its britches and many anti-EU voters felt the EU was threatening British sovereignty. Over the past few decades, a series of EU treaties have shifted a growing amount of power from individual member states to the central EU bureaucracy in Brussels. On subjects where the EU has been granted authority — like competition policy, agriculture, and copyright and patent law — EU rules override national laws.

Euroskeptics emphasize that the EU's executive branch, called the European Commission, isn't directly accountable to voters in Britain or anyone else. British leaders have some influence on the selection of the European Commission's members every five years. But once the body has been chosen, none of its members are accountable to the British government or to Britons' elected representatives in the European Parliament. Related to this issue is the growth of EU regulations.

Sometimes these EU rules sound simply ludicrous, like the rule that you can't recycle a teabag, or that children under eight cannot blow up balloons, or the limits on the power of vacuum cleaners. Another example is that the UK could not require better-designed cab windows for trucks, to stop cyclists from being crushed. It had to be done at a European level, and the French were opposed. Many British conservatives look at the European bureaucracy in Brussels the same way American conservatives view the Washington bureaucracy.

So how did a referendum on the EU come about, and was or is it legally binding?

The idea of utilizing a referendum to determine whether England should remain part of the EU was not a novel concept. The first referendum occurred in 1975 and two-thirds voted pro-EU. Over time, there was also a shift in what political factions were for or against. Initially, the Labor Party was anti-EU. Ironically, the most recent referendum occurred as a strategic move by Conservative Party Prime Minister David Cameron, who was strongly in favor of England remaining in the EU.

In 2015, the European Union Referendum Act was passed by the British Parliament. Cameron hoped the vote to exit the EU would fail, but he wanted the referendum to give him negotiating strength for renegotiating with the EU on four points: protection of the single market for non-Euro members, reduction of EU bureaucracy, exempting England from the concept of an "ever closer union" among EU members and restricting EU freedom of immigration.

As of December 2015, opinion polls showed strong favor of remaining in the EU. However, the sentiment began to shift when the EU would not provide sufficient concessions to England. On the other hand, the EU governance did not believe it was at risk that England would vote to leave and thus saw no real reason to compromise.

In a speech to the House of Commons on February 16, 2016, Cameron announced that the referendum would take place on June 23, 2016 and that, if the vote to leave passed, he would immediately trigger Article 50, the exit clause.

The results were announced on June 24 and 51.9% voted in favor of leaving. A petition calling for a second referendum garnered 4,000,000 signatures, but was rejected by the government. There were various claims of irregularities to charge that the vote was not legitimate. These included allegations of cyber Russian tampering and "fake news". Nothing came of these various allegations in terms of reversing the vote or having a new referendum.

Again, the Referendum Act did not require Article 50 to be invoked. It was advisory. But Cameron had announced it would be triggered immediately and it was decided that the Referendum be given effect.

Ironically, Cameron then resigned rather than trigger Article 50. After Parliament overwhelmingly approved the triggering of Article 50, the new Prime Minister, Theresa May, signed a letter invoking Article 50 on March 28, 2017. Unless England and the EU agreed otherwise, the formal exit day would be March 29, 2019. During this period the EU is required to negotiate a treaty with the departing member dealing with the exit issues and future relationship between the EU and the departing member.

Now what? Although England is not as enmeshed into a political and economic framework like the Confederacy was to the USA, it is being demonstrated that the complications are enormous. Thus, the concept of soft versus hard Brexit arises. Moreover, there are other ramifications. Currently, there is no border enforcement between Northern Ireland and Ireland. However, while Northern Ireland is leaving the EU, Ireland is staying. What makes matters even more complicated is that the open Irish border was part of the Good Friday Peace Agreement of 1998 which has brought relative peace to Northern Ireland. Some fear that failing to resolve this issue could destabilize the status quo.

It would seem that the softest exit for England would be to join the European Single Market (ESM). It is like being in the EU, but with less regulation. With modifications for each country, non-EU member countries Liechtenstein, Iceland, Norway and Switzerland participate. In order to participate, the ESM requires that such countries accept the "four freedoms". They are free movement of goods (no custom duties), free movement of capital, freedom to establish and provide services and free movement of persons across borders. Membership also requires some payment to the ESM.

Immediately after the Referendum, Angela Merkel, Chancellor of Germany, announced that England could conceivably be part of the ESM if it accepted the four freedoms. However, it would seem the freedom of movement requirement would be a non-starter for England.

On July 7, 2018, Theresa May issued a paper known as The Chequers Plan, where she laid out the Brexit Deal she would try to negotiate. It contained 12 points and, while it said no more free movement or sending vast sums of money, many of her Tory colleagues found it too soft, and Foreign Secretary Boris Johnson resigned over it. On the other hand, it received a very cold reception from EU leadership and, in particular, Angela Merkel and the French. From the European perspective, the UK wants all the benefits of EU membership without the obligations. Moreover, the EU worries that if they cut a good deal for the UK, other countries will want the same deal. Cutting no deal, however, could lead to chaos on March 29. Where the U.S. stands on this remains to be seen.

On Wednesday evening, November 14, 2018, it was announced that May had received approval from her cabinet to accept a Brexit compromise. Although 585 pages long (and available on-line), its key components are as follows:

- Britain will pay a divorce bill of $50 billion, but each side will guarantee status of citizens living in other jurisdictions
- 21-month standstill, essentially maintaining the status quo
- The open Irish border will be maintained, which means staying in the EU customs zone
- The EU courts will guarantee compliance

The news media announced it as a bitter pill to swallow for hard Brexits, but all seemed to recognize no realistic alternative. Nevertheless, on Thursday morning, two more cabinet

members resigned. One was Dominic Raab, who was considered a close ally of May. On Sunday, November 25, the EU gave its approval. Now it needs to be approved by Parliament.

If Parliament fails to approve the current plan, it will likely lead to a change of government. This could in turn cause a new referendum which, ironically, could result in the UK remaining in the EU. My prediction is that Parliament will approve.

So what can we learn about these three examples of secession or attempted secession? It reminds me of a conversation I once had on a golf driving range. When asked by a fellow golfer how I was doing, I said my golf game is so bad that I would like to quit, but had multiple commitments to play that could not be avoided. He replied, "I know what you mean. We're in too deep". That is the case of seceding even when the agreement specifically provides for it. There are too many interconnections. Or maybe another way to sum up the situation is that "Breaking Up is Hard to Do".

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