Secession and liberal democracy. The case of the Basque country

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Abstract

The academic debate about the secession of a territory which is part of a liberal democracy state displays an initial contrast. On the one hand, practical secessionist movements usually legitimize their position using nationalist arguments linked to the principle of national self-determination. On the other hand, we find in academia few defenders of a normative principle of national self-determination. Philosophers, political scientists and jurists usually defend the status quo. And even when they do not defend it, most of them tend to leave the question of that question and secession unresolved or confused. Regarding this issue, liberal-democratic theories show a tendency to be “conservative” in relation to the political borders, regardless the historical and empirical processes of creation of current States. Probably, this feature is not far away to the fact that, since its beginning, political liberalism has not been a theory of the nation, but a theory of the state.

1.1 Introduction: three analytical elements about secession

The academic debate about the secession of a territory which is part of a liberal democratic state displays an initial contrast. On the one hand, practical secessionist movements usually legitimise their position using nationalist arguments linked to the principle of national self-determination. On the other hand, we find in academia few defenders of a normative principle of national self-determination. Philosophers, political scientists and jurists usually defend the status quo. And even when they do not defend it, most of them tend to leave the question of that question and secession unresolved or confused. Regarding this issue, liberal-democratic theories show a tendency to be “conservative” in relation to the political borders, regardless the historical and empirical processes of creation of current States. Probably, this feature is not far away to the fact that, since its beginning, political liberalism has not been a theory of the nation, but a theory of the state.

Before dealing with moral theories of secession, it is convenient to clarify a number of points. Below we describe three aspects that should be borne in mind when addressing normative theories of secession.

a) Normative questions. Answering the question “when is the secession of a territory in a liberal democracy justified?” makes it necessary, at the very least, to tackle three questions to which national self-determination provides debatable responses:

- First question: Who is justified in doing so?
- Second question: Why is it justified?
- Third question: How can this be institutionalized?

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1 As states usually oppose any potential secessions in their territory, if the contrary is not indicated it should be understood that the secession is unilateral (i.e., not negotiated).

2 This principle of national self-determination was formulated by US president Woodrow Wilson based on his famous 14 points: A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the government whose title is to be determined. (Wilson 1918).

3 The term status quo refers to a principle apparently opposed to that of the national self-determination defended by secessionist political actors, that of the territorial integrity of existing states, that is, the application of the principle of self-determination only to the states.

4 Political liberalism has been developed in practice in parallel with state-building and nation-building processes led by state institutions. At least to some extent it explains the misrepresentation and marginalization of minority nations in political liberal theories until recent times.
Answers to these questions often traps many theories within a reality that is always more complex and which demands to go beyond the classic concept formulated by Wilson, as several authors have suggested\(^5\), as well as beyond the nationally stateist perspective inherent to the mainstream of liberal-democratic theories\(^6\).

\(b)\) **Empirical cases.** There is a lack of empirical examples of secessionist processes in the group of liberal democracies in recent decades. Actually in Europe new states have been the outcome of the collapse of two empires: the Austro-Hungarian empire after IWW and the “soviet Empire” in the 90’s. If, moreover, we limit the field to unilateral secessions, i.e. non-negotiated ones, there is hardly a single case to be found. A historic example of the first case, negotiated secession, might be that of Norway from the United Kingdom of Norway and Sweden in 1905. Moreover, the will of the international community, which is composed of states, has usually been to maintain the borders fixed by the *status quo*. Other more recent European cases are not examples of secessionist process in liberal democracies: Czechoslovakia in 1993, when the countries mutually agreed to separate; the secession of Montenegro from the State Union of Serbia and Montenegro in 2006 (with international control of the process); and that of Kosovo, after the latest war in the Balkans.

\(c)\) **Gap between theories and practical demands.** Discussing the legitimacy of secession in liberal-democratic contexts usually consists in making suppositions for the future. The political debate about secession in western democracies contains a large number of values, interest, identities and arguments that *moral theories of secession* discussed in academic environments hardly capture. In the political debate, arguments regarding pragmatic, instrumental and moral dimensions tend to get mixed together. Moral theories of secession do not cover all the scope of what is needed: moral, political, institutional, functional and other normative components present in specific cases. From a normative perspective, the debate about potential institutional “solutions” in multinational democracies (federalism, consotionalism, secession, etc) is sometimes more relevant than the debate in terms of strict moral theories of democracy or justice. The former include normatively relevant empirical elements in specific contexts that are usually absent in the more abstract language (and sophisticated lines of reasoning) of the latter.

1.2 **Three traditional kind of theories of secession**

As is customary in the literature, we can distinguish between theories that establish an *a priori* right to self-determination and secession and theories that think secession as a political result when some circumstances appear. The first group includes two versions for territorialized collectives.

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\(^6\) Liberal-democratic theories usually do not have the former three questions in their intellectual agenda. They implicitly define the *demos* of a democracy in unitary and monist terms, as a single reality, marginalising the challenges that exist in multinational democracies (in which several national *demoi* coexist). The reserve the right to self-government for the state collective, regardless of the (sometimes coercive) historical process which has created the state itself. A development of this point in Requejo 2010d, 2005 chap1 and 3.
A) Liberal-nationalist theories. These theories focus on an “intrinsic value” upon the nation or on a “contextual sphere for individual decision”. Both, however, have argued strongly in favour of measures for the recognition and political accommodation of national minorities in multinational contexts, basically by means of agreements of a federal or self-government nature. However, secession is less defined in this literature as it is usually seen as a last resort. For a liberal nationalist, the self-determination of a cultural, national or linguistic minority should be achieved, in principle, through the government of the state to which it belongs. In the empirical field, there are few practical examples of formal institutionalisation of constitutional rights of self-determination and secession. (See table 1)

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Right of Secession</th>
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</thead>
<tbody>
<tr>
<td><strong>Plurinational Federations</strong></td>
<td></td>
</tr>
<tr>
<td>Bosnia-Herzegovinia</td>
<td>No</td>
</tr>
<tr>
<td>Belgium</td>
<td>No</td>
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<tr>
<td>Canada</td>
<td>Yes*</td>
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<tr>
<td>Ethiopia</td>
<td>Yes</td>
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<tr>
<td>India</td>
<td>No</td>
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<tr>
<td>Russia</td>
<td>No</td>
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<tr>
<td>(Serbia-Montenegro)**</td>
<td>Yes**</td>
</tr>
<tr>
<td><strong>Plurinational Regional States</strong></td>
<td></td>
</tr>
<tr>
<td>Spain***</td>
<td>No</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>No</td>
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</tbody>
</table>

* Right of Secession according federal (non unilateral) rules
* *Federation broken by unilateral referendum in Montenegro (2006)
* ***State with some federal trends

**Source: Requejo 2010c**

Critics have considered that these theories have to address an unresolved question: how do we know which is a nation and which is not? Furthermore, from an international perspective, there are more nations than viable states. Some authors argue that this would lead to an extremely undesirable fragmentation (it has been calculated that there


8 These rights can be found in the Constitutions of Ethiopia and S. Kitts and Nevis. Constitution of Ethiopia, Preamble and Article 39 The Right of Nations, Nationalities and Peoples. Constitution of Saint Kitts and Nevis, Section 113, Separation of Nevis from Saint Christopher.

9 A proposal to complement the traditional (and somewhat “vaporous”) concepts of “nation” with empirical criteria, in Requejo 2010c
are some 25 cultural group per state in the world). Many arguments of these theories are often based on the existence of a cultural majority which does not permit the cultural minority to express itself. However, it has been pointed out that situations of shared, overlapping cultures often occur. In these cases, critics say that nationalist theories are not able to provide a solution, as they usually regard the group that wishes to secede as a homogeneous group in cultural terms. It has been also pointed out that the secession of cultural groups that are different from the majority would act as a disincentive for multinational states to accommodate existing minorities within them.

B) Elective/Plebiscitary theories. These authors consider secession legitimate when a group of individuals decides to exercise this right in a democratic and majority manner. The plebiscitary theory hinges on the centrality of values such as freedom of association and individual autonomy, without demanding any specific cultural, linguistic, ethnic or national characteristics of the group that wishes to secede. Despite the apparent simplicity of these theories, it is worth pointing out that they contain extremely important nuances for generating discussion between authors belonging to these kind of theories. The central value varies; while, for some, it is the right of association (Gauthier, Beran), for others it is the Kantian moral autonomy of the individual (Philpott), while there are some who defend individual self-determination subordinated to the principle of its costs and benefits (Wellman). Or even the right of exit inspired by the work of Hirschman (Webb).

Despite the fact that the plebiscitary theory is based on liberty and popular sovereignty, which are normative pillars of liberal democracy, the critics consider that it makes a biased interpretation of these principles. Thus, applying the “law of the majority” only to a group of persons who are concentrated territorially at a specific moment in time in order to create a new border and separate from the state to which they belong would represent an erroneous interpretation of the principles of liberal democracy. These critics consider that popular sovereignty can only be applied to the whole territory of the state and not to the parts which constitute it.

These two groups of theories have in common that they derive the right to secession directly from its contents and, therefore, any empirical cases which fulfil the theoretical description would justify a secessionist process. These arguments are commonly used by secessionist movements, but they usually leave unanswered a set of questions. For these reasons, these two theories have been called primary theories as they grant an a priori right to secession; while the theory we now deal with does so in a secondary way.

C) Just cause theories. These theories consider that there is no a priori right to secession, but that this right arises from the injustices suffered by a group of territorialized citizens within a state. It is therefore a right that is applied as a remedy for a clearly unjust situation. The authors coincide in pointing out two just causes which

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13 See a list of unresolved questions in Norman, 2009: 297.
would legitimise a secession and which were first expressed theoretically by Buchanan\textsuperscript{14}: a) the systematic violation of human rights by the state (e.g. the Kosovars in Serbia; the Kurds in the north of Iraq); b) the unjust annexation of territories (e.g. the case of the Baltic republics by the USSR). This is the theory behind present-day international law: non-intervention and non-recognition of new states unless there is a manifest case of injustice. Recently, however, Buchanan has included a new condition of just cause which could permit secession. This would be the violation of existing inter-state agreements. Cases like that of Chechnya, Sudan, Eritrea, and the Kurdish region in northern Iraq show that when the autonomy of a minority is violated (an agreement of autonomy with the state), it would become legitimately secessionist.

A criticism that has been made against these theories is the paradox contained in the just-cause idea in order to legitimise secession. This consists of the fact that, it would be necessary to be violations of human rights or very serious events for secession to be justified, because if not this is seen as a dangerous act. It seems a kind of theory thought beyond liberal democracies, where it seems unlikely that serious violations of human rights could occur\textsuperscript{15}. Finally, it has also been argued that just-cause places the burden of proof on the secessionists, instead of asking why the unity of the state in question is so important from a normative perspective\textsuperscript{16}.

1.3 A fourth theory of secession for national permanent minorities in multinational democracies

We have looked at two groups of general theories of secession and at one group of theories that is applicable when the secessionist group suffers injustices. We will not conduct an extensive discussion of the criticisms that these theories have received. However, I would like to mention that a theory of secession for cases of multinational liberal democracies should take into account the fact that respect, recognition and accommodation for the rights of national minorities is also a necessary normative element to be added to respect for human rights and democratic procedures in the legitimising principles of liberal-democratic states. Since the theoretical perspective stressed by the so-called Liberalism\textsuperscript{2}\textsuperscript{17}, arguments have been put forward in favour of incorporating respect, recognition and accommodation for national minorities as a


\textsuperscript{15} Buchanan, after observing the experiences of Kosovo and Chechnya, decided to broaden the conditions of just-cause to include the violation of “intrastate agreements of autonomy” Moreover, he later discussed another condition: the case of permanent minorities Buchanan 2007: 360. This fourth condition, although Buchanan partially rejects it, leads him to accept the terms laid down by the famous “Opinion” of the Canadian Supreme Court in the case of Quebec Reference [1998]. For Buchanan, this is a case of negotiated, not unilateral, secession, as the Supreme Court recommended in this case. Despite this, it opens the door to a possible theory of secession applied to cases in multinational liberal democracies. This theory is derived from those of just-cause, but includes elements from the other two.

\textsuperscript{16} This arises the basic normative question, usually unanswered by normative political theories, about what is, should be, and why, the basic political community of human solidarity. It is far from clear that the answer should be “the state”. See Requejo 2005 chap 2.

\textsuperscript{17} Taylor 1992
question of justice\textsuperscript{18}. These approaches would allow to define national minorities in multinational states as the subject of the right to secession. This question leads us to the “Opinion” regarding the case of Quebec mentioned above. On that occasion the Supreme Court, acting as arbiter, denied Quebec the right of unilateral secession. However, it did consider that if a clear majority of Quebeckers voted in favour of secession in a referendum, the Government of Canada would have to negotiate the conditions under which this could take place. This juridical decision points several elements that any theory of secession must take into account: right to organize referendum by national minorities, question submitted to referendum of citizens, required number of voters, etc. The perspective adopted by the Canadian Court is that of interpret the right of national self-determination in federal rather in nationalist terms, against unilateral Canadian and Quebecker nationalisms, but opening the door to a secessionist process if some conditions have been accomplish.

Bearing in mind this practical precedent and the three analytical elements before mentioned, we have presented elsewhere the basis for a more multidimensional normative approach to the recognition and accommodation of national pluralism in liberal democracies\textsuperscript{19}. This approach includes two philosophical elements of Hegelian philosophy: the politics of recognition and an “ethical” collectivist approach (in contrast with mere “moral” approaches). These elements work together with the more individualistic, statist and partially universal perspective usually present in political liberal theories based on a Kantian approach of moral individualism. The right of secession of national minorities in liberal democracies would be one of the institutional rules of this approach. The general framework of reference is I. Berlin’s conception of value pluralism –in this case including not only a pluralism of values, but also of interests and national identities. The objective is to open the values of negative liberty and political equality to the collective dimension involved in nationally diverse societies. The basic normative elements of this theory are: individual and collective minority rights; the politics of recognition; constitutional accommodation through liberal protections and partnership agreements; and democratic vote.

Thus, rather than there being a single theory of secessionist legitimacy, in practice there is more than one. In the next section we will look at the Basque in the Spanish Autonomic State (Estado de las Autonomías). This is an empirical case which shows that both the moral refinement of liberal-democratic theory with regard to the relationship between national groups in multinational democracies, and an institutional practice that attempts to achieve the recognition and political accommodation of national pluralism in liberal democracies –which may include a right of secession for national minorities- are two liberal-democratic challenges for political theory and constitutionalism in the 21\textsuperscript{st} century.

2. National minorities in the Spanish “Estado de las Autonomías”

2.1 A very brief historical note

\textsuperscript{18} Requejo, 2005, 2001; Kymlicka 2001

\textsuperscript{19} Requejo 2010a, 2010b
In modern times the organisation of the Spanish state has been largely based on the premises of the French model, which consisted of only two administrative levels: the central power, and a municipal power which was very weak in political terms. Both were articulated according to a centralised concept of the state. All efforts to articulate the state according to “regionalising” premises – some of which were extremely moderate in nature – failed for different reasons. This was the case of the First Republic (1873), of the *Mancomunitat de Catalunya* of the period of the Restoration (beginning of the 20th century), and of the “integral state” of the Second Republic (1931-1939). In fact, the very term “federal” continues to arouse direct opposition in Spain from some political forces – in the name of “national” unitarianism by the traditional right (formerly linked with Catholicism and the monarchy), or in the name of a homogenising liberal unitarianism or the Jacobinism which is present in some tendencies of the left (mainly in the Socialist sphere).

Following the Civil War (1936-1939) and the subsequent prolonged period of Francoist dictatorship (1939-1975), the territorial model that was established with the 1978 Constitution has evolved in parallel with an environment that is very different from that which existed in previous historical periods: 1) the unequivocal transition from an authoritarian state to a liberal democracy – by means of an agreement characterised by the firm desire of the political forces to establish a set of rules based on a consensus that would endow them with stability and legitimacy; 2) the construction of a welfare state; and 3) the integration of the state into the European and international spheres. In addition to these objectives was that of establishing a territorial system that would result in the stable and definitive political integration of the minority nations, Catalonia and the Basque Country (and, to a lesser extent, Galicia), and their respective political forces, into the political system of the state. This was something that had never before been achieved throughout modern Spanish history. In contrast with other historical disputes that are largely resolved today – the monarchy/republic issue, the religious question, economic and social development, the internationalisation process – almost thirty years after democracy was re-established, the only issue which has yet to be resolved politically is the “historical” dispute regarding the territorial model associated with the multinational character of the state.

Thus, the Spanish transition to liberal democracy, which in general terms is usually considered to have been a successful process, nevertheless displays a number of structural flaws. There is no doubt that with the new model for territorial organisation known as the *Estado de las Autonomías* (State of Autonomies), Spain put an end to its endemic centralism and became a highly regionalised state. However, different actors pursued different objectives through this decentralisation process. These objectives, in turn, reflected their distinct values, some of which, due to the way that the process was implemented, have turned out to be contradictory in practical terms. The final outcome has been a territorial model which in a comparative perspective displays an intermediate

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20 In comparison with the state-level political parties, those that exist within these three minority nations are different (and more pluralist, especially in Catalonia and the Basque Country). Moreover, in all three there are pro-independence parties which receive between 10% and 20% of the votes (depending on the community and type of election). It is worth noting the influence of the electoral system on the political system: despite the fact that the elections to the Spanish Parliament are regulated by a apparently proportional formula, the system has majority effects due to the fact that each electoral district is assigned a small number of seats (Gallagher Index of disproportionality of approximately 8). The third-largest state party (the United Left) is the biggest loser in the current electoral system. Elections to the parliaments of the autonomous communities produce much more proportional results.
A political decentralisation based on functional objectives, such as efficiency, results in different challenges from those posed by a form of decentralisation designed to facilitate the participation of the citizenry. Moreover, both types of decentralisation are distinct from the aim of achieving political accommodation between different national collectivities. In Spain, the successes achieved regarding the first two objectives cannot conceal the still unresolved problems with regard to the third. During the deliberations over the reform of Catalonia’s Statute of Autonomy (2006), these problems and the lack of a solution have appeared once again. In some ways the new Statute increases the level of Catalan self-government, but it does not seem that it will solve the deficiencies regarding the political accommodation of the internal national pluralism which the Spanish constitutional system has suffered from since 1978. The process of reform for the Basque case has yet to be resolved. This is certainly a complex case due to its interrelationship with the violence of ETA and the popular support of organisations linked with the strategy of this group.

It is easy to see that the Spanish Estado de las Autonomías represents an atypical and somewhat eclectic approach within the field of comparative politics. Among the principles explicitly recognised in the Preliminary Title of the 1978 Constitution are those of unity, autonomy and solidarity. The result has been the establishment of a decentralised state which, above all, shares two elements with federations: 1) decentralisation is designed for all the territorial subunits, and not only for some of

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21 See Requejo 2010c
them. That is, the total number of territories endowed with constitutionally-guaranteed political autonomy – currently 17 “autonomous communities” (AC) plus two cities in the north of Africa, Ceuta and Melilla (autonomous cities) – is equivalent to the whole territory of state; and 2) the existence of the Constitutional Court as supreme arbiter of the constitutionality of the laws and conflicts relating to powers between the institutions of the state (the AC have no say, however, in the appointment of the 12 magistrates)22.

Despite the fact that the AC formally enjoy a high degree of autonomy in some areas, the basic characteristics of the model are predominantly based on a more regionalising than a strictly federal logic23. The constitutional system attributes 1) important powers to the central government (Art.149), as well as a number of principles that allow the latter to intervene in somewhat discretionary ways in order to safeguard the “coherence” and “solidarity” of the system (Art.138, 139); together with 2) regulations in favour of autonomy – recognising the legislative capacity of the AC and an exclusively jurisdictional control. Article 2 of the Constitution distinguishes between “nationalities and regions”, a distinction which is a potential source of asymmetric regulations, although this distinction has not been developed subsequently (all the territorial units are treated as “autonomous communities”). Moreover, the Estado de las Autonomías has not instituted mechanisms of coordination or cooperation between the two levels of government (stable inter-governmental relations, a second “federal” chamber, participation in European politics, possibility of establishing horizontal relations between AC, cooperation in institutions such as the Constitutional Court, the Tax Office, the General Council of the Judicial Power, etc).

The most important issue to be resolved by the territorial model is, however, quite different: the political accommodation of a multinational reality. This has always been an unresolved issue in contemporary Spanish history24. Despite the fact that in some comparative political works the Spanish state is often classified as a “federal” state25, there are many arguments that would suggest that perhaps it would be more appropriately situated in the group of “regional” states. It is not a federal state, but a decentralised state when compared with other regional states, and has one important thing in common with federations: decentralisation is designed for all the territorial subunits and not only for some of them. The total number of territories which enjoy constitutionally-guaranteed political autonomy - currently 17 autonomous communities plus two cities in North Africa: Ceuta and Melilla – make up practically the whole of the territory of Spain. However, among the elements that distance the current Spanish

22 The 12 magistrates, who are elected for a period of nine years, a third of whom are replaced every three years, are elected in the following way: four are proposed by the Chamber of Deputies (the lower house of the Spanish Parliament, known as the Cortes Generales) by a qualified majority of three-fifths; four are proposed by the Senate (the upper chamber of the central parliament) also by three-fifths of the chamber; two are proposed by the central government; and two are proposed by the Consejo General del Poder Judicial (the General Council of the Judicial Power, the judges’ governing body). None of these institutions is currently related with the autonomous territorial model.

23 Elsewhere, I have pointed out the elements that differentiate the Spanish system from federations. See Requejo 2005, ch 5-6

24 For an approach to the accommodation of nationally plural societies from the perspective of political theory, see Requejo 2001. See also McGarry 2002, Kymlicka 2001.

model from standard federations are the following: the AC are not constituent entities; the decentralisation of legislative powers is unclear; the judicial power remains basically that of a unitary state; the upper chamber is not linked to the federated units; the Estado de las Autonomías is very different from any model of fiscal federalism; the AC are not considered to be political actors in relation to the principal institutions of the European Union (in contrast to the federations of the EU, especially Belgium and Germany); the AC do not participate in the process of constitutional reform.

The general conclusion is that the current Spanish Estado de las Autonomías does not display important elements (of an institutional and procedural nature) that usually define “federations.” In fact, the Constitution includes more asymmetrical elements than genuinely federal ones. However, most of these asymmetrical elements have not been developed in post-constitutional political and legislative practice. Despite the fact that the AC possess a high degree of autonomy in some areas, the practical characteristics of the model have been predominantly developed on a regionalising perspective.

### 2.2. Stages of constitutional development (1978-2009)

It is possible to identify five phases in the development of the Spanish Estado de las Autonomías between 1978 and 2009:

1) **Constituent phase (1978-1981)**. This corresponds to the negotiation of the Constitution and the Estatutos de Autonomía (statutes of autonomy) of the communities possessing national characteristics. The articulation of the state’s multinationality does not take the form of a “constitutional solution” as this question had not been resolved politically during the period of political transition. The result could be described as a procedural framework for decentralisation, which may develop in a variety of ways. The latter have been characterised by the generalisation of the autonomous communities - which are not specifically defined in the Constitution- and by the fact there are many of them (17 communities plus Ceuta and Melilla, also have a “statute of autonomy”).

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26 The central power maintains its hegemony through the so-called “leyes de bases” and “leyes orgánicas” (basic and constitutional laws), which are the same throughout the state and which can be developed in a centralising way in many areas (education, local power, civil servants, universities, etc).

27 The majority of the senators are elected by the “provinces”, a set of administrative divisions which date back to the 19th century. The AC play no role in the legislative power of the “federation”.

28 Almost all taxes are collected by the central power, which later returns an amount equivalent to that which the AC need in order to finance the powers that they have. The Basque Country and Navarre are the exceptions to this rule as they enjoy an asymmetrical fiscal agreement with the central power, based on a number of “historical rights”, which are regulated under terms which are more confederal than federal. By means of the so-called “economic agreement” (concierto económico), these two communities collect taxes and pass on a specific amount of money to the central power to pay for the services that the latter provides for the community.

2) *Autonomous agreement phase (1981-1992).* During the 1980s the main political parties with representation in all the state (UCD, PSOE, PP)\(^{30}\) signed two pacts concerning issues relating to the autonomies (1981, 1992). Centralism comes to dominate autonomous development through the passing of the *leyes de bases* (basic laws) and *leyes orgánicas* (constitutional laws) by the central political institutions (universities, civil servants, local governments, education, etc). One of the consequences of this was the increasing process of judicialisation of autonomous development during the first half of the last decade, which resulted in the Constitutional Court playing an intense and leading role. The final result of this period was the establishment of a homogenising model of political development, inspired in part by the German model, which is at present far from consolidated.

3) The phase involving the parliamentary agreements with the Basque and Catalan nationalist parties (*PNV, CiU*)\(^{31}\). This period is marked by the main political parties’ lack of an absolute majority (PSOE between 1993-96, PP 1996-2000) forcing them to seek support from other parties in order to guarantee the stability of the central government. This is a phase characterised by bilateral agreements between the two main non-state nationalist parties and the governing Spanish party (PSOE or PP). Nevertheless, the confusion between decentralisation and multinationality that characterised the two preceding phases had still to be resolved. This confusion provides the setting for the two basic perspectives from which the autonomous model is perceived by different political actors:

3.1) *Decentralisation perspective.* Spain is conceived as a single national reality divided into 17 AC which also permits the regulation of a number of structural “differences”. In this situation it is suggested that the most suitable thing to do is to make use of those federal techniques that are most effective for the functioning of a multi-level political and administrative organisation, but which has a homogeneous base. Uniformity and symmetry are the most suitable procedures here, legitimised from the premises of a specific interpretation of concepts such as equality and democratic citizenship.

3.2) *Multinational perspective.* Spain is conceived as a society made up of diverse nations that should be constitutionally recognised and politically articulated among themselves. Here political suitability depends on formulas that can articulate the diversity of national characteristics in the state in a variety of ways. This makes it advisable to introduce legal asymmetries or agreements of a confederal nature in the areas relating to symbols, institutions and powers\(^{32}\).

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\(^{30}\) UCD: *Unión del Centro Democrático* (Union of the Democratic Centre, centrist); PSOE: *Partido Socialista Obrero Español* (Spanish Socialist Workers’ Party, centre-left); PP: *Partido Popular* (Popular Party, conservative).

\(^{31}\) PNV: *Partido Nacionalista Vasco* (Basque Nationalist Party, centre-right); CiU: *Convergència i Unió* (Convergence and Union: “federal” coalition of two Catalan parties –*Convergència Democràtica de Catalunya* and *Unió Democràtica de Catalunya*, both centre-right).

\(^{32}\) This perspective is currently being designed by the two parties that governed Catalonia in coalition between 1980 and 2003. In 1997, both the CDC (*Convergència Democràtica de Catalunya*) and UDC (*Unió Democràtica de Catalunya*) drew up internal documents on how to express the multinationality of the state institutionally: “Per un nou horitzó per a Catalunya” (CDC); “La soberanía de Catalunya i l’estat plurinacional” (UDC). In Catalonia, the concept of “shared sovereignty” sometimes takes as its point of historical reference the situation of the Spanish territories before the process of centralisation carried out by the Bourbon dynasty from the 18th century onwards, following the War of Succession, which was lost.
4) **Absolute majority of the Popular Party (PP) (2000-2004).** In this phase, the PP established a number of agreements with the main opposition party in the central parliament (PSOE), such as an anti-terrorist policy and a fiscal agreement for all the AC except the Basque Country and Navarre. Regarding the “national question”, the main elements were: attempts to recentralise some policies (i.e., education, universities); an increase in the political and social “split” in the Basque Country along nationalist lines (with very polarised elections to the Basque Parliament in 2001; the reform of the Spanish law of political parties – which resulted in *Batasuna* being declared an illegal organization; the presentation of the “Ibarretxe Plan” in the Basque parliament by the Basque government: the proposal to begin a process to establish a new agreement of “free association with the state”, supposedly based on the current legal framework; a parliamentary pact in the Catalan Parliament between CiU and the PP in order to support the minority government of the former, but which failed to produce any changes regarding the political recognition of national pluralism and Catalan self-government; and an increasing nationalistic discourse (use of political symbols, legitimatory language, etc) and a centralizing set of policies by the Spanish central government.

5) **Phase of the relative majority of the PSOE (after 2004).** This phase began with the political shock caused by the bomb attack carried out by an Islamic organisation (11 March 2004). This had an effect on the final result of the general elections, which were held three days later and were won by the Socialist Party by a clear majority of seats. The PSOE subsequently won the following elections (March 2008). This phase is currently developing and is characterised by a policy of political agreements between the Socialist Party and other left-wing groups (ERC; IU, ICV) and which has seen a number of ruptures and discontinuities. During this period, a number of the statutes of some of the AC have been reformed – the most significant of which is that of Catalonia, due to the leading role it is playing and the fact that it is a point of reference for the other AC – and the reform of the finance model of the “régimen común” AC (all the AC except the Basque Country and Navarre). At the beginning of this phase it was also

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33 *Batasuna* (extreme-left organisation which supports ETA violent acts).

34 Ibarretxe is the “Lehendakari”, the president of the Basque Government. The first step (general framework) of this plan was presented in the Basque Parliament in September 2002. See the collective work, IVAP 2003.

35 The general direction of these policies is to try to recentralise some areas, such as education, universities, labour, etc, supporting a renewed Spanish nationalism absent from the Spanish political arena since pre-democratic times.
announced that there would be a very limited constitutional reform\textsuperscript{36}, but no specific calendar was established and the project has largely been forgotten.

The Catalan statute of autonomy dated from 1979. A commission of the Catalan Parliament resolved to reform it in line with agreements established during the previous legislature with the aim of achieving three basic objectives:

1) increase the symbolic and political recognition of Catalonia as a distinct national reality within the Spanish state.
2) increase the level of self-government of the Catalan institutions and establish a higher degree of protection in the Constitutional Court in order to counter the regular invasions of powers carried out by the central government.
3) improve the deficient and onerous finance system through which Catalonia bore a fiscal deficit following inter-territorial transfers of between 7\%-10\%, according to several studies.

At the end of a rather baroque process\textsuperscript{37} of negotiation between Catalan parties and the Spanish government (2004-2006), the first mentioned objective was included in the preamble of the new Statute (without direct normative power). The powers of self-government are expressed in far more detail than in the 1979 Statute, although it does not appear that the practical effects of the Statute will result in a modification of the ambiguous constitutional logic which has given the central government hegemony with regard to the practical division of powers during the previous three decades. As regards financing, in July 2009, an agreement was reached between the Catalan government and the central government which established the ground rules for a new finance system. This agreement should have been based on the regulations laid down by the Catalan Statute in this sphere, but was achieved following parallel agreements between the central government and the governments of the other “régimen común” AC, due to the fact that the new model is a multilateral agreement among all of them\textsuperscript{38}. The text of the new Catalan Statute was subsequently voted in referendum by the Catalan electorate in June 2006 (73\% voted affirmatively, although the turnout was low at less than 49\%). The PP and ERC encouraged voters to vote negatively in the referendum for opposite

\textsuperscript{36} At first, the central government announced that the constitutional reform would only affect four aspects: the succession to the throne – abolishing a regulation that discriminated on grounds of sex; the mention of the names of the AC; the reform of the Senate; and the mention-adaptation of the state’s membership of the European Union.

\textsuperscript{37} In January 2006, General José Mena, commander in chief of the Spanish army, heavily criticised the Statute, firstly for demanding a knowledge of Catalan and also for establishing Catalonia’s own judicial power. He stated that, according to the Constitution, the mission of the armed forces is to guarantee Spain’s sovereignty and independence and to defend its integrity and constitutional order. This “sabre-rattling” (the threat of military intervention according to this interpretation of Article 8 of the Constitution) went on for a number of days and was widely reported in the international press. The leader of the opposition, Rajoy (PP) criticised Zapatero for having “created the circumstances” that provoked Mena and other officers to make these statements (which were disaffirmed, and those involved disciplined, by the Ministry of Defence). For a more in-depth analysis of the statute process in Catalonia, see Nagel-Requejo 2007.

\textsuperscript{38} A complex and drawn-out process whose results have been criticised by the main opposition party in Catalonia (CiU) because it believes that it violates some of the articles of the new Catalan Statute. These same articles, however, are among those included in the appeal against the Statute lodged by the PP in the Constitutional Court (which is delaying to publish its ruling since 2006).
reasons. After this vote, the Popular Party, as well as the governments of some AC (Aragon, the Balearic Islands, and the Community of Valencia) and the Spanish Ombudsman have appealed to the Constitutional Court against parts of the Catalan Statute. This has resulted in the complete politicization of the magistrates of the Constitutional Court manifested through recusations of some of its members by the political parties. This has delegitimized a judicial institution which had enjoyed considerable prestige since the 1980s and which has seen this prestige wiped out at a stroke. The Court has been delaying the rule on the Catalan Statute since 2006 because a lack of consensus between its magistrates (nominated by the PSOE and PP) and this rule is not expected until 2010.

In the Basque Country, following the second Spanish Parliament’s rejection of the Ibarretxe Plan (see section 3), the elections to the Basque Parliament (April 2005) resulted in a tie between the main Basque and Spanish parties which allowed the PNV to continue to control the Basque government until the 2009 elections. In these elections, despite the fact that the PNV won the most seats (30 out of a total of 75), it was removed from power by a parliamentary agreement between the Socialist Party and the PP, which paved the way for the minority PSOE government.

3. Nationalisms, secession and the Basque case

3.1 Introduction

In this section we will pay particular attention to Basque nationalism and the actors who defend the secessionist option, in order to understand the specific character of Basque nationalism and its political profile compared with the other forms of nationalism that exist within the Spanish state. Three main characteristics, which were observed from

39 The process of reform of the Catalan Statute has provoked a double logic. On the one hand, part of the Catalan population has expressed their disappointment with the final result achieved in terms of national recognition and self-government. Secessionism is currently growing in Catalonia (around a 21% according recent polls). Some villages are organising symbolic referendums on an hypothetical independence of Catalonia within the European Union. On the other hand, the text of the Statute has bee imitated by other Autonomous Communities (Andalusia, Balearic Islands, Aragon) which have also approved reforms of their respective Statutes of autonomy.

40 Therefore, PNV has twice attempted to begin a process to establish a new “political agreement” between the Basque Country and the state. The first (2002) was based on a proposal which was officially a revision of the statute of autonomy, while the second (2007) proposed that a referendum first be held in the Basque Country which would pave the way for a new political agreement. Both were quickly and flatly rejected by the central parliament and the central government, respectively, due to their unconstitutionality.

41 The term “Basque Country” is used here only to refer to the Basque Autonomous Community (CAV), which is the administrative entity made up of the provinces of Álava, Vizcaya and Guipúzcoa. However, Basque nationalists use the terms Euskal Herria or Euskadi to refer to all the territory of the Basque nation which, in addition to the CAV, includes Navarre (another Spanish autonomous community) and also the provinces located within the French state: Nafarroa Beherea, Lapurdi and Zuberoa. Navarre has the constitutional possibility to be integrated in the Basque Country according a final rule of the Spanish Constitution (possibility with counts on small popular support) (See map).

42 See Díez Medrano 1999. In contrast with Catalonia, he Basque Country maintained its historical legal privileges (Fueros) after the Spanish Succession War (beginning of 18th Century). These Fueros were also maintained in the provinces of Álava and Navarre in the Francoist period for having back the coup against
In the 1970s onwards, are usually considered as distinguishing factors of Basque nationalism from, for example, Catalan nationalism, and which make it a unique case. Firstly, secessionism and general support for nationalism has been comparatively strong in the Basque Country. There has always been electoral support for secessionism in the Parliament in Vitoria with over 10% of the votes and since the political transition of the late 70’s it has been a parliamentary political option. Secondly, rejection of Spanish identity and social support for independence has been much stronger than in Catalonia or Galicia. Thirdly, the characteristic that has most differentiated the Basque case from those of Catalonia and Galicia has been the support, albeit partial, for violent tactics in order to express secessionist demands. There have been a high number of violent acts during the 1980s and 90s, and violent conflict is still present in the Basque Country (although currently with a weakening position of Euskadi Ta Askatasuna or ETA). Violence is a distorting element in Basque politics that must be always borne in mind.

Thus, these three features make the case of the Basque Country unique in the context of the Spanish state. Violent conflict and political conflict overlap and influence the political agendas of Vitoria and Madrid.

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the Republican regime. This historical reference to the Fueros has been included in the Spanish Constitution (1978), and has become the base for the asymmetrical fiscal agreement called “concierto económico” (economic agreement) which consists on a confederal covenant. The current population of the CAV is 2.2 millions inhabitants (Spain 46.6; Catalonia 7.4) (INE, National Statistics Institute 2009). The CAV includes 251 municipalities. The presence of foreign population is relatively low (4.6%; Catalonia 16.2%; Spain 11.9%, INE 2009)
3.2 Political Parties

What follows is a description of the parties which currently have seats in the Basque Parliament (with the exception of Batasuna, which has recently been declared illegal by the Spanish Supreme Court applying a new law on political parties approved in the Spanish parliament by PSOE and PP) in terms of their support, or lack of it, for secessionist demands.

A) Secessionist parties

1) Eusko Alkartasuna (Basque Solidarity): founded by the former lehendakari (president of the Basque government) Carlos Garaikoetxea in 1986 following a split from the PNV (Basque Nationalist Party). It is social democratic in orientation. It governed in coalition with the PNV in the Basque Country from 1994 to 2009. It supports secessionism and condemns the violence of ETA.

2) Batasuna (Unity): Over the years it has adopted many forms: Herri Batasuna (HB), Euskal Herritarrok (a coalition which included HB), Batasuna. It has also unsuccessfully attempted to reconstitute itself in other forms for electoral purposes, such as Herritarren Zerrenda or Aukera Guztiak. This organization has never rejected the violent strategy implemented by ETA. It is currently illegal in Spain because it has been considered to be dependent on ETA, although it is still legal in France. The most current prominent leader of this party is Arnaldo Otegui. At present, he and other leaders are in prison. It supports nationalism and is extreme left-wing (anti-capitalist) in orientation.

3) Aralar (place name): this party was founded by the politician Patxi Zabaleta following its split from Herri Batasuna, but it condemns ETA violence. It refers to itself as the “patriotic left”, in direct competition with Batasuna, which would like to monopolize the term.

B) Autonomous/Federalist parties with a critical perspective about the Spanish Autonomic State

4) Euzko Alderdi Jeltzalea – Basque Nationalist Party (PNV): regarded as the most important Basque nationalist party, it was founded in 1895 by Sabino Arana and governed the Basque Country uninterruptedly from the moment that autonomy was restored in 1980 until 2009. Its current president is Iñigo Urkullu. Its position regarding sovereignty is the subject of intense debate within the party between secessionists and those who are pro-autonomy (or those who defend the status quo). It is centre-right and Catholic in orientation. It condemns violence.

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43 The militants of Herri Batasuna and the organisations that succeeded it are called abertzales (patriots); the political movement is usually referred to as the patriotic left.

44 This group includes those parties which desire increased sovereignty for the Basque Country.

45 Militants of the PNV are normally called jeltzales. Literally, this name means “supporters of JEL” and comes from the motto of the PNV “Jaungoikoa Eta Lagizarrak” (God and Old Laws).
5) **Ezkerra Batua Berdeak (Green Unity Left, EB – B)**: it is a member of the state-level party Izquierda Unida (United Left). Its leader and member of parliament is Mikel Arana. It is a left-wing party that advocates a “free association” form of federalism as a territorial model for Spain. It has been a member of ruling coalitions with the PNV and EA and supports the pro-sovereignty proposals of the former lehendakari Juan José Ibarretxe. It condemns ETA violence.

C) **Autonomous parties without a critical perspective about the Spanish Autonomic State**

6) **Socialist Party of the Basque Country (PSE–EE)**⁴⁶: its leader Patxi López is currently the president of the Basque Government (lehendakari), leading a minority government with parliamentary support of the Popular Party. It does not support secessionism. It is part of the state-level PSOE (Spanish Socialist Party). It was also a member of the Basque Government during two previous legislatures in the 80’s and 90’s. It defines itself as a non-nationalist Basque party and condemns ETA violence. It is social democratic and pro-autonomy in orientation.

7) **Popular Party (PP)**: Although it is not a member of the current Basque Government, it supported the formation of it in the Basque parliament. This party condemns ETA violence and opposes the claims of the Basque nationalists. It defends the status quo or a greater degree of centralisation and is conservative and Spanish nationalist in orientation. Its current leader is Antonio Basagoiti.

8) **Union, Progress and Democracy (UPD)**: this is a new party which has had one parliamentary seat since the last elections, occupied by Gorka Maneiro. The Spanish leader is Rosa Díez, a former member of the socialist party. It proposes a constitutional reform in order to find a definitive autonomous model and adopt recentralising measures. It condemns ETA violence and maintains a strong Spanish nationalist orientation.

**Table 1. Summary of Basque Political Parties**

<table>
<thead>
<tr>
<th>a. Secessionist parties</th>
<th>b. Critical Pro-autonomy/Federalist parties</th>
<th>c. Non-critical Pro-autonomy parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>EA</td>
<td>PNV</td>
<td>PSE - EE</td>
</tr>
<tr>
<td>Batasuna (now ilegal)</td>
<td>EB-B</td>
<td>PP</td>
</tr>
<tr>
<td>Aralar</td>
<td></td>
<td>UPyD</td>
</tr>
</tbody>
</table>

⁴⁶ In 1994, Euzkadiko Ezquerra, a Basque leftist nationalist organization joined the socialist party, changing its official name to PSE-EE
Therefore, the Basque political party system is very different from the Spanish one. The sections above show that it is characterised by a very high degree of fragmentation, which has been described as a polarised pluralist system. Its number of “effective parties” is 4.4; (Catalonia 3.9; Spain 2.5). Competitiveness between parties is very high and can be analysed using two axes. A left/right axis, common in western democracies, regarding economic and social issues which represents the interests of the different social classes and becomes polarised at certain times. A territorial axis concerning national identity and demands for more self-government which polarises Basque politics between those who defend the status quo or greater integration in the Spanish state and those that advocate secession or a greater degree of sovereignty.

The PNV has been the dominant party in this party system in all the legislatures until the present. Although it experienced difficulties in the 1980s when the split with EA occurred, it overcame them and continued in government until the last autonomous elections (2009). The period that we would like to pay particular attention to is that of the most recent legislatures, from 1999 to 2008, when the PNV and its partners in government, EA and EB-B, make a determined effort in favour of increased sovereignty, which we will return to later. In the next tables and figures there are the electoral results to the Spanish (lower chamber) and Basque Parliament.

\[\textit{a. Tables: electoral results}\]

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</tr>
</thead>
<tbody>
<tr>
<td>PSE-PSOE</td>
<td>28.3</td>
<td>19</td>
<td>29.2</td>
<td>26.3</td>
<td>21.1</td>
<td>24.5</td>
<td>23.7</td>
<td>23.3</td>
<td>27.2</td>
<td>38.1</td>
</tr>
<tr>
<td>PCE/IU/EB-B</td>
<td>4.5</td>
<td>4.6</td>
<td>1.8</td>
<td>2.2</td>
<td>3</td>
<td>6.3</td>
<td>9.2</td>
<td>5.4</td>
<td>8.2</td>
<td>4.5</td>
</tr>
<tr>
<td>UCD(^{49})</td>
<td>16.9</td>
<td>16.9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>CDS(^{50})</td>
<td></td>
<td>1.8</td>
<td>5</td>
<td>3.5</td>
<td>0.8</td>
<td>0.1</td>
<td>0.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AP/PP(^{51})</td>
<td>7.1</td>
<td>3.4</td>
<td>11.6</td>
<td>10.5</td>
<td>9.4</td>
<td>14.7</td>
<td>18.3</td>
<td>28.3</td>
<td>18.9</td>
<td>18.5</td>
</tr>
<tr>
<td>UPyD(^{52})</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.9</td>
<td></td>
</tr>
<tr>
<td>PNV-EAJ</td>
<td>29.3</td>
<td>27.6</td>
<td>31.7</td>
<td>27.8</td>
<td>22.8</td>
<td>24.1</td>
<td>25</td>
<td>30.4</td>
<td>33.7</td>
<td>27.1</td>
</tr>
</tbody>
</table>

\(^{47}\) Requejo 2010c


\(^{49}\) The UCD (Unión de Centro Democrático) was a coalition and later a party led by the former Spanish president Adolfo Suárez. The party had an important role during the transition process to democratic system having three among seven members in the constitutional drafting commission. It collapsed after the socialist (PSOE) victory in 1982 general elections; and AP (PP) emerged as the second main party in Spain.

\(^{50}\) The CDS (Centro Democrático y Social) was founded by the former Spanish president Adolfo Suárez, the architect of the transition process after the death of General F.Franco. This moderate, centrist and liberal party claimed to be the inheritor of the UCD legacy.

\(^{51}\) AP was a right-wing party founded by the former Franco Regime, and politician, Manuel Franga in 1976. Concurred in the general elections allied with the small christian democratic party (PDP) during the eighties and in the 1989 eventually was re-established as the PP (Partido Popular).

\(^{52}\) At present this new party has one deputy in Madrid, Rosa Diez; and one deputy in Vitoria.
b. Graphs: electoral evolution\textsuperscript{56}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|c|c|c|}
\hline
\hline
\textbf{PSE-PSOE/PSE-EE} & 14,2 & 23 & 22 & 19,8 & 16,8 & 17,4 & 17,8 & 22,5 & 30,7 \\
\hline
\textbf{PCE/IU/EB-B} & 4 & 1,4 & 0,6 & 1,4 & 9 & 5,6 & 5,5 & 5,3 & 3,5 \\
\hline
\textbf{UCD} & 8,5 & & & & & & & & \\
\hline
\textbf{CDS} & 3,5 & 0,7 & 0 & & & & & & \\
\hline
\textbf{AP/PP} & 4,8 & 9,3 & 4,8 & 8,2 & 14,2 & 19,9 & 22,9 & 17,3 & 14,1 \\
\hline
\textbf{UPyD} & & & & & & 2,1 & & & \\
\hline
\textbf{PNV} & 38 & 41,8 & 23,6 & 28,3 & 29,3 & 27,6 & 42,4 & 38,4 & 38,6 \\
\hline
\textbf{HB/EH} & 16,5 & 14,6 & 17,4 & 18,2 & 16 & 17,7 & 10 & 12,4 & \\
\hline
\textbf{EA} & 15,8 & 11,3 & 10,1 & 8,6 & & & & 3,7 & \\
\hline
\textbf{EE} & 9,8 & 7,9 & 10,8 & 7,7 & & & & & \\
\hline
\textbf{ARALAR} & & & & & & & 2,3 & 6,1 & \\
\hline
\end{tabular}
\caption{Percentages achieved for the lower chamber (Congreso de los Diputados) and the Basque Parliament.}
\end{table}

\textsuperscript{53} Herri Batasuna (HB) alter the 1998 judiciary process couldn’t be candidate to the Spanish Parliament due the so-called “illegalization process” continued by the Ley de Partidos in 2002 and eventually sentenced in 2007 by the Audiencia Nacional.

\textsuperscript{54} In the General elections has competed always as a single party. But in the Basque parliament has been in coalition with PNV in the 2001 and 2005 elections.

\textsuperscript{55} Despite of the extreme-left wing origin of the party bounded to ETA (called for “no” in the constitutional referendum of 1978) in 1991 a majority of the affiliates voted for the merger with the PSE.

\textsuperscript{56} Euskobarómetro. Elecciones País Vasco 1977-2009 (http://alweb.ehu.es/euskobarometro/)

0 5 10 15 20 25 30 35 40 45
% vote

3.3 ETA and peace processes

The violent strategy chosen by one section of the Basque nationalist movement has been organised in recent decades by *Euskadi Ta Askatasuna* (ETA). This organisation, which first appeared during the Francoist dictatorship in 1959 and carried out its first violent acts during the 1960s, describes itself as secessionist, Basque nationalist and Marxist-Leninist. During the Francoist dictatorship it gained prominence and popularity following the Burgos Trials\(^{57}\) of 1970. Following the Transition, ETA has continued its violent acts until the present. During the 1980s it suffered a number of splits that weakened its structure, but maintained the same ideological principles with which it was founded. Until now 828 people\(^{58}\), civilians, military personnel and politicians, have

\(^{57}\) This was a judicial process, widely reported in the international press, in which General Franco’s regime conducted a court martial involving sixteen people accused of belonging to ETA and having carried out violent acts.

\(^{58}\) Spanish Domestic Ministry [http://www.mir.es/DGRIS/Terrorismo_de_ETA/ultimas_victimas/p12b-esp.htm](http://www.mir.es/DGRIS/Terrorismo_de_ETA/ultimas_victimas/p12b-esp.htm).

\(^{59}\) Etxerat: Listado de Presos Políticos Vascos.
become victims of ETA; and nearly 800 people are currently detained in Spanish and French prisons\textsuperscript{59}. The fight against ETA caused many deaths during the 1980s and included the dirty war carried out by the Spanish central government between 1982 and 1989 by the so-called GAL (Autonomous Liberation Groups), which involved ministers and politicians responsible for internal affairs.

Spanish governments have attempted to negotiate with ETA on a number of occasions, but without success. One of the first attempts took place in 1988 with the so-called Algiers talks which led to a ceasefire that lasted for over 60 days and the start of negotiations by the PSOE. During the government of the Popular Party negotiations also took place in 1998 following the Lizarra Pact\textsuperscript{60} between Basque nationalist parties, and the declaration of an “indefinite truce and ceasefire”. Following unsuccessful negotiations in Zurich between members of the organisation and the Spanish government, ETA announced its intention to resume its attacks.

The agreements between the two largest Spanish parties, the PSOE and the PP, regarding anti-terrorist strategies made it possible after 2000 to gradually make what was considered to be the “social environment of ETA” illegal. As a result, the political arm of the organisation, Batasuna, has been banned, despite the changes of name and acronyms that it has attempted. This strategy has also included the banning of the media of the \textit{abertzale} nationalist movement such as the newspaper \textit{Egunkaria}. The law that has allowed this process of banning the parties of the \textit{abertzale} left is the Political Parties Law (6/2002), which was passed in June 2002 by a majority of the lower chamber of the Spanish Parliament with the votes of the PP, PSOE, CiU\textsuperscript{61} and other smaller parties\textsuperscript{62}.

Finally, 2006 was the last time that the Spanish government attempted to negotiate with ETA, following an indefinite ceasefire that the organisation itself broke once again. Between May 2003 and December 2006 ETA did not carry out any attacks despite the fact that in the Basque Country there were numerous acts of \textit{kale borroka}\textsuperscript{63}.

\textsuperscript{59}http://www.etxerat.info/orokor.php?id_saila=10&id_edukia=31&lang=es.

\textsuperscript{60}This Pact was signed on 12 September 1998 by Basque nationalist parties (PNV, EA, and Batasuna) and also EB-B. Following the Peace Agreements in Northern Ireland it was agreed that negotiations should take place without prior conditions, publicly and in the absence of violence.

\textsuperscript{61}Convergència i Unió (Convergence and Union, CiU) is the largest Catalan nationalist party. It is pro-autonomy and centre-right in orientation.

\textsuperscript{62}The law was drawn up ad hoc in order to make the \textit{abertzale} left illegal. A number of Basque nationalist parties and Izquierda Unida expressed their disagreement with the law because they considered that it violated the civil rights of part of the society. Amnesty International also expressed its concern (http://www.es.amnesty.org/com/2002/com_03jun02.shtm)

\textsuperscript{63}A term in the Basque language which literally means “street warfare” and is used to describe the violent acts carried out by members of the \textit{abertzale} left which differ from those of ETA due to their low intensity.
(low-intensity terrorism). It was during this period that the abertzale left put forward what has come to be known as the Anoeta Proposal (November 2004). This proposal expressed the commitment of the abertzale left to find a democratic solution to the conflict. Moreover, it laid down a “road map” to solve the conflict which involved the creation of two negotiating tables. The first table would consist of a negotiation involving ETA and the Spanish and French governments on disarmament, the situation of ETA prisoners and the rehabilitation of victims from both sides of the conflict. A second negotiating table would be responsible for dealing with the agreements of political normalisation which would have to be ratified by the people of Euskal Herria. Despite the significance of this proposal, due to the fact that it displayed a commitment to opt for a democratic solution although it failed to condemn ETA violence, it was not put into practice. The Spanish government attempted to carry out a rapprochement and begin talks using a resolution passed by the lower chamber of the Spanish Parliament in 2005, which authorised the President to seek a negotiated settlement. ETA declared a ceasefire on 22 March 2006. Negotiations finally broke down.

The latest peace initiative took place in November 2009 when, during a conference in Venice (Italy), leaders of Batasuna proposed a process inspired by the Northern Ireland peace process which had already been mentioned in the Anoeta proposal of 2004. The impact of this proposal on both the Spanish government and ETA militants has yet to be seen, although the first reactions by Spanish political forces has been that of rejection.

3.4 The two proposals of President Ibarretxe and recent political developments

The issue we are concerned with, secessionist demands, was given tangible form in political proposals during the last two legislatures of the Basque Parliament. The tripartite government, made up of the PNV, EA and EB-B, promoted an initiative designed to obtain greater sovereignty for the Basque Country. In 2001, the lehendakari Juan José Ibarretxe put forward a proposal to the Basque Parliament for a New Political Statute for the Basque Country which aimed to increase the amount of autonomy obtained through the Gernika Statute. This proposal, despite being presented as a reform of the statute of autonomy, sought a new political status based on “free association” that would have to be approved in a referendum by the Basque people. According to this plan, the Basque Country would be free to decide for itself on all issues except defence, the merchant navy and foreign policy. The proposal was passed.

64 The title of the proposal was Orain herria, orain bakea (Now the people, now peace). The event was held in San Sebastian’s cycling track and was attended by 15,000 people. The Spanish public prosecutor’s office began legal actions against the organisers considering it to be an event organised by an illegal political group.

65 The title of the document presented in Venice was: A first step towards the democratic process, principles and will of the abertzale left. Batasuna has presented this latest document as an autonomous proposal from the ETA strategy. Actually, there are signs that there is a tension between ETA and Batasuna in relation to the leadership of the secessionist movement in the Basque Country. However, the rest of Spanish and Basque political forces have not believed yet that Batasuna is an autonomous organization respect to the strategy of ETA. This is an important element of Basque politics. If it changes, the whole Basque political dynamics may also change.

66 President of the Basque Autonomous Community
by the Basque Parliament in 2004 with the votes of the governing parties (PNV, EA and EB-B) as well as those of Socialist Abertzaleak (Herri Batasuna) which, despite disagreeing with the proposal, considered it opportune to support Ibarretxe’s initiative\(^{67}\). The initiative was, however, stopped by the members of the lower chamber of the Spanish Parliament, a majority of whom voted to reject it due to its unconstitutional character. Both the PP and the PSOE voted against it and it was supported only by minority groups.

Subsequently, following the unsuccessful negotiations with ETA held during 2006 and the Loyola talks, the lehendakari Ibarretxe presented a second pro-sovereignty proposal to the Basque Parliament which was also designed to resolve the Basque conflict. On this occasion he made a speech in which he laid down a “road map” aimed at unblocking the negotiation and which consisted in conducting a plebiscite that would ratify the Basque Government’s negotiations with its Spanish counterpart. The “road map” subsequently anticipated the establishment of two parallel negotiations: an initial negotiating table between political parties on the political future of the Basque Country and a second negotiating table with ETA dealing with a resolution to the conflict. Ibarretxe offered the Spanish Government a pact based on two ethical principles: the democratic principle (the will of Basque society) and the principle of rejection of violence. Finally, it proposed that the agreements mentioned above once again be ratified in another plebiscite in the Basque Country\(^{68}\). In order to achieve this, the Basque Government passed a Plebiscite Law\(^{69}\) with the support of the PNV, EA, EB-B, Aralar and one abertzale deputy; with the votes against of the PSE-EE and the PP. The plebiscite was to take place on 25 October 2008\(^{70}\) and consisted of two questions:

- “Do you agree to support a process to achieve a negotiated end to violence, if ETA previously demonstrates its unequivocal intention to put an end to violence once and for all?"

- “Do you agree that the political parties of the Basque Country, without exception, initiate a process of negotiation to reach a Democratic Agreement regarding the exercising of the Basque’s people’s right to decide for themselves, and that said Agreement be subject to a referendum before the end of the year 2010?"

The Spanish Government appealed to the Constitutional Court against the law passed by the Basque Parliament, which had sought protection from a number of articles of the Gernika Statute and the Spanish Constitution in order to justify the legality of the

\(^{67}\) The result in the Basque Parliament was 39 votes in favour and 35 against

\(^{68}\) Therefore, both proposals made by Ibarretxe’s government were not strictly secessionist. They combined a set of confederal and partnership rules for a new “free association” with the Spanish State. This will of establishing an “association” has been criticised by Batasuna.

\(^{69}\) “Law 9/2008, of 27 June, for the official announcement and regulation of a plebiscite in order to obtain the opinion of the citizens of the Basque Autonomous Community regarding the opening of a process of negotiation to achieve peace and political normalisation”

\(^{70}\) This was a particularly significant date as it was the anniversary of the passing of the former Statute of Autonomy (Gernika Statute, 1979).
plebiscite. The lines of reasoning followed just the patterns of traditional constitutionalism without introducing any concept related to the multinational character of the state. The Constitutional Court published its ruling on 11 September 2008 stating the unconstitutionality of the Basque law and therefore cancelling the plebiscite announced by the Basque Government and aborting Ibarretxe’s “road map”. The following fragment of the ruling is especially important and explicit:

“In reality, the contents of the plebiscite represent the initiation of a procedure to reconsider the established order which eventually could conclude in “a new relationship” between the State and the Autonomous Community of the Basque Country; that is, between that which, in accordance with the Constitution, is today the formal expression of a constituted order by the sovereign will of the Spanish Nation, which is unique and indivisible (Art.2 of the Spanish Constitution), and a subject created, within the framework of the Constitution, by the constituted powers by virtue of the exercise of a right to autonomy recognised by the fundamental Law. This subject does not possess sovereign power, which is exclusive to the Nation constituted as the State. (...) The procedure that it wishes to initiate, and the repercussions that this will have, can not fail to affect the whole of the Spanish citizenry, since said procedure would address the redefinition of the order established by the sovereign will of the Nation, whose objective is none other than the formal revision of the Constitution by means of Art. 168, that is, with the double participation of the Spanish Parliament, as representative of the Spanish people (Art.66.1), and the holder of sovereignty, directly, by means of the preceptive referendum of ratification (Art.168.3)”.

Subsequent political events, with the end of the hegemony of the PNV in the Basque Government that resulted from the agreement between the PP and the PSE-EE following the autonomous elections of 2009, have put an end to institutional pro-sovereignty and secessionist demands. The new lehendakari, the socialist Patxi López, has expressed a wish to avoid pro-sovereignty activities and maintain the status quo, and governs with the support of the PP.

To sum up, the Spanish state’s failure over the last two centuries to accommodate the different national realities that exist within it is well known. Even in the most restricted sense, such as that embodied in expressions like the “Basque and Catalan problems” which are present in the declarations and treatises of different political leaders and intellectuals in the last 150 years, one may at the very least detect one fact: that there is an unresolved territorial problem which mainly affects the national minorities of the State. As it has been already pointed out, the failure to resolve this issue could be described as the failure of a general process of Spanish nation-building to integrate its different national realities into an articulated concept of a Spanish “nation” in terms of a political “union” rather than a political “unity”.

In our view, as we as maintained in other works, the biggest design faults of the current Spanish Constitution is that it attempts to tackle two distinct issues at the same time.

71 STC 103/2008. See López Basaguren 2009

72 Requejo 2005, chap 5
time: the decentralisation of the state and the accommodation of its multinationality (which includes the question of secession as one potential institutional element)\textsuperscript{73}. Both issues are convenient objectives to be regulated in the constitutional and policy-making framework, but they can hardly be established through the same procedural rules when they deal with very different targets. On the one hand, the Basque case shows a clash between majoritary and minoritary nationalisms and a lack of political culture prone to find institutional formulas for the political accommodation of a nationally diverse democracy. Most political actors of both kinds of nationalism use the theory of national self-determination as its legitimizing source, linking this theory with some elements of pleiscitary theories in the case of national minorities\textsuperscript{74}, and with strict “legal-constitutional” considerations by state nationalists. That is, political actors answer the three normative questions described in the first section using elements of these two type of theories. The final practical outcome is that the question of the “tyranny of majority” shows an unresolved national side in the Spanish multinational democracy (as well as other democracies of this kind). Just cause theories are practically absent in the political debate.

On the other hand, the Basque case points out the limits and biases of traditional liberal theories (liberalism 1) and classical constitutionalism when they try to deal with the national pluralism of some empirical democracies. These biases affect the concepts of individualism, universalism and stateism linked to traditional liberalism and constitutionalism. Specially when these limits and biases work are combined with the political culture of the main Spanish political forces (PSOE and PP) which is much more unitarian than federal, and much more uninational than multinational. It is probable that this issue will remain in the near future both, in the theoretical agenda of liberal-democratic theories –which should include, in our view, a “Hegelian turn” in the approach of theoretical notions such as political recognition and constitutional accommodation of national minorities in multinational democracies-, and in the political agenda of the main political actors involved in empirical multinational cases. These are two challenges for improving the normative and institutional quality of liberal democracies in nationally diverse societies in the 21\textsuperscript{st} Century.

\textsuperscript{73} An analysis of the relationship between economics and identity in the Basque Country, in Costa-Tremosa 2008. See also the collective work Buesa 2004 (in Spanish). W Norman has defended the convenience to include secession in the constitutional rules in order to avoid secessionist processes. See Norman 2009, 2006.

\textsuperscript{74} In the last years, different political movements have been improving in favour of a generic “right to decide” in Catalonia and in the Basque Country (The Spanish Constitution prohibits in practice that the “Autonomous Communities” organise referendums. These referendums require the compulsory formal permission of the president of the Spanish government to be implemented.
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