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## Recognition and political accommodation: from regionalism to secessionism. The Catalan case

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## **Recognition and political accommodation: from regionalism to secessionism.**

### **The Catalan case.**

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Having lived through a bloody civil war in the 1930s followed by four decades of General Franco's dictatorship, the Spanish state carried out a transition to a democratic system at the end of the 1970s. The 1978 Constitution was the legal outcome of this transition process. Among other things, it established a territorial model – the so-called “Estado de las Autonomías” (State of Autonomous Communities) – which was designed to satisfy the historical demands for recognition and self-government of, above all, the citizens and institutions of Catalonia and the Basque Country<sup>1</sup>.

In recent years support for independence has increased in Catalonia. Different indicators show that pro-independence demands are endorsed by a majority of its citizens, as well as by most of the political parties and organizations that represent its civil society. This is a new phenomenon. Those in favour of independence had been in the minority throughout the 20<sup>th</sup> century. Nowadays, however, demands of a pro-autonomy and pro-federalist nature, which until recently had been dominant, have gradually lost public support in favour of demands for self-determination and secession.

This paper analyses the massive increase in support for secession in Catalonia during the early years of the 21<sup>st</sup> century. After describing the different theories of secession in plurinational liberal democracies (section 1), we analyse Catalonia's political evolution over the past decade focusing on the shortcomings with regard to constitutional recognition and accommodation displayed by the Spanish political system. The latter have been exacerbated by the reform process of Catalonia's Statute of Autonomy (2006) and the subsequent judgement of Spain's Constitutional Court regarding the aforementioned Statute (2010) (section 2). Finally, we present our conclusions by

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<sup>1</sup> The “Estado de las Autonomías” is a model that occupies an intermediate position between the classic federal and regional models of comparative politics, but has more regional than federal features (Requejo, 2010d).

linking the Catalan case with theories of secession applied to plurinational contexts (section 3).

## **1. Recognition, plurinational states and secession**

A few years ago, the United Nations clearly established that a *politics of recognition* is an integral part of the struggle for human dignity (*Human Development Report*, 2004). Moreover, it established that national and cultural freedoms, which include both individual and collective dimensions, are an essential part of the democratic quality of a plurinational society. Furthermore, it stated once again that when analysing legitimacy in plurinational contexts one often observes a juxtaposition between the perspectives of the paradigm of equality (equality vs inequality) and the paradigm of difference (equality vs difference). This juxtaposition interacts with the individual and collective rights of liberal democracies. As a result, values such as dignity, freedom, equality and pluralism become more complex in plurinational contexts than in those of a uninational nature. The overall challenge of plurinational democracies can be summed up in the phrase “one polity, several *demoi*”<sup>2</sup>.

On the other hand, if we turn our attention to liberal democracies, it is clear that all of them conduct processes of nation-building that promote the predominant national identity among their citizens, even when this kind of state nationalism is implicit or “invisible”. Over the last two decades, analyses of democratic liberalism have shown the normative and institutional biases of traditional approaches (liberalism 1), which are of an individualist, universalist and *stateist* nature that favour the majority national groups of plurinational democracies. An alternative liberal-democratic approach (liberalism 2) has stressed the value that the national and cultural spheres have for

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<sup>2</sup> Normative definitions of minority nations (nations without their own state) tend to be controversial. One way to determine whether a specific case may or may not be regarded as a minority nation is by incorporating empirical criteria to the more classic normative definitions found in studies on nationalism. In earlier papers we have put forward two empirical criteria which could be added to the more traditional ones (e.g., the existence of historical, cultural, and linguistic singularities and the wish to establish some kind of self-government). These are: 1) the existence of a system of parties which is different from that present at state level; and 2) the presence of at least one secessionist party within that distinct party system (Requejo, 2010d). As we did in previous works we prefer to use the term “plurinational” instead of using the most common “multinational” for descriptive and prescriptive reasons. See Requejo-Caminal 2012: 12-13).

individuals, both in terms of their self-image and self-respect, as well as in practical terms and in terms of the understanding of the societies in which they have become socialized or in which they live. Therefore, this second perspective uses political and moral reasons to demand that state institutions and practices adopt measures in favour of the political and constitutional recognition and accommodation of a state's national pluralism<sup>3</sup>.

The classic institutional measures offered by comparative politics in order to achieve the practical accommodation of national pluralism are basically of three types: federalism (in a broad sense, including processes of “devolution”, confederations, associated states, etc), consociationalism, and secession. While the first two types of measures have been studied for a number of decades through both theoretical and normative models and the analysis of different empirical cases and comparative analyses, secession has received renewed analytical attention in recent years, especially in plurinational contexts. One consequence of this has been the analytical refinement of the literature on normative theories of secession<sup>4</sup>.

A fundamental motive behind these theories is the justification of secession based on three key aspects: the political subject (who), the reasons that legitimize it (why) and the procedures (how). An established typology divides secession into two basic groups: *Remedial Right Theories*, which link secession with a “just cause”, in other words, they regard secession as a remedy for specific “injustices”; and *Primary Right Theories*, which regard secession as a right belonging to certain collectives that fulfil a number of conditions. These latter theories are subdivided into those of an adscriptive or nationalist nature and those of an associative or plebiscitary nature.

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<sup>3</sup> For normative arguments in favour of liberalism 2, see Norman, 2006; Parekh, 2000; Kymlicka, 2001; Taylor, 1992. Regarding “invisible” state nationalism, see Billig 1995.

<sup>4</sup> The creation of a *new state* involves (a) a transfer of *sovereignty* from the mother state to a new political unit, which will be (b) *independent* from the mother state. Even this most basic description, however, is not universally accepted by academics. Some have pointed out that it is necessary to add that the secessionist unit did not have a colonial relationship with the mother state, and that the latter is not dissolved once the secession has taken place. See Pavkovic, 2007. See also Moore, 1998; Lehning, 1998; Pavkovic, 2003, 2007.

**1.1 Remedial Theories**, or those relating to a “just cause”, give priority to a number of reasons or specific cases that justify political “divorce”<sup>5</sup>. Secession is not regarded as a primary right of specific collectives, but as a legitimate remedy for a series of circumstances, such as territorial annexation by force (the case of the Baltic states and the USSR), the violation of the basic rights of a group of citizens by the state, genocidal practices, permanent negative discrimination regarding redistribution or socio-economic development, non-compliance with previous agreements of self-government or collective rights by the state, etc<sup>6</sup>.

These latter theories have received most analytical attention in recent years, despite the fact that, as we will see, they do not appear to be the most suitable ones for the study of political legitimation in plurinational contexts. The first difficulty is how one should characterize an “unjust” situation. This obviously depends on the theory of justice one uses. Moreover, there are differences of degree in empirical situations that make it difficult to decide when the line of what could be considered morally reprehensible has been crossed (regulation of collective rights, fiscal treatment, redistribution, policies concerning education, culture, the media, etc.). These theories assume that the burden of proof resides with the minorities. In other words, they are theories that are biased in favour of the state, regardless of how the state was historically created. In this sense, they are conservative theories which legitimize state power.

In general terms, they are basically theories associated with the individualistic, universalist and stateist postulates of liberalism 1 –state respect for individual rights and democratic principles, as well as the non-discrimination principle. They therefore turn a blind eye to democratic states’ lack of neutrality with regard to national and cultural issues (nation-building policies), marginalizing minorities’ collective demands for national recognition and accommodation –which are usually formulated nowadays through liberalism 2<sup>7</sup>. Nevertheless, a number of authors have recently tried to enlarge the conditions of “just cause” by including the state’s obligation to carry out policies of recognition and accommodation towards its minority nations.

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<sup>5</sup> Here we use the term “political divorce” as synonymous with secession, despite the fact that this is a somewhat controversial analogy. See Aronovitch, 2000.

<sup>6</sup> See Beran 1984, Birch 1984, Buchanan 1991, 2003.

<sup>7</sup> Despite the comments Buchanan makes regarding this question in his first book (1991), he explicitly refuses to incorporate nations or any other adscriptive criterion into his conception (Buchanan, 1998). See Hechter, 2000, Sorens, 2012.

An initial approach is the one formulated by Bauböck, which is based on a revised conception of federalism in plurinational contexts. The federal solution is given priority<sup>8</sup> over the creation of “culturally homogeneous states”, which are linked, somewhat impulsively in our opinion, to adscriptive and associative theories. This author believes that the legitimacy of secession cannot be established at the normative level, but must be based on empirical situations: when support for secession appears and it is impossible to continue within the federal system, a process of legitimation of the new state will take place. Thus, secession is the result of the practical failure of plurinational federalism in specific contexts. However, this theoretical conception of plurinational federalism contrasts with that defended by other authors, who include secession within federal rules as a normative and institutionalized right of minority nations in the rules and procedures of liberal democracy in terms of the recognition and accommodation of the national pluralism of the state<sup>9</sup>.

Seymour reformulates Buchanan’s theory in order to incorporate the issue of the accommodation of national diversity<sup>10</sup>. He coincides with Buchanan regarding the idea of a right to secession as a remedy rather than a *primary right*, as is the case of adscriptive and associative theories. Seymour believes it is necessary to adopt a political conception of liberalism, distinct from moral individualism, which contemplates individuals and groups from an institutional perspective. In this way, he does not rule out a conception of people which gives priority to their aims, but it is also necessary, he says, to include moral value related to peoples. Thus, nations have a primary right to self-determination within the state to which they belong. However, the right to external self-determination, that is, secession, is acceptable if the right to internal self-determination is denied. Seymour’s defence of this reformulation is based on the idea

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<sup>8</sup> Bauböck formulates four kinds of reasons designed to defend the priority of federal structures: i) concession: permits the fulfilment of self-government; ii) moderation: limits the strength of extreme forms of nationalism through competitive elections; iii) participation: representation of minorities at state level; iv) multiple identities: promotes the mixing of citizens and therefore a state citizenry (Bauböck 2000:381).

<sup>9</sup> Requejo has formulated a model of plurinational federalism as an institutional expression of Isaiah Berlin’s value pluralism. The contrast between liberalism 1 and 2 is linked here with a broader theoretical question: the contrast between the Kantian and Hegelian paradigms as background philosophies for the accommodation of pluralism in plurinational democracies (Requejo 2005 chap 1-4, 2010).

<sup>10</sup> Seymour 2007. This author’s “philosophical” approach has similarities with Requejo’s (2005, 2013), above all because it regards the Hegelian paradigm of *recognition* as normatively and institutionally complementary to the Kantian approach of individual *dignity* in plurinational liberal democracies. Requejo, however, does not limit secession normatively to internal processes of self-determination.

that it fulfils the same conditions of institutionalization as those demanded by Buchanan<sup>11</sup>.

Finally, Patten (2002) adopts a different strategy. His starting points are the formal conditions associated with associative or plebiscitary theories: 1) valid claim to the territory by the secessionists; 2) fair secessionist demands; 3) non-probability that the new state will generate rights violations according to liberal-democratic standards; 4) that the citizens of the secessionist unit form part of a territorially-concentrated group; 5) that the secession is not a threat to peace and security. For Patten, these five conditions are insufficient, as the theory would lead to excessively permissive interpretations of the right to secede. In order to restrict it, he adds a sixth condition: the *failure of recognition* by the state. This condition means that in a context of dual identities (such as Scotland, Quebec or Catalonia), the state must establish a democratic forum where national identities (especially minority ones) can take distinct collective decisions. This means that structures, rules and formal or informal practices must be established that make it possible to ensure the recognition of each national group. The specific arrangements that permit this recognition to be satisfied may vary in each case by incorporating elements of a symbolic nature (anthems, flags, etc.). Their absence would constitute a failure of recognition<sup>12</sup>.

**1.2 Primary Right Theories** regard secession as a fundamental right associated with specific collectives. Adscriptive or nationalist theories take as their central element that the nation is a legitimate political subject endowed with this right. Thus, the legitimacy of secession would be based on a previous political unit that possesses this right, which would basically be understood nowadays in inclusive and universal liberal-democratic

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<sup>11</sup> These would be: i) conformity with the progressive moral principles of international law; ii) minimal realism; iii) absence of perverse incentives; iv) morally accessible to different cultures. Although it is true that the international community adheres to a conception of secession as a remedy (with just cause), it is also true that most international treaties are less conservative than Buchanan. This reformulation is presented not only as being consistent with Buchanan's principles of institutionalization, but also more realistic (Buchanan 2007: 398).

<sup>12</sup> In order to defend this requirement for recognition, Patten puts forward two main arguments: a) *equality of recognition*; b) *democratic pattern*. The former is designed to reject any theory that fails to take *failure of recognition* into account. The second points out that, in the last resort, one must recognize the secessionist unit's right to decide if it wishes to secede from the mother state, especially in a context where there is a failure of recognition by the federal or central structures of the state (Patten, 2002: 565-579).

terms<sup>13</sup>. This is the sphere of liberal nationalists who, in liberalism 2 terms, are critical of the practical consequences of the implicit state nationalism defended by traditional liberals (liberalism 1) –despite their habitual legitimizing rhetoric based on moral individualism and state universalism. The collective rights of minority nations are seen as complementary to individual rights, not antagonistic to them. And in many empirical cases the best and possibly the only way to promote and safeguard collective values would be the creation of one’s own state. Nationalist theories of secession have their own problems, prominent among which is the regulation of the rights of minorities within minorities (trapped minorities) following secession, and that of the dual or plural identities of the citizens of minority nations<sup>14</sup>. Adscriptive theories are often criticized due to the difficulty in defining a priori which groups have a primary right to secede. Once it has been determined which groups would have this right, the theory may provoke contradictions with regard to strict democratic normativity, as the minority nation may become a state without the need for majority demand. Moreover, it is commonly argued that, from a practical point of view, giving the right of secession to nations would multiply by thousands the number of secessionist demands in the world, which is associated with a high level of instability, above all where national groups overlap territorially. However, the advantage of nationalist adscriptive theories is that they regard elements of a “historical” and of a socio-political nature designed to personalize subjects to be legitimate in order to exercise the right to secede, to which could be added elements of a political nature (see note 2).

Finally, associative or plebiscitary theories give priority to democratic *procedure* in order to legitimate secession, whether this is through a referendum or based on the decisions of representative institutions<sup>15</sup>. The key values here are individual moral autonomy and the right to choose voluntary political associations. They represent the pillars of the consensual legitimacy of a democratic political authority. If this consensual base regarding the state’s authority is not shared by the majority of individuals of a collective, secession is a legitimate act and constitutes a right that must

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<sup>13</sup> See Tamir 1993, Margalit&Raz 1990. The last two authors use the concept of *encompassing groups* instead of the nation as the subject of the right to secede. See also Walzer 1994.

<sup>14</sup> We do not develop these two issues in this paper. In recent years, theoretical and comparative analyses have revealed liberal-democratic institutional solutions for the accommodation of these two questions. See Gagnon-Tully 2001, Amoretti-Bermeo 2004

<sup>15</sup> Beran (1984) states that any group that has inhabited a given territory for a (small) number of generations has the right to create a state there if this is carried out democratically.

be legally regulated. Thus, in this kind of theories secession is not regarded as a possible solution to the infringement of the rights or interests of a collective, nor is it linked to any kind of specific national or ethnic group. Rather it is a *primary right* of a political and territorialized nature based on the individual preferences of the members of a group of citizens. The authors who have formulated this kind of approach establish a series of conditions that must be met when this right is established<sup>16</sup>. For example, the state must be feasible in empirical terms –number of citizens involved, guaranteed rights for (trapped) minorities, that secession does not prevent the viability of the former state, that it does not generate political instability, etc. “Historical” considerations are alien to the internal logic of this perspective. This may mean, for example, that it is considered potentially legitimate for a group of relatively recently territorialized immigrants to secede. Moreover, it is argued, on the one hand, that an a priori right to secession established in these terms might result in the fragmentation ad infinitum of political communities and, on the other, would not permit the correct development of democracy as it would be permanently threatened by fragmentation<sup>17</sup>.

In the international sphere, there are relatively few empirical examples of the constitutionalization of secession. The constitutions of Ethiopia and Saint Kitts and Nevis are the two clearest cases of the explicit inclusion of the right to secession. The former adopts an adscriptive approach, as the “nationalities” and “peoples” that constitute the state have access to the secession clause. The latter permits the secession of the island of Nevis through a referendum which must have the support of a majority of two-thirds<sup>18</sup>. The most recent cases of the secessions of Montenegro (2006) and Kosovo (2008) from Serbia occurred, in the first case, in accordance with international regulations based on a referendum with clear rules monitored by the European Union and, in the second case, as a result of a unilateral declaration of independence by the Kosovar parliament, which was recognized by a majority of international actors once negotiations had broken down. These two cases are examples of international mediation when a state of deadlock has been reached regarding internal constitutional rules.

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<sup>16</sup> See Beran 1984, Wellman 2005.

<sup>17</sup> See Moore 2001, Buchanan 1997, 1991.

<sup>18</sup> While in Ethiopia there have been no secession proposals since that of Eritrea, which was preceded by a long armed conflict and occurred before the current constitution came into force, the island of Nevis conducted a secessionist referendum (1998) in which 61.7% voted in favour of secession without reaching, however, the legal minimum of two thirds.

Another case of constitutional regulation, albeit less conclusive than the previous ones, is that of Canada which, following the referendum on the secession of the French-speaking province of Quebec (1995) in which the anti-secessionist option won by a narrow margin of votes, established, based on a much-discussed *Opinion* of the Supreme Court, that political and constitutional negotiations must take place if a “clear majority” of Quebec citizens responded to a “clear question” regarding secession (Secession Reference, 1998)<sup>19</sup>. In the next section we analyse the case of Catalonia and the emergence of a growing secessionist movement in recent years. As we will see, the legitimation of the secessionist process in Catalonia may be able to draw on normative and institutional elements present in the three kinds of theories and empirical references that have been briefly outlined in this section.

## **2. Catalonia in the 21st century: the emergence of secessionism.**

Catalan politics has undergone two important changes at the beginning of the 21<sup>st</sup> century. On the one hand, the end of a long period of political hegemony by CiU (1980-2003)<sup>20</sup> as the governing party in favour of a coalition of three left-wing parties (PSC-ERC-ICV/EUiA)<sup>21</sup> which governed the country for seven years (2003-2010). On the other hand, the process to reform the Catalan Statute of Autonomy, which was passed in a referendum (2006), but which was seriously weakened, both in terms of its content

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<sup>19</sup> These two references to “clarity”, however, have not been without controversy. Thus, the regulations of the Canadian Clarity Act (2000), following the Supreme Court’s *Opinion*, were countered when Quebec’s National Assembly passed the *Loi sur l’exercice des droits fondamentaux et des prérogatives du peuple québécois et de l’État du Québec* (2000).

<sup>20</sup> CiU: *Convergència i Unió* is a federation of two centre-right and nationalist political parties: *Convergència Democràtica de Catalunya* (founded in the late 1970s and led by Jordi Pujol until 2003 and by Artur Mas since then) and *Unió Democràtica de Catalunya* (founded in the 1930s and led by Josep A. Duran i Lleida since the 1980s).

<sup>21</sup> The PSC is formally independent from the PSOE, but the two maintain a “federal” relationship and a single vote in the Spanish parliament. ERC is a left-wing pro-independence party founded in the early 1930s and ICV/EUiA is a coalition between ICV, a post-communist and ecologist organization and EUiA, also a left-wing organization linked to communist ideology.

and its capacity to protect self-government and with regard to its finance system, by the judgement of the Spanish Constitutional Court (2010)<sup>22</sup>.

If, for the 2003 elections, the majority of Catalan parties included in their manifestos a wish to reform the Statute in order to ensure full recognition of Catalonia's national reality, a better finance system and an improved and more protected system of self-government, one decade later virtually the same parties incorporated into their political programmes the desire to exercise the "right to decide" about the future of Catalonia by means of a referendum on a possible future separation from the Spanish state.

While, at the beginning of the century, the Catalans who expressed a preference for Catalonia to be an "independent state" were in a minority (less than 15%), today, according to surveys and opinion polls, this figure has risen to around 50% of the Catalan electorate. The key to explaining this change – which could be described as a shift from regionalism to secessionism – is to be found in the political, economic and cultural events of the past decade.

### ***2.1 Changes in Catalan politics (2003-2013): two tripartite governments (2003-2007) and two minority governments of CiU (2007-2013)***

The year 2003 marked the beginning of two changes in Catalan politics. Despite the fact that the nationalist coalition CiU once again won more seats, a lack of parliamentary support and the fact that the opposition parties were able to form an alternative coalition (PSC, ERC, and ICV-EUiA) brought about a change of government. This followed six consecutive legislatures of CiU hegemony under the leadership of Jordi Pujol (1980-2003). This period saw the development of the "autonomous" institutionalization and self-government established by the Spanish constitution of 1978. The government of Catalonia (Generalitat) played a key role in the transfer of powers from the central government to the 17 "autonomous communities" (AC), often leading the decentralization process. CiU also became a political force capable of guaranteeing the stability of the central government through parliamentary agreements during the 1990s,

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<sup>22</sup> For an analysis of the Constitutional Court's judgement (2010) on the Catalan Statute, see Requejo 2011.

when neither the PSOE (1993-1996), nor later the PP (1996-2000) had absolute majorities in the Spanish parliament.

However, during the early years of the 21<sup>st</sup> century, a legislature marked by CiU's state-level support for the PP –which enjoyed an absolute majority after 2000– in exchange for reciprocal support for CiU in the Catalan chamber, and in a context of neo-nationalist Spanish policies driven by the central government, prepared the ground for a major change in Catalonia. CiU's reverse in the 2003 Catalan elections –the party lost ten seats– was paralleled by the consolidation of ERC's pro-independence position in parliament (23 seats) and the rise of the post-communist and ecologist party ICV-EUiA. This situation permitted the formation of the so-called *Pacte del Tinell* (Tinell Pact), an agreement to establish a coalition government by the main left-wing parliamentary parties (PSC, ERC, and ICV-EUiA). The signatories of the Tinell Pact undertook to promote policies of a social-democratic and ecologist nature which, according to its text, would require the Generalitat to have wider powers, as well as requiring changes to the finance model and greater political and legal status for Catalonia within the Spanish state. All this resulted in a need to reform the Statute of Autonomy, which had originally been passed in 1979. Notwithstanding, the new coalition government, led by the Socialist and former mayor of Barcelona Pasqual Maragall, did not enjoy a great deal of stability in the 2003-2006 period. In fact, it ended abruptly following the expulsion from the government of the pro-independence partner (ERC) when this party finally opted to vote “No” in the referendum on the new text of the Statute. Having said that, this first tripartite government managed to achieve the main political objective established by the Tinell Pact: to pass the new Statute of Autonomy, despite the watering down of its most important aspects relating to recognition, self-government and finance in the initial text during its passage through the central parliament (in which the PSOE, led by J.L. Rodríguez Zapatero, had been the hegemonic party since 2004)<sup>23</sup>, and the low turnout for the referendum on a significantly “mutilated” text.

The second tripartite government (2006-2010) was very different from the first, despite the fact that it was made up of the same parties (ERC rejoined it after the 2006 elections) and that its main concern continued to be its social policies. This time, having passed the Statute, it gave priority to carrying out specific public policies. The

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<sup>23</sup> Other significant measures promoted during this period by the first tripartite government were the neighbourhood law, the education plan and the infrastructures plan.

instability of the first tripartite government was addressed by incorporating the leaders of the different political parties. The president of the Generalitat was the socialist leader José Montilla, who had, until then, been minister of Industry, Tourism and Trade in the Spanish government, and was much closer in political terms to the ideas of the PSOE than his predecessor Pasqual Maragall, who was more Catalanist<sup>24</sup>. That said, it should be mentioned that the new tripartite government did not enjoy the same degree of electoral support as it had in 2003: 43.96% of the electorate abstained in the 2006 elections. This decline in support for the left-wing tripartite government has been attributed to two causes: its own instability and the final outcome of the troubled process to reform the Statute of Autonomy.

### ***A) The reform process of the Statute of Catalonia***

***a) Launching the reform.*** As laid down in the Spanish Constitution, the reform process of the Statute of Catalonia had to be carried out in three stages: it had to be passed by the autonomous parliament, and by an absolute majority of the members of the Spanish parliament (because it has the status of an organic law) and finally it had to be approved in referendum by the autonomous community itself. The 2003 elections put the reform of the Statute on the Catalan political agenda and the beginning of the journey towards its discussion and passing by the Catalan Parliament. All the parties that stood for election included the reform of the Statute in their manifestos with the exception of the Popular Party.

Efforts to reach a consensus among the different Catalan parties went on for months (from the beginning of 2004 until 2005) and the main bones of contention were those related to the finance model. A first version of the Statute was sent to the *Council of Statutory Guarantees*, but this body rejected a number of articles relating to finance, exclusive powers and the “historical rights” of Catalonia. The Statute was finally passed by the Catalan parliament in September 2005 by a majority of 120 of the 135 MPs (89%) –the PP was the only party that failed to support it. Thus, the group in favour of

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<sup>24</sup> During the electoral campaign attention was drawn to the fact that Montilla was standing for the presidency of the Generalitat despite having been born outside Catalonia (Andalusia).

the Statute consisted of four political forces: CiU, PSC, ERC and ICV-EUiA, who had managed to reach agreement despite their ideological differences.

The new Statute approved by the parliament was an ambitious text –within the limitations of the constitutional framework– which recognized the distinct national reality of Catalonia, and increased its level of self-government in several ways, as well as “protecting” it legally against the Constitutional Court. The new text contained aspects such as the definition of Catalonia as a nation; the Catalan language became the “preferred language” within the administration and it became a citizen’s duty to be familiar with it throughout the territory of Catalonia together with Spanish; it established the right of the Generalitat to collect all taxes as well as conduct bilateral negotiations with the Spanish state; it established a thorough protection of Catalonia’s autonomous powers and; among other aspects, it drew up a list of rights and duties for the citizens of Catalonia.

*b) Negotiation.* Once the new Statute had been passed by a large majority of the Parliament of Catalonia, it also had to be approved by its Spanish counterpart. The Catalan political forces entered into a negotiation process in order to obtain the support of the PSOE, which was in power at the time and enjoyed a parliamentary majority. However, lacking a clear idea regarding how the negotiation should be conducted, during the final months of 2005 and the beginning of 2006 a process began in which the political forces negotiated separately in Madrid and the President of the Generalitat (Pasqual Maragall) failed to play an active role.

During this phase, party-political dynamics brought about a breakdown of the unity among the four political forces that had made it possible for the Catalan parliament to pass the text. In this context, Artur Mas, leader of the opposition and of the most-voted party in Catalonia (CiU), embarked on secret talks with Prime Minister Zapatero in order to unblock the negotiations. The Mas-Zapatero Pact was subsequently supported by the PSC and ICV, but not by ERC.

During this negotiation the version of the Statute that had been passed by the Catalan parliament was significantly diluted in order for it to be accepted by the PSOE and, by

extension, by the central parliament. Among the changes made to the text were the following:

- a) The national definition of Catalonia: this was moved from the articles to the Preamble of the Statute (which lacked legal value) and had the following somewhat idiosyncratic wording “Expressing the feelings and the wishes of the citizens of Catalonia, the Parliament of Catalonia has defined Catalonia as a nation by an ample majority”.
- b) Justice: the justice administration would not adopt a decentralized model and the High Court of Catalonia would not be the court of last resort.
- c) Powers: watering down of the bilateral negotiation procedures and the exclusive powers of the Generalitat in many areas (education, immigration, ports, airports, industry, research, universities, foundations, businesses, local administration, etc).
- d) Foreign affairs and relations with the Spanish state: the Generalitat would not have the right to examine treaties with the European Union when these affected its own exclusive powers; nor would it be able to participate directly in the Council of Ministers or the COREPER. Moreover, other fundamental aspects for Catalonia’s presence abroad were eliminated: limitations on foreign delegations; elimination of Catalonia as constituency in European elections; its exclusion from UNESCO; the Generalitat’s inability to sign external agreements within the scope of its own powers; the Generalitat was also not permitted to designate members of the Constitutional Court or establish agreements with other AC.
- e) Finance: elimination of bilaterality and fiscal responsibility on taxes. Watering down of the role of the Tax Office with no guarantees of changes in the solidarity model nor of respect for the ordinal principle following transfers. Elimination of gradual harmonization with the economic agreement enjoyed by the autonomous communities of the Basque Country and Navarre.

The Statute of Autonomy was eventually passed in March 2006 in the Spanish Parliament with the support not only of the PSOE, but CiU, the PNB, IU, the BNG and Coalición Canaria. Subsequently, in May 2006, it was also passed by the Senate without any changes. During these votes, ERC clearly dissociated itself from the reform process by abstaining because it believed that the changes made to the original text had been too serious for it to receive the party’s support.

In June 2006, a referendum was held to approve the new Statute (Table 1) in which it received the support of 73.9% of the Catalan electorate, although the turnout was low:

**Table 1. Referendum on the Catalan Statute of Autonomy (2006)**

<b>Yes</b>	1.899.897	73,24%
<b>No</b>	533.742	20,57%
<b>Turnout</b>	2.594.167	48,85%

Source: Catalan Government

The referendum should have marked the end of the reform process by closing a legislature devoted to this issue. However, political events took a different turn. On the one hand, the tension within the tripartite government caused by ERC's opposition to the new Statute resulted in it being expelled from the government as well as serious instability. On the other hand, the appeals of unconstitutionality lodged, above all, by the Popular Party, caused the controversy to drag on and ended up hindering the deployment of the powers contained in the new text.

*c) The judgement of the Constitutional Court (2010).* The Popular Party (PP), the Ombudsman, and several autonomous communities (La Rioja, Murcia, Valencia, Aragon and the Balearic Islands) lodged appeals against different aspects of the Statute's text. These were mainly related to the definition of Catalonia as a "nation", linguistic aspects, powers, the remaining underlying bilaterality, the establishment of specific rights and liberties for the citizens of Catalonia, the regulation of Catalonia's foreign affairs, and rules relating to its finance system.

The 12 judges of the Constitutional Court (appointed by the Congress, Senate, central Government and the General Council of the Judiciary) took nearly four years to deal with the appeals, generating constant uncertainty regarding the final outcome which would have consequences for the overall operation of the system of autonomous communities. Over these four years the process became increasingly convoluted and politically convulsive. The Court's impartiality was questioned, seriously damaging the

institution's legitimacy<sup>25</sup>. Finally, the Constitutional Court published its ruling on the most extensive of the PP's appeals in July 2010<sup>26</sup>. The Court's judgement affected the constitutionality of 14 articles and "interpreted" 27 others. The aspects revised by the Court can be divided into three areas<sup>27</sup>:

- 1) Recognition: the judgement states that the Preamble (in which Catalonia is defined as a nation) has no legal value. Regarding the Catalan language, the wish to make it the preferred language within the administration and the media, and the duty to know it were eliminated; the linguistic rights of consumers and users and its role as the primary language in the education system were limited.
- 2) Powers: in this area the Statute's regulation limiting the scope of "base laws" (the central government's main way of invading Catalonia's autonomous powers) was cancelled. Moreover, the concepts of exclusive powers, executive powers and spheres such as international relations, culture, civil law or immigration were reinterpreted.
- 3) Finance: in this area, two articles referring to the levelling of incomes taking into account similarity of fiscal effort and legislation on local taxes were declared unconstitutional. The interpretative part affected regulations regarding the ordinal principle and state investments according to GDP, among others.

In conclusion, the process resulted in a clear watering down of the objectives of recognition and political accommodation that had been established at the beginning of the reform process of the Statute. This is a key element to understand the subsequent emergence of secessionist demands in Catalonia. First of all, the reform had demanded the legally binding recognition of the national reality of Catalonia within the framework of the Spanish Constitution. Article 1 of the reform proposal approved by the Parliament of Catalonia established that "Catalonia is a nation"<sup>28</sup>. This demand had

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<sup>25</sup> A number of challenges of a political nature were made between members of the Court. This resulted in the marginalization of Judge Pablo Pérez-Tremps, at the request of the PP, for having published an academic study on the powers of the Generalitat some years earlier. Moreover, disagreement between the two largest state-level parties, the PP and the PSOE, made it impossible to replace several of the Court's judges. As a result, some of its members' terms of office ran out. During the writing of the judgement, disagreements between the informally so-called "conservative" and "progressive" judges made it necessary to draw up a total of seven versions of the final draft, some of which were leaked to the press.

<sup>26</sup> STC 31/2010, 28 June 2010.

<sup>27</sup> See Requejo 2011.

<sup>28</sup> Parliament of Catalonia (Bulletin), October 2005.

been stripped of all legal value by the end of the process. Secondly, greater depth and protection for self-government had been sought in order that the Generalitat could further develop its own distinct powers, but we have already seen that this demand resulted in extremely modest gains. Thirdly, it was not possible to attain a finance model which ended a system of territorial “solidarity” regarded as unjust (quantified as between 7% and 10% of Catalonia’s GDP, figures that have provoked use of the term “fiscal despoliation” in political debates), nor respect for the ordinal principle once the territorial transfers have been made.

The combination of the extremely long-drawn-out process to reform the Statute (7 years) and its final outcome generated a widespread feeling in a large part of the Catalan citizenry of a lack of institutional legitimacy and reluctance on the part of the Spanish state to permit the effective recognition and accommodation of the distinct national reality of Catalonia.

### **B) Mobilizations of the citizenry, “right to decide” and secessionism**

In parallel with the process to reform the Statute there was an increasing mobilization of the citizenry which had not occurred in previous years. In 2005, the Platform for the Right to Decide (PRD) was formed, bringing together over 500 entities. While the Statute was being negotiated in the Spanish Parliament (February 2006), the PRD organized a demonstration that was attended by hundreds of thousands of citizens who marched through the streets of Barcelona under the slogan “We are a nation and we have the right to decide”. This mobilization gathered together the main pro-Catalan associations in Catalan civil society, but only received the support, in the party-political sphere, of ERC and EUiA, as the rest of the political parties considered this to be a time to negotiate. Subsequently, when the Statute was being implemented (December 2007), the PRD led another large mobilization demanding greater investment in Catalonia, during a crisis involving the functioning of the railway network. This second mobilization under the slogan “We are a nation and we say enough is enough!” attracted even more people than the previous one, and was supported by the majority of the Catalan political groups, apart from the PSC and the PP.

In November 2009 all twelve newspapers with offices in Catalonia published a joint editorial in Catalan and Spanish entitled “The Dignity of Catalonia” which denounced the injustice done to Catalonia following the watering down of significant aspects of the Statute after it had been approved by referendum in the Spanish and Catalan parliaments. A third mobilization of the citizenry took place following the Constitutional Court’s judgement on the Statute (July 2010). On this occasion more than a million people took to the streets according to the local police force (the total population of Catalonia is 7.5 million people) under the slogan “We are a nation, we decide!”, organized by the principal Catalan cultural organizations –led by Òmnium Cultural– and supported by the main trade unions, the president of the Generalitat José Montilla himself and all the Catalan parliamentary parties, with the exception of the PP and Cs<sup>29</sup>.

Apart from these mobilizations of the citizenry, which were basically the product of the strong tradition of civil associations in Catalan society, a new and original kind of mobilization appeared. Between September 2009 and April 2011, 552 municipalities (out of a total of 947, representing 77.5% of the total population of Catalonia) organized unofficial referendums on independence, which were run by voluntary municipal associations. In many villages and towns citizens were asked, in imitation of an electoral process, if they wished Catalonia to become an independent democratic and social state within the European Union. It is estimated that some 800,000 people participated. The majority obviously voted in favour of secession, as only those citizens most sympathetic to this option opted to cast their vote, but this wave of plebiscites constituted a significant propaganda tool and as a result secessionism gained ground on pro-autonomy and federalist positions<sup>30</sup>. But in this context, the emergence of the movement in favour of the “right to decide” (or right to self-determination) was not presented exclusively as a pro-secessionist movement, but also as a defence of the “right” to decide the country’s future democratically.

The elections held in November 2010 saw the decline of the political forces that made up the coalition government, which had been seriously affected by the economic crisis

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<sup>29</sup> C’s (Ciutadans/ciudadanos-partido de la ciudadanía: Citizens-the party of the citizenry), is an organization created in 2006 which is critical of Catalan nationalism and, from implicit pro-Spanish nationalist positions, defends the constitutional model of 1978, secularism and bilingualism in Catalonia.

<sup>30</sup> See Guinjoan-Muñoz 2012.

that had begun in Spain in 2008<sup>31</sup>, and resulted in the return to power of a (minority) CiU government. In a context of budget cuts, economic crisis and a low level of implementation of the powers laid down in the 2006 Statute of Autonomy, the new government prioritized the attainment of a new fiscal agreement by proposing that Catalonia leave the common finance regime<sup>32</sup> and began a “bilateral negotiation” with the Spanish state. This was the second time that Catalonia had attempted to leave the framework of the common regime as the new Statute had also included this possibility. Moreover, in March 2012 the Catalan National Assembly (ANC) was formed. This is a civil organization, made up of a wide cross section of Catalan society, it is pro-independence, and present throughout the territory of the country and organized the massive demonstration held on 11 September, 2012, which mobilized over a million citizens and was widely reported in the foreign media.

The demand for the “right to decide” was included in their manifestos by the Catalanist parties in the elections held on 25 November 2012, obtaining over two-thirds of the seats in the Parliament, after the president of the Generalitat (Artur Mas) had made a last attempt to negotiate a “fiscal agreement” similar to the model of the existing economic accord in the Basque Country and Navarre which had been flatly rejected by the president of the central government (Mariano Rajoy)<sup>33</sup> (Table 2).

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<sup>31</sup> During the first quarter of 2008 the unemployment rate in Catalonia was 7.6%, by the last quarter of 2010 it had risen to 18%, and at the end of 2012 it stood at 24% (IDESCAT) (more than 26% in Spain).

<sup>32</sup> The finance model of the 15 autonomous communities, the so-called “Common Regime” (which comprises all the AC except for the Basque Country and Navarre, which are regulated by an asymmetric agreement called the “Economic Accord”) is laid down in the Organic Finance Law of the Autonomous Communities (LOFCA). National tensions in Catalonia, in contrast with the Basque Country, have been expressed in a largely non-violent way. For more information regarding politics in the Basque Country, see Requejo–Sanjaume (2012).

<sup>33</sup> For access to all the electoral manifestos of the 2012 Catalan elections, see the *Regional Manifesto Project* : <http://www.regionalmanifestosproject.com/>.

**Table 2. Catalan Parliament: electoral results (1999-2012). Percentage (number of seats)**

	<b>1999</b>	<b>2003</b>	<b>2006</b>	<b>2010</b>	<b>2012</b>
<b>CiU</b>	37,7 (56)	30,9 (46)	31,52 (48)	38,4 (62)	30,7 (50)
<b>PSC</b>	37,9 (52)	31,2 (42)	26,8 (37)	18,4 (28)	14,4 (20)
<b>PP<sup>34</sup></b>	9,5 (12)	11,9 (15)	10,7 (14)	12,4 (18)	13 (19)
<b>ERC</b>	8,7 (12)	16,4 (23)	14 (21)	7 (10)	13,7 (21)
<b>ICV-EUiA</b>	2,5 (3)	7,3 (9)	9,5 (12)	7,4 (10)	9,9 (13)
<b>Ciutadans<sup>35</sup></b>	-	-	3 (3)	3,4 (3)	7,6 (9)
<b>CUP<sup>36</sup></b>	-	-	-	-	3,5 (3)
<b>SCI<sup>37</sup></b>	-	-	-	3,3 (3)	1,3 (0)

Source: Catalan Government.

Similarly, surveys show that support for secession, on the one hand, and the right to decide, on the other, have not ceased to grow over the last few years<sup>38</sup> (Graph 1).

<sup>34</sup> Partido Popular (PP) is a state-wide, right-wing party and centralist, the current president of Spain Mariano Rajoy belongs to this party and nowadays has an absolute majority in central Parliament.

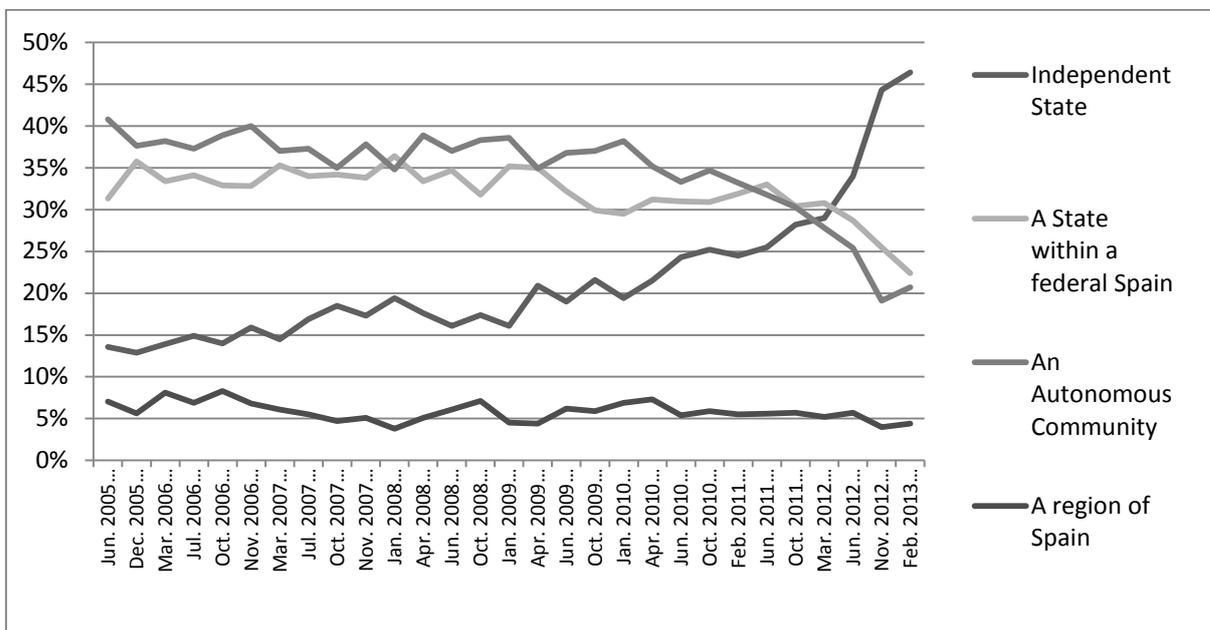
<sup>35</sup> Ciutadans-Partido de la Ciudadanía (C's) is a centrist party, centralist and defender of Spanish speakers in Catalonia.

<sup>36</sup> Candidatura d'Unitat Popular (CUP) is a secessionist and leftist party which comes from local secessionist movements and leftist minor organizations.

<sup>37</sup> Solidaritat Catalana per la Independència (SCI) is a centrist platform created for declaring secession unilaterally in Catalonia.

<sup>38</sup> The evolution of the territorial preferences of the Catalans has varied drastically: in a multiple-choice question on the preferred territorial model for Catalonia (regional, autonomous community, federated state, independent state), in June 2005 13.6% of respondents preferred an independent state, while in June 2012 no fewer than 34% chose this option. More recent polls (2013) show even higher results (between 40% and 45%) (CEO, Barometer of Public Opinion).

**Graph 1 – Evolution of Catalans’ territorial political preferences (2005-2013)**



Source: CEO

It is worth noting that the opposite has happened in the rest of the autonomous communities (with the exception of the Basque Country); as the pro-independence option gained ground in Catalonia, the number of people in favour of decentralization and federalization dwindled in the rest of Spain<sup>39</sup>.

The new (CiU) minority government has sought stability through a “Agreement of Government” with ERC (December 2012). ERC remains in opposition but supports the government on constitutional issues and those relating to governability. This agreement between CiU and ERC includes aspects connected with the economic crisis as well as three aspects pertaining to the “right to decide” the country’s constitutional future: a) a “Declaration of Sovereignty” in the Catalan Parliament; b) the creation of an advisory body called the Advisory Council for National Transition made up of experts; and c) the calling of a referendum on the constitutional future of the country within the framework of the EU.

The Declaration of Sovereignty was passed by the Catalan Parliament (January 2013) by a majority of 85 out of a total of 135 members. It establishes that Catalonia has the

<sup>39</sup> See Grau 2011.

right to decide its own future. Although this declaration lacks legal validity, the Spanish government has lodged an appeal against it with the Constitutional Court as it considers it to be in contravention of the 1978 Constitution. The CiU parliamentary group in the Spanish Parliament subsequently put forward the initiative to hold a referendum on the future of Catalonia within the Spanish legal framework, which was supported by 74% of the Catalan members of parliament. Ninety per cent of the other Spanish MPs (basically the PP and the PSOE) voted against this proposal. However, the Catalan socialist MPs voted in favour of the resolution. This was the first time that they had voted differently from their PSOE colleagues. The same resolution was also presented and voted on in the Catalan Parliament, where 104 out of 135 MPs voted in favour<sup>40</sup>. There is therefore a very pronounced contrast between the two parliaments.

Finally, the autonomous government of Catalonia (Generalitat) has created the Advisory Council for National Transition (CATN) (April 2013) which has been tasked with advising the government on the different scenarios, procedures, legal frameworks, international experiences, institutions, etc relating to the exercise of the right to decide<sup>41</sup>.

### **3. Conclusions: Legitimizing national pluralism and theories of secession. The case of Catalonia.**

With regard to the legitimizing positions put forward by the different political actors, there is a clear contrast not only between the values and objectives they defend, but also between the different “paradigms” or theoretical frameworks they employ. On the one hand, the central government and the main Spanish political parties put forward reasons of a legal-constitutional nature to argue that, in the Spanish case, it is not possible to enter into a dynamic similar to that which occurred in the case of Quebec and Canada or the one that is currently taking place in Scotland with regard to the United Kingdom. These are different situations, they say, which must be approached in different ways. The underlying implicit democratic approach employed here is that which is associated

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<sup>40</sup> The PSC and ICV have supported the “right to decide”; that is, the calling of a referendum in which the citizenry can express their majority wishes regarding their future, despite the fact that the former is against independence and the latter has made no statement on the matter.

<sup>41</sup> This council has 13 members, most of who are university professors and researchers, mainly from the areas of political science, economics, and constitutional and international law.

with liberalism 1. Moreover, a number of actors have employed arguments relating to the potential economic decadence of an independent Catalonia or its automatic exclusion from the European Union (in contrast with the Scottish debate). Thus the two avenues chosen by those actors that reject the possibility of the independence of Catalonia and the possibility of calling a referendum on the issue are that of the unconstitutionality of territorial separation, and that of “fear” of the potential consequences that an independent Catalonia would have for the Catalan people.

On the other hand, the Catalan actors put forward two kinds of legitimizing argument depending on whether the aim is to justify the holding of a referendum on secession, or to justify the advisability of Catalonia becoming an independent state. The fundamental reason used to justify the referendum is its democratic nature. The prior assumption is that Catalonia is a specific *demos* that has the right to decide about its future according to liberal-democratic rules. The differentiating roots of this *demos* are of a historical and national nature. Thus the legitimizing arguments for the right to decide usually combine the perspective of adscriptive or national theories of secession with the perspective of democratic and plebiscitary theories. The different advocates of this position, both in the political sphere and in civil society, put different emphasis on these two avenues of legitimation, but, broadly speaking, the approaches that they adopt are linked either to traditional minority nationalist traditions, or to values and attitudes associated with liberalism 2. In fact, the contrast between the normative and analytical frameworks represented by liberalism 1 and 2 are in line with the more basic and abstract contrast between, on the one hand, the Kantian paradigm based on the value of *dignity* and the perspective of *moral individualism*, and, on the other hand, the Kantian-Hegelian paradigm, which complements the former with *recognition* and the perspective of *moral collectivism*<sup>42</sup>.

In contrast, the legitimizing arguments in favour of independence –whether this is achieved by means of a referendum or through alternative avenues such as a unilateral declaration of independence by the Parliament of Catalonia– add to the two avenues mentioned earlier that associated with theories of just-cause secession. In this case, “injustice” is present both in relation to the systematic mistreatment at the economic and fiscal levels that Catalonia receives from the Spanish government (fiscal deficit of

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<sup>42</sup> This point is developed further in Requejo 2013.

around 7%-10% of GDP<sup>43</sup>), lack of infrastructures, centralism with regard to Barcelona's airport and other infrastructures, lack of recognition of the distinct national reality of Catalan society, linguistic policies favouring Spanish to the detriment of Catalan (absence of linguistic pluralism in state institutions and practices, etc), marginalization of Catalonia from the European and international spheres, shortcomings in the use of political symbols (use of flags, anthems, etc) in sporting competitions, etc. This avenue is reinforced by the traditional lack of inclination displayed by Spanish institutions to reach agreements that permit recognition and political and constitutional accommodation of the state's national pluralism. The refusal to include an explicit recognition of the Catalan nation in the new Statute by the Spanish parliamentary majority and subsequently by the Constitutional Court represents a failure of recognition (Patten). Moreover, the economic mistreatment of the fiscal balances and the unwillingness to resolve the ambiguity regarding powers which benefits the central government are clear examples of a lack of respect with regard to self-government or internal self-determination (Seymour) and of unfair redistribution (Buchanan). Finally, regarding the right to decide, the Spanish territorial model is always interpreted in a unitary way rather than in a plurinational federalist fashion which is sympathetic to value pluralism (Requejo). This response prevents an approach to the question based on negotiation and multilateralism such as that established, for example, by Canada's laws or in the Scottish case.

In short, it is clear that the conflict between the Spanish and Catalan institutions has escalated and become more radical since the last elections (November 2012). While this paper was being written (April 2013), the future prospects of Catalan and Spanish politics regarding the territorial question remain open. There are a number of different possible scenarios: either through agreements –which currently seem unlikely– within the context of the Spanish state, or through agreements with European or international mediation, or through an institutional rupture and the mobilization of the citizenry (which we do not deal with here). Moreover, it is an issue that is juxtaposed with the management of the economic crisis in Europe (in which the Generalitat does not participate). In practical terms, macroeconomic decisions (management of the public deficit and public debt) remain in the hands of the central government, as do decisions

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<sup>43</sup> Catalonia's fiscal deficit with regard to the state is in the order of 15,000-20,000 million euros a year, according to a number of studies. The accumulated negative balance since the year 1986 is calculated to be around 230,000 million euros (Bosch-Espasa-Solé 2012).

relating to the management of the main taxes and money transfers which enable the Generalitat to pay everything from the salaries of its employees to its suppliers. The economy is currently one of the central government's key instruments for putting pressure on the Catalan government. Moreover, the latter has yet to approve the budget for 2013, due to the fact that ERC does not agree with the cutbacks put forward by CiU, which are designed to meet the objective of controlling the public deficit (the approval of the budget is not part of the Agreement of Government signed by these two political forces).

The Catalan case within the context of the Spanish "state of autonomous communities" thus illustrates the practical juxtaposition of the legitimizing arguments put forward by the different normative theories of secession. The reform process of the Statute has marked the most recent political cycle of this empirical case, causing the predominant Catalan demands to shift from being regionalist or pro-autonomy in favour of secessionism. Throughout this process, the lack of recognition and accommodation shown by the Spanish state has played a decisive role. These recent political events have placed the Catalan case as a clear empirical reference within the sphere of comparative politics on secessionist processes and as to check the normative theories of secession in plurinational democracies.

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