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MA THESIS

**Secessionist movements in Europe:
A comparative study of the Scotland and Catalonia Cases within the EU
Framework**

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The present thesis has been submitted as a prerequisite for the acquisition of the MA degree in
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A handwritten signature in black ink, appearing to read 'Alike Mademli', written in a cursive style.

Alike Mademli

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ABSTRACT

The Scottish and the Catalanian secessionist movements have both acted as crucial factors to the political developments within the respective states, United Kingdom and Spain. These movements have also stimulated a -hitherto only theoretical- discussion within the European Union regarding the aftermath of a possible secession of a member state's territory, and especially the legal and political implications in the relation of the "new" state with the Union. This essay will present the gaps and challenges that exist in the EU level with regard to the legal framework, the extent of the legal acquis on such issues, and the respective potentials; furthermore, it will examine the historical development of each movement, the relevant legal and constitutional framework in each country as well as the political outcomes of the quite recent developments, trying to identify similarities and differences between the two cases.

Key words: Secessionism, Scotland, Catalonia

1. Introduction

When dealing with statal territorial matters, the contemporary challenge for modern states “is not how to expand anymore, but rather how to hold together, or at least disassemble in orderly manner” (Griffiths, 2016). Indeed, the proliferation of sovereign states has been a crucial characteristic of the post-World War II era, when aggressive foreign policies aimed at expanding and delimiting national borders were still conducted, also within European territories. Nowadays, the majority of territorial conflicts are internal to the states, and modern events in Scotland and Catalonia confirm that the demand for independence still represents a defining factor within the international community. An estimate of twenty-five significant separatist movements is active within Europe (Borgen, 2010). The dynamics and the strategies implemented in the pursuit of secessionist desires are specific to each particular case, but it is possible to identify three interconnected features that are common: (1) the interests of states; (2) the international recognition regime; and (3) the interests and strategies of the secessionist movements (Griffiths, 2016).

Unarguably, it is still up to sovereign states to determine whether secessionist movements will be recognized as independent states. Shaped by the growing interconnection of liberal economies and global trade, small sovereign states realized they could develop economically and solidify internally by opening their markets to the global economy in order to secure foreign investments, resources, and contracting security from larger statal entities, according to their geographical position and the ideological configuration of their internal politics. Collectively, these dynamics consistently diminished the pressures and necessities of smaller states to pursue aggressive foreign policies aimed at expanding their borders. But as soon as these expansionist pressures reduced, sovereign states began to face powerful fragmentary pressures internal to their borders. Additionally, “the consolidation of the norm of self-determination in the United Nations Charter has provided stateless nations with the vocabulary and legal apparatus to pursue greater control over their political fates” (Griffiths, 2016).

Member States are definitely not eager to lose internal territories and resources. Nevertheless, the historical and cultural roots of different areas within sovereign states are often so diverse, that governments are inevitably worried that granting secessionism to one region might eventually create the preconditions for independentist sentiments to expand and spill over to another. Therefore, the international community has come into play, developing rules and principles to manage secessionist pressures. Nevertheless, contemporary public international law comprehends at least two seemingly contrasting concepts, both published in the *Helsinki Final Act of 1975*: on one hand, the principle of

self-determination, and on the other hand, the principle of *territorial integrity*. In theory, “[b]y virtue of [...] self-determination [...] all peoples always have the right [...] to determine, when and as they wish, their internal and external political status” (OSCE, 1975). Lea Brilmayer argued that the concept of “all peoples” constitutes a vague definition that could easily refer to populations aiming to secede from their patron state and create a new state entity (Brilmayer, 1991). Hence, which *peoples* have the actual right to self-determination? Does the definition include minorities, indigenous peoples, or ethnic groups? Clearly, the definition appears to be inherently controversial, perhaps purposely, in order to leave space for flexible interpretations according to each particular context. Furthermore, the principle of territorial integrity, developed to counterbalance the destabilizing effects that self-determination might have on the internal stability of the state and the international order, also constitutes a controversy as it protects states from being deprived of their *territorial wholeness* (Raič, 2002).

It is clear that when it comes to the international recognition regime, two fundamental matters that lie at the heart of the issue remain essentially unanswered. The first is a matter of *priority* (Capeleto, 2014): is it more important to defend the right of states to maintain their territory, or the right of stateless nations to secede and pursue their political and economic agenda independently, even if the process would entail the violation of the territorial integrity of the larger state? The second, consequentially, is a matter of *criteria* (Capeleto, 2014): how to determine whether stateless nations and populations have the right to independence? In general, international law has focused on inhibiting territorial conflicts, and thus undermining claims of independence. As a consequence, the principle of territorial integrity has frequently been prioritised to the principle of external self-determination (Capeleto, 2014). A complex debate surrounding secession and creation of new states still divides scholars and the international community in general, as the reach of secessionist voices resonates across the globe.

Nowadays, secessionist leaders comfortably navigate the waters of the international arena, which they make use of to pursue the strategic interests of what they consider to be their own state. “They often engage in quasi-diplomatic relations, tap diaspora networks, and engage in a range of institutional and/or extra-institutional methods to pursue their goal” (Griffiths, 2016). According to Griffiths (2016), secessionist movements display two general strategies, often pursued at the same time: (1) targeting their central government and consistently bargaining for increased rights, autonomy, and, ideally, the formal right to decide their fate, usually via a referendum; (2) luring the lens of the international community on the issue, either to increase international pressure on the central

government, or, alternatively, to bypass completely the central government and legitimize the independence will of the secessionist movement. Both strategies combine elements of coercion and normative appeal, as they must exploit the windows of opportunities left open by loopholes and controversies characterizing the international legislation ruling the issue. However, as previously mentioned, the specific declination of these strategies is greatly shaped by local historical factors, socioeconomic contexts, political arena, and public opinion. All these elements are specific to each particular case. As the recent developments of Scotland and Catalonia will show, when involving mature democracies, “such processes are built upon deep grass roots, support of durable political parties, and modern societies who can deploy an array of technological and communication tools to advance their cause” (Griffiths, 2016).

But when it comes to territorial disputes within the European Union, what is the position of the EU towards these matters? Despite the fact that separatism is often regarded as a domestic issue, the EU has indeed a primary significance in the political discourse of separatist movements (Greenwood, 2011). As a matter of fact, Brussels could represent a safety net that is supposed to protect the fate of the new state in the eventuality of a successful secession, by establishing new trade and diplomatic agreements with the purpose of integrating the new entity into the Union. Therefore, unsurprisingly, European separatist movements clearly follow a pro-EU political agenda, seeking to maintain EU-membership after secession (Greenwood, 2011). However, the position of the European Union on the issue is a complex one, and the support for such movements cannot be as straightforward as separatists would like, being restricted by national laws and areas of competence that simply do not compete with the EU. Besides, in principle European institutions only talk to national governments and, due to the complexity and controversy of the matter, try as much as possible to avoid any involvement in regional domestic issues of member states (Greenwood, 2011).

The focus of this thesis will therefore be the analysis of two cases of separatist regions, whose recent developments have confirmed their steadiness and determination in pursuing statehood in the near future: the cases of Scotland and Catalonia. As we will see, both movements have often expected a significant involvement of the EU in order to fulfil their independence visions. *Chapter 2* will present the legal framework, gaps and challenges that exist within the European Union with regard to territorial secession; then, *Chapter 3* and *Chapter 4* will respectively present the cases of Scotland and Catalonia, examining the historical factors that have been conducive to the growth of each movement, the relevant legal and constitutional framework in each country, and the political outcomes of the most recent

developments; the analysis of this historical, legal, and political data will finally lead towards a comprehensive comparative study, that will be presented in the conclusive *Chapter 5*, in which the structures, driving forces and scenarios of two symbols of European separatism are untangled.

2. EU Framework on Territorial Secession

Aspirations of secession within European Member States inevitably become simultaneous issues of re-drawing of borders, demarcation of political power, and access to vital resources. Despite the defects of a Union so far mostly financial rather than economic, and lacking a communitarian vision and approach in foreign politics, Europe still represents a safer economic, political, and military network. Hence, secessionist movements often aim to maintain their status quo of European territories. In this regard, the principle of enlargement through openness to membership is foundational and article 49 TEU allows the re-drawing of the EU's external borders. However, the matter of internal enlargement that arises with the emergence of new states from original EU member states inevitably creates the issue of re-drawing internal borders and placing obstacles on the path towards EU membership (Closa, 2017).

Therefore, for European secessionist movements, the attitude of the EU is fundamental. However, the position of the EU does not align with that of independentist regions. For instance, after the negative outcome of Scotland's referendum, the EU communicated that the result was positive for a united and stronger Europe (Closa, 2017). It seems clear that the EU would rather not deal with an eventual separation of territory from the United Kingdom at the time, and it would be highly unlikely to change its position in the future also, considering the additional complexities that would derive from the Brexit. Besides, there is no certainty that the EU would eventually recognize an independent Scotland. Similarly, the European Commission discouraged Catalan separatists by claiming that Catalonia would not automatically be assimilated by the European Union, but would rather become a *third country* that would need to apply for membership (Patrick, 2016). However, apart from these undoubtedly significant declarations of intent, the EU has not yet identified a definitive approach toward the issue, hampered by the absence of a clear legislative framework on sub-state independence. Hence, the matter has been so far relegated as an internal affair of the member state, also to avoid a surely complex and definitely not welcomed intromission into state home affairs.

2.a. Existing Legal Framework

Existing EU treaties do not directly legislate over formation of new states, but the existence itself of the European Union shapes the strategies that separatist movements might pursue in order to obtain self-determination as sovereign states. As a matter of fact, the existing normative ground is

characterized by a legislative limbo that provides separatists with space of action within an *opportunity structure*. This concept, originally developed by scholars that focused on social movements, such as Gamson and Meyer (1996), or Kriesi (2007), “focuses on the effect of exogenous factors—i.e. the social, political or institutional environment in which groups operate—on the activities, influence and organization of collective actors. (...) Change in the external environment can alter the structure of opportunity for political action by enhancing or inhibiting prospects for mobilization, affecting the types of claims advanced or strategies pursued and the likely influence of collective actors” (Bourne, 2014).

The idea that the EU may, independently from its will, provide a framework of opportunities and constraints that would inevitably influence the behaviour and strategies of movements pursuing independence, provides the basis for operationalizing the core notion of *European integration effects* (Bourne, 2014). In other words, according to Bourne (2014), the question is whether and to what extent European integration represents an opportunity or a limit for contemporary secessionist movements. So far, the EU has not yet faced the necessity to take a clear position in regard of the hypothetical situation of a territory obtaining independence from the original state and claiming EU membership. Nevertheless, the theoretical and practical debate among scholars is fervent, as in absence of a clear procedural guideline there is essentially disagreement on what would be the best approach for a situation that would essentially be unprecedented. However, according to Bruno Coppieters (2010), the absence of a clear European legislation in regard does not exclude that the European Union has already, in praxis, taken an initial position on the debate. In fact, Coppieters argues that the EU is gradually developing a *strategic culture on secession*; the concept of “strategic culture” refers to the ways nations perceive particular threats to the principle of territorial integrity or how they view the right of a nation to constitute an independent state (Coppieters, 2010). This strategic culture now developed by the EU is characterized by (1) the predilection for regional self-government models that respect territorial unity and attain to the status quo; (2) the support for peaceful, reformist, and democratic movements rather than violent ones; and (3), by prioritising the rationale of *just cause* rather than *democratic choice* in order to justify secession (Bourne, 2014)¹. If that is the case -and the attitude of the EU towards the matter seemingly confirms it- then neither the Scottish nor the Catalan movements appear to be heading in this direction, because both movements refuse EU’s preference for the preservation of unity

¹ The *just cause argument* refers to historical experiences of blatant injustices at the hands of central government that are to be restored by granting some form of local authority or, as a last resort, outright independence. The *democratic choice argument* maintains that the right to self-determination itself may override the principle of territorial integrity since any group aspiring to national self-determination has the right to claim a separate political identity (Coppieters, 2010).

and territorial integrity, and support the concept of secession for reasons of democratic choice rather than just cause (Bourne, 2014).

However, in principle, these separatist movements are expressing a tendency for self-determination that is, in theory, legitimate. International law acknowledges and protects people's right to self-determination. One of the goals of the UN Charter is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace" (UN Charter art. 1, para. 2.). Similarly, the Treaty of Lisbon affirms that the "Union shall respect the equality of Member States . . . as well as their national identities. . . inclusive of regional and local self-government" (Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 3a para. 2, Dec. 13, 2007, 2007 O.J. (C 306)). Additional statements in the UN Declaration of Friendly Relations of 1970 and the UN Vienna Declaration of 1993 further include the right of self-determination among all peoples (Costa de Souza, 2011). Moreover, Article 1 of the Montevideo Convention establishes four practical conditions that a territorial entity must accomplish in order to achieve self-determination and be recognized as state: (1) it must have a permanent population; (2) a defined territory; (3) a government; (4) and the capacity to enter into relations with other states (Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19).

Consequently, once these requirements are fulfilled, other states supposedly have the duty to recognize the new entity as a state itself. Nevertheless, many scholars claim that the Montevideo conditions are *necessary but insufficient*. According to Ian Brownlie, the recognition of the state does not automatically assume any duty or obligation to enter into diplomatic relations of any kind (Brownlie, 1979). In synthesis, he states that a formal recognition of another statal entity remains political and discretionary: "Even recognition is not determinant of diplomatic relations, and absence of diplomatic relations is not in itself nonrecognition of the state" (Brownlie, 1979). Therefore, secession remains extremely disfavoured in practice, regardless of the right to self-determination and the Treaty of Lisbon, because as previously mentioned, secession inevitably constitutes a simultaneous threat against sovereignty and territorial integrity, both pillars of the Westphalian nation state (Patrick, 2016).

To cancel any doubt, in November 2013, Mr. Barroso declared that it is not the role of the EU to "*express a position on questions of internal organization related to the constitutional arrangements of a particular Member State. (...) Scenarios such as the separation of one part of a Member State or*

the creation of a new state would not be neutral as regards the EU Treaties. (...) the EU is founded on the Treaties which apply only to the Member States who have agreed and ratified them. If part of the territory of a Member State would cease to be part of that state because it was to become a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU and the Treaties would no longer apply on its territory. (...) Under Article 49 of the Treaty on European Union, any European state which respects the principles set out in Article 2 of the Treaty on European Union may apply to become a member of the EU. If the application is accepted by the Council acting unanimously, an agreement is then negotiated between the applicant state and the Member States on the conditions of admission and the adjustments to the Treaties which such admission entails. This agreement is subject to ratification by all Member States and the applicant state” (EU Parliament, 2014).

2.b. Gaps and Challenges

These legal and theoretical controversies are not the only aspects hindering the likelihood of a formal procedure that the interested parties could follow to reach successful independence. Every separatist movement should necessarily be contextualized and processed as a specific, particular case. Despite their apparent similarities, the hypothetical cases of secession of Scotland and Catalonia, for instance, possess significant differences and no common recipe would be of any use. Even though both movements share one preeminent characteristic, that is, the *lack of* shared disposition with the original state they belong to, as Elliott phrases it “*an aggrieved feeling of alienation from an unsympathetic central government*”², the Brexit phenomenon introduced the unique eventuality of a territory claiming independence and ultimately gaining statehood following the *withdrawal* of a member state from the EU.

Seceding territories such as Scotland or Catalonia consider themselves European countries and part of the European Union, both ideologically and due to utilitarian reasons (Shaw, 2017). But clearly, Brexit has drastically altered the debate by adding the withdrawal of a member state from the EU as a new dimension to the normative apparatus (Closa, 2017), because withdrawal denotes an assertion of state sovereignty that, inherently and legitimately, refuses the European integration project (Weiler, 2017), significantly altering the territorial context, the political projects, and the citizens’ right to move

² Elliott, J. H. (2018). *Scots and Catalans: Union and Disunion*. Yale University Press. p. 247.

freely in the territory because, for example, they may not access the market or enjoy freedom of movement (Closa, 2017).

What needs to be further elaborated at this point are the implications of a possible secession in the rights of the citizens of the seceding territory, meaning the rights which at the moment derive from their European citizenship. Article 9 of the TEU grants “*every national of a Member State*” the “*citizenship of the Union*” allowing for Member States’ nationals to exercise specific rights within the territory of any Member State; European citizens have *inter alia* the right a) *to move and reside freely within the territory of the Member States* (arts. 20 par. 2 a and 21 TFEU); b) *to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State* (arts. 20 par. 2 b and 22 TFEU); c) *to enjoy, in a third country, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State* (arts. 20 par. 2 c and 23 TFEU), and d) *to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the EU* (arts. 20 par. 2 d and 24 TFEU)³ (Papadopoulos, 2014). Considering that a) the European citizenship and -by extension- the derivative rights originate from the Member State nationality, and b) that the acquisition and forfeiture of nationality fall within the competence of the Member States⁴, it is crucial to examine what might happen with regard to EU citizenship in case a person is deprived of their nationality. The issue was addressed by the European Court of Justice in the case of *Rottmann v. Free State of Bavaria* (2010)⁵; the main points of the Court’s reasoning were the following:

- *the fact that a matter falls within the competence of the Member States does not alter the fact that, in situations covered by European Union law, the national rules concerned must have due regard to the latter (par. 41);*

- *the situation of a citizen of the Union [...] in a position capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law (par. 42);*

and finally:

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on European Union. Official Journal C 326 , 26/10/2012 P. 0001 – 0390.

⁴ Treaty on European Union - Declaration on nationality of a Member State. Official Journal C 191, 29/07/1992 P. 0098.

⁵ Judgment of the Court (Grand Chamber) of 2 March 2010. Case 135/08. Janko Rottman v Freistaat Bayern. Reference for a preliminary ruling: Bundesverwaltungsgericht – Germany.

- *it is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality has been obtained by deception, on condition that the decision to withdraw observes the principle of proportionality (par. 59).*

Recurring to the principle of proportionality, the ECJ managed to contain the Member States' discretionary power to unilaterally deprive national citizenship and, by extension, the European one as well (Papadopoulos, 2014). In the event of secession, this ruling could constitute the legal basis for the peoples of a newly independent Scotland or Catalonia to negotiate a more balanced arrangement, in case UK or Spain decided to deprive them directly from the British or Spanish nationality respectively. The Rottmann ruling suggests that the national courts need to examine the proportionality of the citizenship withdrawal decision, regarding deceitful individuals, in the light of the EU citizenship as well as in the light of national law (para. 55), by considering whether the *“loss is justified in relation to the gravity of the offence committed by that person”*; withdrawal of nationality is a harsh punishment for any individual who has made up to that point a country the hub of his activities and has been integrated in the socio-economic life, since it does not only punish either “offender”, but could lead to the total dissolution of their status and relations (Kostakopoulou, 2011). Similarly, the consequent forfeiture of the EU citizenship and the deprivation of the rights that derive from it for each of these peoples would violently disrupt their lives, in many different aspects, since a wide range of the citizens' activities (economic, professional, educational, etc.) have been planned for a long period of time to be conducted within the ambit and under the protection of EU law (Papadopoulos, 2014). Of course, in such a case there would be a unique, unprecedented way of deprivation of the EU citizenship, not resulting from the deprivation of the national one, as in the Rottmann case (the Scots or the Catalans would not be facing the risk of statelessness, on the contrary they would have their own national citizenships), but as an outcome of the dissociation of the seceding territories from the EU and until they become EU members as independent states; there would be, however, margin for a *mutatis mutandis* application of the ruling, as the fact that a person once had the status of Union citizen, relying their rights on this status, is sufficient for the ECJ in order to rule that the matter falls within the scope of Union law and request the proportionality test in the view of the withdrawal of the MS nationality (Eijken, 2010).

The aforementioned ruling has already been invoked -among others- by the *“EU Citizenship for Europeans: United in Diversity in Spite of jus soli and jus sanguinis”* initiative. The citizens' initiative has been launched in the light of BREXIT and has the objective of emancipating the EU Citizenship

from the concept of the Member State nationality by proposing EU legislation that would “*ensure that, following the withdrawal of a Member State in accordance with Article 50 TEU, the citizens of that country can continue to benefit from similar rights to those which they enjoyed whilst that country was a Member State*”; the initiative, widely known as Flock Brexit, was registered by the European Commission in March 2017. The main argument invoked by the initiative is that despite the fact that the Member State nationality is a precondition for the acquisition of citizenship of the Union, whether the EU citizenship has *the potential or capacity to somehow stand alone*, encompassing *an element of independence*, still remains an unresolved matter (Rieder, 2013), leaving margin for further negotiations and legal actions. Examining the examples of the “EU-Swiss model”⁶ and the European Economic Area (“EEA”), Rieder (2013) concluded that there is such an institutional possibility even for individuals who do not wish to *join their member state’s downscaling in membership, to remain in a closer relationship with the European Union*. UK seeking to participate in the EEA was proposed also by the Scottish Government in its paper, Scotland’s Place in Europe; UK would leave the European institutions but would maintain access to the Single Market, an option that has been rejected by the Prime Minister at the time, Theresa May (Scottish Government, 2016; Tomkins, 2017).

The implications of such “*an automatic and collective loss of citizenship*” -as Patricia Mindus phrases it referring to the loss of the EU citizenship (2019)- have become an actual issue, needed to be addressed, with Brexit; the legal complexities affect both, those who have made their life choices relying on the free movement, as well as the “*static citizens*”, the British citizens who reside and develop their economic activities in the UK and have done so for most of their lives. Not only British nationals are affected though; many people have been also worried regarding their residence rights and their migration status, and this certainly has been concerning European citizens residing in the UK who might be interested in a more indirect fashion -for instance, due to family ties with British nationals (Mindus, 2019). To better address all these issues that occur from Brexit, EU and UK agreed inter alia a transition period until the 31st of December 2020, with a possibility of extension for up to one or two years⁷, a measure which could be considered viable for cases with similar implications, such as the secession of a territory of a Member State.

⁶ “Switzerland (not a member of the EU or the EEA), has negotiated many agreements with it, ranging from selective access to the Single Market to participation in research and education programs and EU policies on borders (Schengen) and asylum (Dublin). To obtain these agreements, Switzerland has to accept package deals from the EU, including elements of legislation it was opposed to. The agreements have to be constantly updated to reflect changes in EU law, and every bill presented to the Swiss federal parliament is examined regarding its compatibility with EU law”. <https://ukandeu.ac.uk/the-facts/what-is-the-swiss-model/>

⁷ AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. Articles 126 and 132 par. 2 (2019/C 384 I/01).

Another path that must be taken into account is that of *unconsented remedial secession*, that happens to remediate situations of gross violations of fundamental rights (Buchanan 1997; in Closa, 2017). Theoretically, remedial secession might be acceptable for territories currently included within European Member States. However, the EU requires its members to respect fundamental human rights, values of democracy, and rule of law. Even if European states are characterized by a different degree of respect and protection of such values, the EU monitors the political operations of its member states and fosters reforms to increase the degree of compliance with the aforementioned principles, along with the Charter of Fundamental Rights and Freedoms. Hence, if the assumption is that a Member State already complies with such requirements, the request of the separatist territory based on gross violations of fundamental rights would represent an oxymoron. Furthermore, in the hypothetical case in which a Member State would be unfulfilling of the obligations towards the totality of its population, or a portion of it, the unlawful operation of the state would obligatory be investigated and analysed by the Union itself, and not unilaterally by the territory claiming independence. Hence, “a priori, unconsented remedial secession seems to be incompatible with the structure of values on which membership of existing states is constructed” (Closa, 2017).

An alternative to unconsented remedial secession would be that of *consented secession*, meaning a process of independence and separation from the original territory that is agreed between the state government and the new territory gaining statehood (Closa, 2017). But even this eventuality presents controversies: if, in theory, the claim of consented secession by the territory aspiring to sovereign self-determination could be regarded as a legitimate aspiration, the same principle must hence apply to the willingness of the original state to safeguard its territorial unity. Closa (2017) argues that the claim of the original state to protect its unity is equally valid, as it derives from legitimate and democratic arguments. Hence, wilful political negotiations to reach a shared agreement appear to be the only pursuable solution to the impasse. However, there is no legal shortcut that separatists could exploit to impose such agreement, as both national and EU legislations both prioritise in principle the protection of the state. The study of the case of Catalonia will clearly demonstrate the limits and controversies of consented secession when the disposition of the central state is negative and non-negotiable, while the case of Scotland could have broadened the discussion and converted it from a theoretical to a more pragmatic one, should the secession have been actually achieved in 2014.

Another angle that must be included in the analysis is the *democratic character* of the decision. The hypothesis of secession is a process that the separatist movements cannot pretend to pursue authoritatively, but necessarily giving voice to the population to express its willingness. This

willingness should be, in theory, represented by a majority of the population, within the seceding territory, via a referendum. However, does the unqualified majority of 50% +1 of votes, not including the larger citizenry of the original state, respect the principle of democracy? Again, Closa (2017) argues that this purely majoritarian conception of democracy contradicts the predominant one in Europe and the EU. Democratic decisions must respect fundamental human rights and obey the Rule of Law, aspects that are particularly rigorous in the EU. Could a majoritarian unilateral process, which did not respect the existing legal framework in a given member state, be a sufficient and acceptable parameter for the EU to legitimize these claims? If such process could not be regarded as illegitimate, it is at least definable as controversial, and any hypothetical attempt of the EU to support it, would represent a clear violation of state internal affairs in absence of any plausible reason. Hence, it seems inevitable for the EU to be bound to giving priority to the unity of the state rather than to separatist claims.

Nevertheless, in both cases of Scotland and Catalonia, separatist movements entrust much of the positive outcome of their independence to Europe. Their argument is that an eventual successful and democratic secession from a Member State should already entail to the new territory the benefits of a sort of consequential membership. However, even this discourse presents several practical complexities. First of all, as previously specified, the EU requires the fulfilment of conditions specified in Article 49 (Copenhagen principles), but also a complex negotiation process and, finally, the unanimity of all member states. Hence, the duty to automatically accept a new member state is definitely not practicable. The EU could eventually agree to negotiate because pressured by the political relevance of a successful pro-independence campaign and referendum, because the territory is European, and because the new state aims to become part of the EU (Closa, 2017), but this duty to negotiate cannot secure admission (Kenealy & MacLennan, 2014). Secondly, the hypothesis of a possible veto by an existing member, like Spain for instance, would inevitably create an obstacle arduous to overcome, surely not without long-lasting negotiations. And because of Spain's fear of a spill-over effect that might affect other regions, such as the Basque country, this possibility is not unlikely. Besides, such a process would only be pursuable with a consistent amount of pressure, both internal from the separatists, and external from the international community, and, as Closa (2017) puts it, "ironically, those advocating the acquisition of sovereignty by a territory, commence by requesting other states to limit their own". Thirdly, Article 2 of the Treaty of European Union requires its member states to comply with a set of values. Moreover, the set of Copenhagen principles, together with the geographical delimitation of article 49 (Closa, 2017), define EU external borders. These mandates

apply to both member states and territories willing to join the European Union, and compliance with them, both during the process of gaining independence and afterwards, throughout the establishment of a new democratic governmental apparatus, are essential conditions (Closa, 2017). These principles regulate EU's self-preservation and secure compliance with its codes and values that cannot be presumed or implicit, and therefore require monitoring and evaluation (Hillion, 2017). Hence, the hypothesis of an automatic accession to the EU as consequential to secession appears definitely unpracticable as it would create an unjustified bypass of EU instruments for separatists to serve their own goals (Closa, 2017).

Considering the aforementioned controversies and gaps characterizing the normative ground defining the variety of possible paths towards separatism, it appears clear that the attitude of the EU inevitably tends towards disincentivizing separatist movements, in support of the original state to maintain power over the totality of the territory. Similarly, Member States can take advantage of the resulting legal limbo to repress sub-state self-determination (Hurst, 1990). The following chapters will provide an in-depth analysis of Scotland and Catalonia, in order to contextualize the existing legislative gaps and challenges within the particular historical and political context of each specific case.

3. The Case of Scotland

This chapter discusses the case of the Scottish secessionist movement with regards to the history of the Scottish people, the evolution of the relations with England since the creation of the United Kingdom, as well as the social, cultural, economic, and administrative issues that have been remaining in dispute between the Scots and Westminster. We will also examine the existing legal framework in the UK in order to understand the circumstances under which the 2014 Referendum on the Independence of Scotland was conducted; in such a legal system defined by the absence of a written constitution -wherein one would expect to find relevant provisions-, it is important to examine the way a legal means of direct democracy was provided to the people of Scotland in order to express their will.

Furthermore, we will examine the possibilities and the arguments that have been developed in the pre-referendum period regarding the relation of an independent Scotland with the European Union. Brexit has surely triggered an unusual process of redefinition of EU borders, through the withdrawal of a previous member state, whilst Scotland is still seeking to obtain independence from the UK but, contemporarily, aiming to remain included within the European Union. Finally, in the third part of this chapter, the White Paper on Scotland's Independence will be presented. The White Paper is a document produced by the Scottish Government in 2013 to precede and foster its independence referendum. Its significance lies in the fact that the "next day" of an independent Scotland had already been designed, regardless of the outcome. In this major moment of Scotland's modern history, the political leaders did not leave their people's future in ambiguity. On the contrary, they prepared a very thorough plan, consisting of steps to be followed by any government of a newly independent Scotland, and shared this plan with the people of Scotland, rendering them an actually accountable and significant actor in the pursuit of their country's destiny.

3.a. Historical Review

3.a.i. The creation of the Anglo-Scottish Union

For the purposes of this thesis, this chapter will describe the historical period since the actual creation of the Anglo-Scottish Union in 1707. Even though the two countries have been sharing the same monarch even during the 17th century, since Stuart King James VI of Scotland inherited the English throne in 1603, they did not have a common administration, remaining thus two separate states (Boyle & Crawford, 2013). Scotland's unsuccessful efforts to establish itself in the international trade in

order to expand its mainly agricultural economy rendered it vulnerable against its dominant neighbour's economic and political aspirations⁸ (Smout, 1964). Hence, the Treaty of Union signed on the 1st of May 1707 was more of a product of coercion by a strong and wealthy England towards a smaller and weaker Scotland (DPI, 2014). Neuralgic Scottish bodies were either incorporated, like the Scottish Parliament, or totally abolished, like the executive power previously exercised by the Scottish Privy Council and the Scottish Secretary of State. However, several other institutions remained untouched, securing a level of autonomy within the Union (system of local government, Church and universities) (DPI, 2014).

Even though Scotland gave up its national sovereignty to benefit economically by uniting with the powerful neighbour, such expectations were not immediately accomplished. The protectionist economic policies followed by England, as well as the difficulties that Scotland faced to gain a consistent presence in international commerce, placed the latter in a disadvantaged position and created the perception that the Union had not induced any positive change for the people of Scotland (Elliott, 2018).

3.a.ii. Efforts towards integration

More substantial steps towards integration were made after the 1720s and until the end of the 18th century, as Scotland reached a sufficient level of incorporation into the commercial system of the Union, and managed not only to expand its economy, but to foster social and cultural changes towards Europeanisation; the improvements in the field of agriculture led to the increase of production and national income, while the inclusion of the Scottish people in the establishment of the British empire and its bureaucratic mechanism and bodies opened the roads to the continental markets and the colonies overseas (Elliott, 2018). During the second half of the 18th century, Edinburgh became the cultural capital of the Kingdom, vindicating the intellectual and scientific tradition Scotland has been holding even long before 1707. In the city that had become the rival to London, the political capital, a class of highly educated professionals kept growing, among whom lawyers, medics, clerics, and professors. This cultural thriving was also fuelled by the Scottish emigration to the empire's colonies, as the valuable knowledge and experience acquired by the emigrants were channelled back home (Elliott, 2018).

The more power the British state was gaining -with the expansion of its empire in India, the industrialisation of its economy, and its naval supremacy- the more willingness was demonstrated by Scotland to engage in the British cause. Through the Kingdom's achievements, the Scots were

⁸ 'The English counter-attack came straight away and took two forms -straight bribery of Scottish members, and economic sanctions directed at Scottish trade. [...] In sum, England was now seeking Parliamentary Union for political reasons at a moment when the Scots had become dissatisfied with Regal Union for economic reasons: and one of the main weapons chosen by the English to enforce their will was the threat of economic sanctions.'

developing sentiments of British patriotism, but without disavowing their Scottish identity, retaining their pride for their contribution to the British cause as a national group. However, the degree of integration achieved did not lead to a ‘Union of the Hearts’ between the Scots and the English; Scottish people were still looked upon by the English as inferior, mainly due to the provincial character of their society (Elliott, 2018). Nevertheless, even the apparent imbalance regarding the representation of the Scots in Westminster (the English population was five times larger than the Scottish, but the English MPs were 10 times more than the Scottish), was not sufficient to destabilise the political status quo; England showed no particular interest to interfere in Scotland’s domestic affairs or impose any strict integrating policy through Westminster; meanwhile, the Scottish were pleased to employ their own institutions in order to run their domestic business (Pentland, 2008). Deeper integration was further achieved as Scotland capitalised its participation in Westminster for its own benefit by transferring political experience, policies and best practices to their local administrations; as in J. H. Elliott’s wording, ‘Union in Britain was union by association and imitation’.

3.a.iii. Early claims for greater autonomy

The relations between the two nations remained positive during the 19th century, as the power of the empire and the rampant industrialisation could guarantee a stable economic environment and a high level of prosperity for the Kingdom. However, Scottish discontent for being regarded as inferior partners in the Union became more obvious towards the middle of the century, with the creation of the National Association for the Vindication of the Scottish Rights in 1853. The Association was founded to demand “Justice for Scotland”, expressing moderate discomfort regarding “the neglect of Scottish interests at Westminster, the suppression of Scottish governmental institutions, the paucity of state expenditure in Scotland, and a number of symbolic issues relating to heraldic insignia” (Tyrrell, 2010). In practice, it requested the increase of the Scottish MPs in Westminster, the restoration of the Scottish Secretaryship, the creation of a separate Department of State for Scotland (later, during 1884), more autonomy in Scotland’s administration and, in general, a more balanced treatment by Westminster -not too invasive, with regard to issues that could affect the whole country; not too neglecting, with regard to those that affected only Scotland (Elliott, 2018). However, all relevant discussions and claims were disrupted by the outbreak of World War I.

Scotland’s industry was severely hit during the Great Depression, leading to the raise of unemployment rates, and rendering England’s support more than necessary. Nonetheless, the economic policy that England implemented to recover from the post-war crisis was characterised by a high degree

of interventionism, fuelling Scotland's discontent. Moreover, in 1934, in a context of rising nationalist sentiments that characterised Europe during the interwar period, the Scottish Nationalist Party (SNP) was founded. After the end of World War II, England's interventionism recurred as Scotland's main discomfort, since the Labour Party, after its massive victory in 1945, was developing and implementing the welfare state policies in quite a centralist and uniform way. Despite that fact, the conflicts between the Scottish and Westminster were dealt by both sides with sobriety. In 1941, Churchill appointed Tom Johnston as Secretary for the State of Scotland, an institution that had been recreated in 1885, and upgraded to full Secretary of State appointment in 1926; Tom Johnston has been characterised as the "most effective and influential Secretary of State of the twentieth century" (Elliott, 2018)⁹, as he managed to redirect powers to Scotland and maintain the necessary balance in the political discourse, despite the fact that he himself opposed devolution (DPI, 2014).

3.a.iv. Change of the political scene – The Devolution Referendums

The rise of the Scottish National Party¹⁰ and the emergence of the 'home rule' agenda as a topical political issue in the second half of the century was an essential new element in the political scene that changed the perspective of the political parties towards Scottish claims; the demands for recognition of equality and greater autonomy flared up and became appealing to the Scottish electorate. In the Hamilton elections of 1967, the SNP gained the seat over the in-government Labour Party¹¹. To contain the nationalist feelings, Wilson's Labour Government created in 1969 the Royal Commission on the Constitution, more commonly known as the Kilbrandon Commission, in order to address the issue of devolution by examining constitutional and structural changes within the Union. Even though this effort¹² was disrupted by the change of the government in 1970, when the Conservatives won the elections, Labour reinstated the discussion by including the devolution in their electoral manifesto and issuing the Scotland Act 1978. A referendum was held in 1979, but it did not lead to the implementation of devolution, as it failed to fulfil a prerequisite of the 40% of the electors voting "Yes" (Audickas, Cracknell, & Loft, 2020). In the very first decisive step for Scotland's long-holding demands, it seemed that even the Scots feared that a 'Yes' to devolution could be interpreted as an agreement to the

⁹ "He acted as the mediator between London and Edinburgh, skilfully balancing the interests of the two. Himself a Home Ruler, he concentrated power in the hands of the Council of State for Scotland, thus effectively decentralising government from London in order to recentralise it in his homeland. As a forceful member of the cabinet he was also not above exaggerating the dangers of the Scottish separatism in order to win concessions from Westminster when it suited his purpose." (Elliott, 2018)

¹⁰ "The Scottish National Party (SNP) won its first seat at a general election in 1970, although it had previously won seats at by elections in 1945 and 1967." (Audickas, Cracknell, & Loft, 2020).

¹¹ It is remarkable that even though the Secretary of State, Willie Ross, appointed by the Labour Party's government in 1964, managed in his tenure to support the development of the northern regions of the country, the result of the Hamilton (Lanarkshire, Scotland) by elections did not vindicate his efforts, as the SNP prevailed and gained the seat over the Labour Party (Elliott, 2018)

¹² Or the '*delaying tactic*', as seen by the historian Duncan Tanner (DPI, 2014).

dissolution of the Union; such a development would be quite unfortunate, especially during a period that had been marked by the accession of the UK in the European Community (Elliott, 2018).

Following the failure of the referendum, the Thatcher administration (1979-1990) ceased all the discussions regarding devolution, provoking a counter-effect of grievance exacerbated by the privatization of the industries, the closing down of the mines, the increase of unemployment, and the exploitation of the oil deposits in the North Sea (Elliott, 2018). Moreover, what escalated the alienation of the two sides was the implementation of the “Community Charge”, or ‘Poll Tax’, as it was widely known; the term refers to a per capita tax policy that was introduced and implemented in Scotland in 1987, a year prior to the rest of the UK. *“The tax was highly unpopular and spurred the ‘Can Pay, Won’t Pay’ campaign. This campaign and the perception, if not reality, that Scotland was being used as a policy ‘guinea pig’ led to a dramatic decline of the Conservative Party in Scotland”*(DPI, 2014).

As the malaise created under the Thatcher administration continued to grow, both the SNP and the Labour Party were bringing forth their agendas around the devolution; the first by working on the “Independence in Europe” policy, addressing the independence issue to a supranational organisation, and the latter by participating in the Convention called by the “Campaign for a Scottish Assembly”, launched in the aftermath of the 1979 referendum in order to preserve the idea of devolution (Elliott, 2018). The Convention, from which the Conservatives abstained, issued a report in 1990 proposing a devolved legislative assembly for Scotland. When the Labour Party won the elections in 1997, Tony Blair, assuming the Premiership, kept his electoral promise for a devolution referendum in Scotland. Following a united campaign in favour of devolution by the Labour Party, the Liberal Democrats and the SNP -the Conservatives were campaigning against-, the referendum was held in September of the same year with the massive win of ‘Yes’¹³ (DPI, 2014; Elliott, 2018).

3.a.v. The Scotland Independence Referendum – The road to the referendum and the aftermath

In 2007, the SNP managed to come first in the Scottish Parliament elections and its leader, Alex Salmond, proceeded with changing the name of the Scottish Executive to Scottish Government, demonstrating a qualitative change in SNP’s position on the issue of independence. Nevertheless, independence was perceived as a long-term goal, as the SNP needed to first prove their capacity to

¹³ *‘In the 1997 referendum the proportion of voters favouring devolution was much larger. 74.3% of voters supported the establishment of a Scottish parliament and 63.5% were in favour of the Parliament having tax-varying powers. Turnout was 60.2%. There was no threshold for the number of electors voting ‘Yes’ in the 1997 referendum.’* (Audickas, Cracknell, & Loft, 2020).

govern. In the Scottish elections of 2011, with a striking 45%¹⁴, the SNP could now make an actual step towards the strategic goal of independence by requesting a referendum. Even though the British government had the legal grounds (Scotland Act 1998) to refuse an independence referendum, David Cameron took due consideration of the Scottish elections result and let the decision regarding Scotland's future to its people. The terms of the referendum were negotiated between the British and the Scottish governments, and resulted in the *Edinburgh Agreement*¹⁵ of 2012 (Elliott, 2018).

At this point, it is worth examining to whom the referendum was addressed, granting the opportunity to decide on Scotland's future; ar. 9 of the Edinburgh Agreement provides for the following:

"The Referendum Bill introduced by the Scottish Government will create a franchise for the referendum. Both governments agree that all those entitled to vote in Scottish Parliamentary and local government elections should be able to vote in the referendum", and as it is further explained in the text, *"The Scottish Parliamentary franchise enables British, Irish, qualifying Commonwealth citizens and European Union citizens resident in Scotland to vote"*¹⁶,

rendering the approximately 800,000 Scots who lived in other parts of the UK at the time ineligible to vote and the approximately 400,000 people from elsewhere in Britain who lived in Scotland eligible¹⁷. The above provisions for the Scottish electoral body, with regard both to the referendum as well as the Scottish elections, demonstrate that the Scottish people cannot be perceived in a narrow, ethnic related, sense, but on the contrary, in a wider, residence related, one, revealing also some interesting characteristics of the Scottish nationalism and its broader pursuits; as T.C. Smout (1994) phrases it, *"Modern Scottish identity is much more firmly allied to a sense of place than to a sense of tribe"*¹⁸.

Scottish nationalism, as expressed mainly by the Scottish National Party (SNP), does indeed try to be perceived as different in nature from other secessionist movements, encompassing more civic rather than ethnic characteristics, *allowing anyone to identify with the nation and its civic values regardless of their ethnicity* (Green, 2014). The former leader of the SNP, Alex Salmond, states in the preface of the White Paper on Scottish Independence that *"it will be better for all of us if decisions about Scotland are taken by the people who care most about Scotland – the people who live and work*

¹⁴ 'Measured by the number of seats gained, 2011 was the best SNP performance to date, when they won an outright majority (69 out of 129 seats).' (Audickas, Cracknell, & Loft, 2020).

¹⁵ Scotland Act 1998 as well as the Edinburgh Agreement will be discussed in the next section.

¹⁶ AGREEMENT between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland. Edinburgh, 15 October 2012

¹⁷ <https://www.bbc.com/news/uk-scotland-13326310>

¹⁸ 'I am a real Scot from Bathgate' has much more resonance than 'I am a real Scot because my granny was a real Scot'. (Smout T.C., 1994, Perspectives on Scottish Identity)

here”¹⁹, while the same position has been also held by the current leader Nicola Sturgeon, who stated that “*The nationalism I represent is a civic nationalism: that, if you live in Scotland, regardless of where you come from, regardless of the colour of your skin or the faith you practise, all of us can make it a better country to live in if we have the courage to do that. It's not in any way divisive*” (2015)²⁰. The pro-independence campaign as a whole, not only the SNP leaders, and in a consistent way, tried to present “*a vision of Scotland defined as a civic nation and promote a society based on the shared values of social justice and democracy*”, without, however, disregarding the existence and importance of Britishness feelings as a part of the Scottish identity, probably in order to “*attract undecided voters by asserting the possibility for them to keep a sense of British identity in an independent Scotland*” (Hild, 2016).

The Scottish electorate, however, was not entirely in favour of the complete disengagement from the Union, but rather in favour of greater autonomy, as per the opinion polls at the time²¹ but still, as the political debate and campaigns developed, there has been a serious turnaround in the Scottish electorate. The ‘No’ campaign (or ‘Better Together’), conducted by the three British parties, was focusing mainly on Scotland’s lack of capacity to form an autonomous state and to exist without the support of the UK, reviving the negative feeling of inferiority to the Scots as well as the memories of all the antagonistic and unjust policies that had been implemented by the British state. On the other hand, the ‘Yes’ campaign managed to gain ground by investing, not only in issues of history and identity, but in the positive prospects of an independent Scotland; in this context, the year prior to the referendum, the Scottish government issued a thorough plan (over 600 pages) of Scotland’s ‘next day’ (the White Paper on Scotland Independence), which was addressed to the Scottish people requesting them to be engaged in the cause (Elliott, 2018; Scottish Government, 2013).

As the opinion polls started showing a rise of the ‘Yes’ campaign appeal, the leaders of the three largest British parties, the Prime Minister David Cameron of the Conservatives, Nick Clegg of the Liberal Democrats and Ed Miliband of the Labour Party, proceeded signing the ‘Vow’, a pledge promising new extensive powers to Scotland in case of remaining in the UK²². It is worth noting that during the negotiations on the referendum, Alex Salmond had requested a greater devolution (‘*Devo-max*’) to be included in the ballot, a proposal which was rejected by Cameron; but as the polarisation

¹⁹ Scotland’s Future, 2013, pg.ix

²⁰ <https://www.dailymail.co.uk/debate/article-3066692/Nicola-shiny-new-face-SNP-nationalism-ugly-pal-s-bloody-nose-proves.html>

²¹ ‘Only 29% of the electorate wanted full independence [...] most would be satisfied with an increased devolution of power to the government in Edinburgh’ (Elliott, 2018).

²² ‘WE ARE AGREED THAT: The Scottish Parliament is permanent and extensive new powers for the Parliament will be delivered by the process and to the timetable agreed and announced by our three parties, starting on 19th September. And it is our hope that the people of Scotland will be engaged directly as each party works to improve the way we are governed in the UK in the years ahead. [...] we can state categorically that the final say on how much is spent on the NHS will be a matter for the Scottish Parliament. [...] People want to see a change. A No vote will deliver faster, safer and better change than separation.’ David Cameron, Nick Clegg, Ed Miliband, The Vow (The Guardian, 2014).

was deepening in the days closer to the referendum, a de facto Devo-max commitment was achieved for the Scottish with the aforementioned Vow.

On 18 September 2014, the referendum on Scottish Independence was held on the proposition *“Should Scotland be an independent country?”* with a massive turnout of 85%; independence *“was rejected by a margin of 10.6 percentage points, with 55.3% (2,001,926) voting against the proposition on an overall turnout of 84.6%. This was the highest turnout at a nationwide referendum or parliamentary election in Scotland since 1918. [...] There was a majority for ‘No’ in 28 of Scotland’s 32 local authority areas, including the capital, Edinburgh (61.1% for ‘No’)*” (Audickas, Cracknell, & Loft, 2020). The defeat of the ‘Yes’ vote implied the resignation of Alex Salmond from the leadership of the SNP and his replacement by Nicola Sturgeon, the current leader of the party.

In the aftermath of the referendum, and contrary to what would be expected -the claims for independence to be contained or perhaps a discussion on the implementation of the ‘Devo-max’ promise- there was a rise of all pro-independence voices, resulting in the striking result for the SNP in the general elections of May 2015; the party received 50% of the vote in Scotland and won 56 out of the 59 Scottish seats in Westminster. Similarly, successful for the SNP were the Scottish elections of 2016 (with 46% of the vote, it remained the largest party of the Scottish Parliament), while a decrease in its popularity is noticed in the last general elections of 2017 (Audickas, Cracknell, & Loft, 2020). Having become the third largest political party nationwide, with a rapidly increasing membership and under the new leadership of Nicola Sturgeon, the SNP could exercise great influence and define the developments in the wider British -not only the Scottish- political scene.

3.a.vi. Scotland and Brexit; options and possibilities

Nowadays, following the Brexit referendum of 2016, the consequent negotiations of the British with the EU regarding the exit deal, and the change in the UK government, the SNP has reinstated the issue of a second referendum on Scottish independence; Nicola Sturgeon had declared her willingness to demand the transfer of powers from Westminster by the end of year 2019 (Brooks, 2019). Meanwhile, she and the Welsh First Minister have addressed a letter to the previous President of the European Council, Donald Tusk, expressing their will for a second referendum on EU membership and requesting for the granted Brexit extension period to be sufficient enough for the referendum to be conducted (Daily Mail, 2019). According to Griffiths (2016), even if the Scottish National Party lost the 2014 referendum, they might win an eventual second referendum, because Brexit has altered the debate. If unilaterally denied by the UK, the case could fuel the secessionist cause and possibly increase the violence of discourse and actions.

Withdrawal from the EU has been more than unwelcome to the Scottish Government -and the Scottish people as well, based on the results of the Brexit referendum in Scotland²³; in the aftermath of the Brexit referendum, the Scottish Government proceeded with some proposals regarding Scotland's relations with EU following the withdrawal. As aforementioned, the first option would be for the UK to maintain access to the Single Market as part of the European Economic Area, proposal which has been rejected by Theresa May (Scottish Government, 2016, par. 106). The second proposal pertained to the participation of Scotland alone to the EEA and the European Customs Union under specific arrangements in the model of Denmark, whereby parts of a Member State's territory -namely Greenland and Faroe islands- are outside the EU and the EEA (Scottish Government, 2016, par. 107-109; Douglas, 2017). The third option concerned the admission of Scotland to the EU as an independent country, following the positive outcome of a second independence referendum (Scottish Government, 2016, par. 5; Douglas, 2017), an option that has already been rejected by the current Prime Minister, Boris Johnson.

Within this climate of political discourse regarding Brexit and the consequent implications, there has been an attempt mainly by Scottish MPs in 2018 to provide the British government with a legal "getaway" from the withdrawal procedure. The petitioners made an inquiry to the Scottish Inner Court of Session on whether there was the *third option of revocation rather than the dichotomy of either accepting the Withdrawal Agreement or else exiting the EU via the automatic operation of Article 50(3) TEU upon the elapse of the two-year time period on 29 March 2019* (Garner, 2018). The referring Court requested a preliminary ruling from the ECJ, which, despite the UK Government's arguments regarding the admissibility of the case²⁴, ruled the following:

Article 50 TEU must be interpreted as meaning that, where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State — for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired — to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to

²³ "Scots voted 62:38 to remain, whilst the UK as a whole voted 52:48 to leave" (Tomkins, 2017)

²⁴ "The United Kingdom Government argues that the question referred is inadmissible because it is hypothetical. In particular, the United Kingdom Government submits that no draft act of revocation of the notification of the United Kingdom's intention to withdraw from the European Union has been adopted or even contemplated, that there is no dispute in the main proceedings and that the question referred is actually intended to obtain an advisory opinion on a constitutional issue, namely the correct interpretation of Article 50 TEU and of acts adopted pursuant to that article." ECJ. Case C-621/18, par. 20.

confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.

With its ruling, the ECJ provided the legal margin to the UK to pursue another policy with regard to withdrawal from the EU until the expiration of the two-year transition period in the 31st of December 2020, and it would have then been a matter of domestic constitutional law to examine which legal pathway to follow, whether the passage of a new Act of Parliament explicitly authorising the power to revoke before a notification would have been required, or instead whether such a power had already been vested in the Prime Minister by virtue of the EU (Notification) Act 2017; since the UK Government never considered such an option in the first place, the latter question still remains theoretical (Garner, 2018). As the negotiations of the UK with the EU proceed and do not seem to reach an agreement, rendering an irregular breakaway the most possible scenario²⁵, the Scottish Government has been trying to ensure that *Scotland's distinctive needs and priorities are met*, pushing the UK Government *to respect devolution and honour its commitment to replace EU funds in full* (Scottish Government, 2020).

3.a.vii. "Internationalisation" of the Scottish Debate – Approach towards the EU and the international community

The mainstream of the Scottish, as well as the Catalan, separatist movements wish to keep EU membership after having obtained independence. Consequently, even though the EU has sought to evade the debate underlying the national dimension of the matter, it is undeniable that the views and attitudes of various EU actors will eventually impact the likelihood of future secession and accession processes. For instance, voters could be persuaded that the new state will join the EU quickly and on favourable terms (Bourne, 2014). The Scottish government clearly stated that it expected "to begin negotiations with both the UK and EU institutions to agree a "smooth transition to independent EU membership [which] can take place on the day Scotland becomes an independent country" (Bourne, 2014). The argument is that, due to Scotland's 40-year EU membership, the aforementioned Article 49 of the Treaty on European Union on accession of new states did not apply in the *sui generis* case of Scotland (Bourne, 2014).

Several attempts to externalize this debate have been made by Scottish First Ministers and other Scottish government ministers. The strategy deployed, recalling the one outlined by Griffiths (2016),

²⁵ Brexit trade deal in balance as Boris Johnson prepares for make-or-break talks with EU chief. Independent. (2020, December 6).

attempted to attract the lens of the international community on the issue, either to increase international pressure on the central government, or, alternatively, to bypass completely the central government and legitimize the independence will of the secessionist movement. For instance, during his mandate, the ex-First Minister Alex Salmond addressed the matter of Scottish independence on relevant international stages such as Hong Kong, New York, Paris, and Philadelphia (Bourne, 2014). In April 2014, Salmond gave a high profile and symbolically significant speech, with the purpose of debating rising doubts about the likelihood of an independent Scotland staying in the EU despite the Eurosceptic turn in British politics, signalled by former British Prime Minister Margaret Thatcher's earlier Bruges speech in 1988 (Bourne, 2014).

There were also numerous diplomatic meetings in London, Edinburgh and Brussels (Bourne, 2014). The Scottish ministers flew to attend a meeting with representatives of Nordic and Baltic states, trying to find allies, especially among smaller Baltic, Scandinavian and East European EU members, "to build strong, collaborative relationships across Europe in line with our ambition to become a modern, independent country and full equal member state of the EU" (Carrell and Kassam, 2013; in Bourne, 2014). In March 2014, for instance, artists from the pro-independence National Collective met with senior party leaders in Denmark, resulting in a successful public statement where Denmark announced that Scotland would be welcome into both the EU and NATO, and that membership could be arranged overnight and was a *mere formality* (Bourne, 2014). Further attempts at transnational collaboration included meetings between pro-independence campaigners such as the unsuccessful registration of a European Citizens' Initiative in favour of *internal enlargement* in case of secession of a territory within an existing member state (Bourne, 2014). In 2012, the International Commission for European Citizens, constituted also of representatives from the Scottish Independence Convention and others from Flanders and Catalonia, presented another unsuccessful European Citizens' Initiative to protect the universal right of self-determination within the EU's legal framework (Bourne, 2014).

3.b. Legal Framework in UK

3.b.i. "Scotland's right to choose: putting Scotland's future in Scotland's hands"

In December 2019, at the Westminster General Election, the SNP won again the great majority of seats. One week after the elections, on the 19th of December 2019, the Scottish Government published its official request for a second independence referendum. The document is called: "*Scotland's right to choose: putting Scotland's future in Scotland's hands*" (Scottish Government,

2019). In the introduction, First Minister Nicola Sturgeon underlines that *“it is a fundamental democratic principle that the decision on whether or not Scotland becomes independent should rest with the people who live in Scotland”*. Her argument to back the request for a second referendum is based on what she refers to as *“significant and material change in circumstances”*, since the previous referendum was held in 2014. The change in circumstances Sturgeon refers to is the fact that following Brexit, Scotland will be forcibly leaving the European Union despite the willingness of the majority of Scottish citizens to remain. Therefore, Sturgeon argues, *“the decision on whether a new referendum should be held, and when, is for the Scottish Parliament to make - not a Westminster government which has been rejected by the people of Scotland. (...) We are today therefore calling on the UK Government to ensure a transfer of power is made -from Westminster to Holyrood- so that a fresh independence referendum is put beyond legal challenge. (...) It is our position that a referendum should be held before the end of 2020, but the precise timing will be a matter for the Scottish Parliament to decide.”* Hence, Scotland is trying to persuade the UK to facilitate a second referendum to be held on a consensual basis. But, as the following subchapter will demonstrate, the major legal obstacle is represented by the Scotland Act of 1998.

3.b.ii. Scotland Act 1998

The Scotland Act 1998 is an act of the Parliament of the United Kingdom that established the devolved Scottish Parliament and the Scottish Government. The Act determined that the authority exercised by Scottish Institutions shall be characterised by a varying set of powers based on the concept of *devolution*: devolution means that people in Scotland benefit from decisions that are best made on a UK-wide basis in areas like defence, security, foreign, and economic policy (UK Government, s.d.). Whilst decisions on issues like childcare, health, education, and religion can be made autonomously, the Act specifically declares the continued power of the UK Parliament to legislate in respect of Scotland, upholding the concept of Westminster's absolute *Parliamentary sovereignty* in matters of defence, security, and foreign and economic policy (UK Government, s.d.).

Therefore, in order for Scotland to call a legally binding referendum, Scotland needs permission and recognition from the UK to amend the Scotland Act 1998. Prior to the Edinburgh Agreement, there was debate on whether a referendum could be held without permission from Westminster, but this remained purely theoretical, as negotiations were concluded and a legal agreement was struck (McKerrell, 2017). Afterwards, in the Edinburgh Agreement of 2012, the UK and Scottish Governments finally agreed on the conditions to conduct a legal, fair and decisive referendum. This was

granted through a temporary amendment of the Scotland Act 1998 in order to allow Holyrood to legislate on the matter (McCorkindale & McHarg, 2020). Based on this particular precedent, Annex B of the document “*Scotland's right to choose: putting Scotland's future in Scotland's hands*”, contains new draft amendments to the Scotland Act, to enable the necessary transfer of competence (McCorkindale & McHarg, 2020). However, the new amendments are significantly more trenchant if compared to the agreement of 2012: (1) they include an explicit statutory recognition of Scotland’s right to *self-determination*; (2) they would *permanently amend* the Scotland Act to centralise full competence to authorise an independence referendum; (3) they place a statutory duty on the UK to co-operate with Scotland to allow a *legally binding* transition to independence; (4) they extend the legal competence of the Scottish Parliament, Scottish Ministers and other public authorities to prepare for *independence* (McCorkindale & McHarg, 2020).

Nevertheless, these requests should be considered as proof of stubbornness and demand of negotiation, rather than an *aut...aut* declaration. As aforementioned, the Scottish parliament is not completely sovereign. Thus, realising that the UK will not likely agree to cooperate in the near future (Nicola Sturgeon’s request for a second referendum has already been rejected by Boris Johnson), what can Scotland actually do to secure a lawful referendum at some point?

3.b.iii. UK Constitutional Law

It is clear that, as a matter of UK constitutional law, Scotland can only become independent with the agreement of the UK Parliament, because the Scottish Government’s mandate to hold a referendum is politically important but legally irrelevant. There are no legal shortcuts for Holyrood to exploit, and whether a second referendum will be held in the future, is a matter of political negotiations and diplomatic terms. Sturgeon said that the Scottish should have the opportunity to decide on Scotland’s future before 2021, but in the letter written by UK Prime Minister Boris Johnson, addressed to Nicola Sturgeon, the intentions of the UK appear clear and contrasting with the Scottish will. On the 14th of January 2020, Boris Johnson wrote²⁶ : “*I have carefully considered and noted the arguments set out for a transfer of power from the UK Parliament to the Scottish Parliament to allow for further independence referendums. You and your predecessor made a personal promise that the 2014 Independence Referendum was a “once in a generation” vote. The people of Scotland voted decisively on that promise to keep United Kingdom together, a result which both the Scottish and UK*

²⁶ Letter from PM Boris Johnson to First Minister Nicola Sturgeon, 14 January 2020. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857586/Nicola_Sturgeon_20200114.pdf

Governments committed to respect in the Edinburgh Agreement. (...) For that reason, I cannot agree to any request for a transfer of power that would lead to further independence referendums. (...) Another independence referendum would continue the political stagnation that Scotland has seen for the last decade, with Scottish schools, hospitals, and jobs again left behind because of a campaign to separate the UK. It is time we all worked together to bring the whole of the United Kingdom together and unleash the potential of this great country.”

In conclusion, the ambitions of the Scottish government to hold a second independence vote have been thoroughly stated, but the coronavirus crisis paused and postponed its preparatory work.²⁷ Without the agreement of the UK, nothing can apparently be done, but the political relevance of the debate still leaves a small window of opportunity ajar, as the Covid-19 pandemic has apparently moved the scale needle towards a popular “yes”. In July 2020, Professor John Curtice, one of UK’s leading political scientists, commented that the latest surveys illustrate that support for Union has historically never been so low (Nutt, 2020). More precisely, Sir Curtice made the assessment following the publication of Panelbase polls which assess the support for the “Yes” in an independence referendum at 54%, with “No” being calculated at 46%. According to Curtice, the past three months of coronavirus pandemic have given an example of how much better Scottish government could do for its population, if Scotland were to be a smaller and independent country (Nutt, 2020). Moreover, during the months of the coronavirus outbreak, the polls showed a great support for Nicola Sturgeon’s handling of the crisis, with +60 points of approval rating for the Scottish First Minister, against -39 for Prime Minister Boris Johnson’s approval (Nutt, 2020). Apparently, the Scottish public evaluates positively the Government’s conduct during the pandemic, especially if compared to the behaviour of the UK Government, because Sturgeon has implemented a much more wary attitude towards it, with more restrictive measures (Nutt, 2020).

It appears that following the coronavirus pandemic, whose contingency has given Holyrood the opportunity to exercise its devolved powers, the Scottish people had a proof of what independence means in the form of increased autonomy, and public support for independence has never been so high and stable in time, with approval rising each month (Nutt, 2020). Hence, conditions have recently changed dramatically, and even in absence of will, it might be difficult for the UK to ignore such an

²⁷ Letter from Cabinet Secretary for Constitution, Europe and External Affairs, Michael Russell MSP, to the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, 18 March 2020. Available at: www.gov.scot/publications/coronavirus-covid-19---independence-referendum-cabinet-secretary-for-constitution-letter

urgent political matter. Meanwhile, since 2013, a very thorough plan had already been developed, consisting of steps to be followed by any government of a newly independent Scotland: The White Paper on Scotland Independence

3.c. The White Paper on Scottish Independence

In the document “*Scotland’s Future: Your Guide to an Independent Scotland*”²⁸, published on the 26th of November 2013, also known as “The White Paper on Scottish Independence”, or simply the “White Paper”, the Scottish National Party has developed a guideline, enriched by a set of policies, that outline the path to follow for Scotland to become an independent nation. The first chapter of the document, “The Case for Independence”, is more of a political manifesto that underlines the benefits that independence would bring to the Scottish population. Afterwards, the document addresses several thematic areas in the following chapters, such as finances and economy, health, education, defence, justice and security, environment, culture, and democracy. A section of Q&A, followed by several annexes, concludes the document, constituted of a total of 670 pages.

In order to acquire a thorough understanding of the contents and the intentions of the White Paper, several elements are worth mentioning. Regarding International Relations, Home Affairs, and Defence, five points stand out:

- The document clearly specifies that an independent Scotland would surely want to continue being part of the European Union; nevertheless, the intention is to preserve the pound as currency;
- Independent membership in NATO;
- The nuclear program, called Trident, would be abolished and removed. Clearly, this constitutes a difficult matter for the UK to handle, as in lack of alternative locations, they might be forced to relocate the nuclear weapons abroad, weakening its status of nuclear power;
- The Scottish Defence Force announces the hiring of additional military personnel: 15.000 regulars and 5.000 reservists.
- Scottish natural resources, especially oil and water, should be controlled independently.

²⁸ “Scotland’s Future: Your Guide to an Independent Scotland”. Available at: <https://www.gov.scot/publications/scotlands-future/>.

Finally, the White Paper also pays close attention to welfare matters, especially health, that is addressed in great detail. Several promises made to the readers attempt to lure the population towards voting “yes”. Specifically:

- Thirty weekly hours of public childcare for all children from two to four years old;
- An adjustment of the minimum wage to the actual cost of living;
- Employment measures to reduce the gender inequality gap, and employment for the youth;
- Preservation of a publicly owned and publicly funded health care system, with gradual increase in intakes in line with the past years: *“In an independent Scotland, we will continue to provide high quality, world-leading health and social care in a way that reflects the founding principles of the NHS and our social care services. (...) With independence, Scotland can work towards a fairer society that will address these health inequalities.”*

Despite the fact that the White Paper has been characterised as a *“a clear, firm, and rather attractive retail offer to the Scottish electorate”*²⁹, it has also received harsh criticism for the approach to several issues. The Scottish Secretary at the time, Alistair Carmichael, two months after the publication of the White Paper, referred to it as *“more of a black mark than a blue print”*, listing twelve faulty proposals. Some of the proposals were identified as already achievable under the competencies devolved to the Scottish Parliament, such as child care plans, while others were found to be inaccurate, and, therefore, non-achievable. Two of the most neuralgic proposals -the one regarding the currency as well the one regarding the EU membership- have been based on assumptions which had already proven to be wrong. The White Paper assumed that a currency union between an independent Scotland and the continuing UK would automatically be in the interests of both parties, while the UK Government had stated that such a union would be ‘highly unlikely’. The Scottish Government also asserted that Scotland would not have to apply to join the EU as an independent state, and could have “continued membership” just by amending the existing EU treaties. However, there was no relevant legal precedent of a continued membership, while the EU Commission had already ruled out such a possibility³⁰.

²⁹ Scottish government publishes white paper on independence: Politics live blog, Andrew Sparrow (The Guardian, 2013). Available at: <https://www.theguardian.com/politics/2013/nov/26/scottish-government-publishes-white-paper-on-independence-politics-live-blog>

³⁰ Twelve of the faults in the Scottish Government's independence white paper, Policy Paper (Office of the Secretary of State for Scotland, 2014). Available at: <https://www.gov.uk/government/publications/white-paper-unravelling/twelve-of-the-faults-in-the-scottish-governments-independence-white-paper>

4. The Case of Catalonia

A study published by the Centre of Sociological Investigations (CIS) in 2012 indicated that, unarguably, the citizens of the Autonomous Community of Catalonia consider themselves, in percentage, more Catalan than Spanish. Specifically, around 29% of participants declared to feel more Catalan than Spanish, and an additional 22% consider themselves exclusively Catalan. Hence, a total majority of 51% feels Catalan rather than Spanish. This data is even more significant if compared to the 5% of the population that feels only Spanish, and around 7% that answered to feel more Spanish than Catalan. Finally, 34% of the population declared to consider themselves equally Catalan and Spanish (CIS, 2012). Therefore, similarly to the people of Scotland, in Catalonia also the identity component of the separatist claim is strong and rooted.

Keeping in mind these results, this chapter will present the secessionist movement of Catalonia, focusing on three interrelated aspects. Firstly, the history of the separatist movement will be outlined, focusing on the evolution of the relations with Spain as well as the social, cultural, and economic roots of the Catalan independentist claim. Secondly, the Spanish legal framework will also be examined, to understand the practical feasibility of separatist ambitions and the legal obstacles confronted on the path towards independence. In this regard, the relation of Catalonia with the European Union and the strategies to internationalise the Catalan debate will also be addressed. Thirdly, the correlation between the economic arguments and the growing vigour of the separatist requests will also be presented, given that especially after the crisis of 2008 that affected Spain and the totality of Europe, the economic discourse represents a crucial factor for the Catalan separatists.

4.a. Historical Review

4.a.i. Origins of the Catalan political movements

“Catalonia, together with the Basque country, is the region that has traditionally had the strongest nationalist sentiment, and has historically struggled most intensely in favour of autonomy” (Basaguren, 2013). The Catalan culture is strongly rooted in history and it could not be otherwise, considering that Catalonia was an independent country until 1714, with a glorious Medieval past (Davies, 2012). Since 1283, the Principality of Catalonia had already established a complex institutional and political system based on an agreement between the realm and the king. In reality, Catalan relationships with the Spanish Crown have always been characterized by an alternation of

peace and attempts to terminate Catalan privileges in favor of a more centralized kingdom; however, in general, Catalonia has always enjoyed greater independence compared to Scotland, an autonomy fostered by a geopolitical factor that Scotland did not possess: an extensive trade network across the Mediterranean, centered in Barcelona, which competed with Genoa and Venice (Fontana, 2014).

Between 1640 and 1652, the years of the so-called Reaper's War were characterized by harsh conflicts with the monarchy and social uprisings of peasants in Barcelona. The monarchy wished to dispossess Catalonia of its resources, to centralize and exploit them; nevertheless, the Catalan governmental institutions and laws were well protected by the population that during those years managed to enhance its direct participation and involvement in the local politics of the Principality of Catalonia (Corteguera, 2002). After the Napoleonic war and the eradication of the French presence, Catalonia became one of Spain's industrialization centers and one of the largest textile producers in the Mediterranean; Spain also decided to encourage this industrial expansion by implementing protectionist policies. The active participation of the Catalan population in local politics, along with the industrial growth, contributed to the Catalan cultural *renaissance* of the 19th century, a movement which fostered the recovery of Catalan language and culture (Fontana, 2014).

In 1913, guided by the Catalan politician, writer and lawyer Enric Prat de la Riba, Catalan nationalism won its “*most important success*”³¹ obtaining partial self-government for the *Mancomunitat* (Commonwealth) of the Catalan provinces: it modernized transport-and-communication infrastructures such as roads and telephones, and further supported Catalan culture through the construction of libraries, the use and regulation of the Catalan language, and the promotion of sciences (Marimon, 2013). Throughout centuries, the identity component has never faded away, and language still represents a central political matter between Barcelona and Madrid (Sanjaume-Calvet, 2016). One of the principal Catalan parties, Esquerra Republicana de Catalunya (ERC – the Republican Left of Catalonia), was founded in 1931, and historically accumulated consents by uniting nationalist claims for independence with arguments of social justice (della Porta & Portos, 2020). The fascist regime of Francisco Franco ferociously repressed the Catalan separatist movement and the ERC: from 1936 to 1948 and under Franco's dictatorship, 4000 people were executed and around 130,000–150,000 went missing in Catalonia at the end of the civil war (della Porta & Portos, 2020). Moreover, Franco also attempted, and partially succeeded, to eradicate the use of Catalan language in public space, as its usage only re-appeared in 1983 (Sanjaume-Calvet, 2016).

³¹ Elliott, J. H. (2018). *Scots and Catalans: Union and Disunion*, p. 198. Yale University Press.

However, also during the harsh Francoist repression, Catalan separatist's networks did not linger passively. Such independentist structures were socially stratified, from workers to highly educated members of the cultural elites, and organized strategic resistance aimed at protecting the Catalan identity and its indigenous language and culture (della Porta & Portos, 2020). The components of the ERC were targeted with particular violence by Franco, and as a consequence, the party initially remained weak. However, following the fall of the dictatorship, Catalan political movements could rise and structure themselves around nationalist discourses, mostly guided by the political figure of Jordi Pujol, leader of *Convergència i Unió* (CiU), since the original democratic election in 1980 until the mid-2000s (della Porta & Portos, 2020). The Spanish Constitution of 1978, ratified after the end of Franco's dictatorship, established the framework for a process of devolution of power that divided Spain into 17 self-governing Autonomous Communities (Basaguren, 2013). Each Community is guided by its own regional parliament and government, institutions that have the faculty to exercise significant political power (Basaguren, 2013).

To pursue its primary aim of increasing and diversifying the evolution of the Catalan autonomy within the existing constitutional framework of the Spanish state, the CiU, a centre-right party, managed to broaden its basin of support across the left-right divide (Elias, 2015). However, in 2003 the CiU lost influence against a coalition of leftist forces strongly characterised by federalist predilections, headed by the social-democratic Socialist Party of Catalonia (PSC). Despite the uncertain and volatile political environment, from 2000 until 2004 the PSC mostly worked towards drafting a reform to the Statute of Autonomy, Catalonia's fundamental law. With this purpose in mind, the strategy was based on establishing a dialogue for cooperation with the independentists of ERC, in order to challenge the CiU, that was at the time a government ally of the conservative party *Partido Popular* (PP) (della Porta & Portos, 2020).

4.a.ii. 2003-2010: The election of Zapatero and the Reform to the Catalan Statute for Autonomy

Probably the first milestone, that endorsed the separatist debate to reach heights of popularity and recognition at national and international level, was the 2003 election campaigns of José Luis Rodríguez Zapatero. Running as Prime Minister of Spain, during his speech in Barcelona, he claimed that he would enhance any reform of the Catalan Statute for Autonomy if previously approved by the Catalan Parliament (Sanjaume-Calvet, 2016). Furthermore, he enriched his speech by quoting, in

Catalan language, a verse of Miquel Martí I Pol, a popular Catalan poet (Sanjaume-Calvet, 2016). Unsurprisingly, Catalans reciprocated such a powerful declaration of interest and political intentions with a historical electoral support. A few days later, Zapatero was elected Prime Minister and, throughout his mandate, he maintained his promise.

With the Partido Socialista Obrero Español (PSOE) in power, the Catalan government tried to take advantage of the favourable political environment to gradually obtain more autonomy, launching a public debate on the aforementioned reform (della Porta & Portos, 2020). In 2005, 90% of the Catalan parliament approved the proposed reform to the Statute of Autonomy, which defined Catalonia as a nation (Sanjaume-Calvet, 2016). However, the result was rejected by the PP and it also generated internal tensions within the PSOE; new negotiations between the PSOE and CiU were necessary to reach a new agreement, leaving Catalonia's national status in a deliberate ambiguity (Elliott, 2014). Nevertheless, despite the adoption of the parliament and the ratification by a Catalan referendum in June 2006, when 73% voted yes with less than 50% of participation, the new statute could not be adopted because again the PP opposed itself by appealing on grounds of unconstitutionality (della Porta & Portos, 2020).

The Partido Popular, a centre-right party, characterised the modified Statute as a “*dagger aimed at the heart of the constitution*”, and brought the case before the Constitutional Court, claiming that the proposed changes amounted to a constitutional reform and should be treated as such; according to the PP, the references to national symbols, the denomination of Catalonia as a nation, the compulsory teaching of the Catalan language in schools, as well as the increased financial autonomy granted to the Catalan government weakened even further the central state (Elliott, 2018). The Supreme Constitutional Tribunal deliberated four years (between 2006 and 2010), in order to reach its decision, during which the political polarisation increased, inflaming the public and creating the conditions for the first massive Catalan independence rally (Sanjaume-Calvet, 2016). In June 2010, the Constitutional Court invalidated as unconstitutional several provisions regarding the Catalan language, a new fiscal agreement, the recognition of the Catalan nation and the international profile of Catalonia (della Porta & Portos, 2020). Even though the Court did not annul the statute as a whole and proceeded to relatively moderate modifications on the aforementioned provisions, it did however declare that the reference to Catalonia as a nation in the preamble had no legal grounds (Elliott, 2014). Popular outrage burst out in the streets, with people demonstrating and asking for the recognition of Catalonia as a nation (della Porta & Portos, 2020).

Despite the obstacles faced, the process of reform of the Catalan Statute of Autonomy in the time period between 2003 to 2010 is “widely regarded as providing a favourable context for a public discussion of Catalonia’s relationship to Spain and for the Catalan secessionist movement to gain momentum” (Muñoz & Guinjoan, 2013). As a matter of fact, the setbacks established by the Constitutional Court triggered an increase in support of the independentist cause, still weak and marginal at the time: support for an independent Catalan state increased from 13.6% in June 2005 to 19.4% in February 2010, then reaching 48.5% in November 2013 (della Porta & Portos, 2020).

4.a.iii. The election of Mariano Rajoy and the 2014 Catalan Independence Referendum

The 2009-2015 period was characterised by a steadily growing wave of pro-independence mobilizations, especially on the 11th of September of each year, denominated “Diada Nacional de Catalunya”³² (National Day of Catalonia), when mass mobilisations commemorate the fall of Barcelona into the hands of the Bourbon troops of Philip V of Spain during the Spanish succession war, which took place on 11 September 1714, and the consequent abolition of the Catalan institutions. On the 11th of September 2012, for example, 20% of the Catalan population gathered to voice their collective desire for secession in what became so far, the largest pro-independence demonstration in democratic Spain. (della Porta & Portos, 2020). Besides these grand events, pro-independence activism was operating on a daily basis, through collective political engagement via international publicity campaigns, performances and local grassroots activities (Crameri, 2015).

However, the uphill path towards Catalan independence became steeper when Mariano Rajoy, leader of Partido Popular (PP) -the same party that had previously challenged the Autonomy Statute at the Constitutional Court in 2006- was elected Spanish Prime Minister in 2011 (Sanjaume-Calvet, 2016). The victory of the PP was indisputable and, as a consequence, the party obtained the majority of seats in both the Spanish Congress as well as the Senate, hence holding absolute power at the national level (Sanjaume-Calvet, 2016). Considering the difficult circumstances and the necessity for action, under the leadership of the regional president Artur Mas, the ruling party of the regional Catalanian government CiU, and the other major pro-independence party ERC, decided to agree on a political truce in order to establish a collaboration to organise an independence referendum on the 9th of November 2014 (Sanjaume-Calvet, 2016). The referendum was supposed to ask Catalans two questions: (1) Do you want Catalonia to become a state? (Yes/No) and, (2) If yes, do you want this

³² Art. 8.3 of the Catalan Statute for Autonomy. Available at: https://web.archive.org/web/20110929115352/http://www.gencat.cat/generalitat/cas/estatut/titol_preliminar.htm#a8

state to be independent? (Sanjaume-Calvet, 2016). In order to clarify the reasoning behind the wording and structure of the referendum questions, I addressed Diplocat, the Public Diplomacy Council of Catalonia³³. Their response directed me to two sources, “The consultation on the political future of Catalonia” issued by the Government of Catalonia (2014) and the “Eight years of pro-independence effort in Catalonia: elections, actors and the political process” by Joan Marcet (2019). As aforementioned, historically, Catalonia has been enjoying some degree of political autonomy, following either federalist or autonomist solutions depending on the historical circumstances, always claiming for greater autonomy and trying to combine this desire for greater autonomy with its integration to the Spanish state (The White Paper, 2014)³⁴. However, a devolution model that would perfect autonomy was never actually established; the respective mechanisms stipulated by the 1978 Spanish Constitution in the last democratic transition were written in an ambiguous fashion in order to create wider political agreement at the time (The White Paper, 2014), while the continuous failures to redefine the territorial structure of Spain during 2004-2005, in conjuncture with the delayed response of the Spanish state to the 2008 recession, escalated the political confrontation to a political and institutional crisis (Marcet, 2019). The structuring of the 2014 referendum reflects this shift of the debate as well as the differences among the parties supporting the referendum, with some advocating a substantial increase in self-government powers and others demanding independence (Martí and Cetrà, 2016).

The referendum was considered unconstitutional by the Spanish Conservative Government of Mariano Rajoy, by the Spanish Parliament majority, and ultimately by the Constitutional Court (Sanjaume-Calvet, 2016). Nevertheless, during this period, Catalan civil society organized and held numerous demonstrations demanding their *right to decide* and pushing for independence (Minder, 2013). The “right to decide”, coined in the recent years and standing out as an expression, was not intended as the political or legal equivalent of the “right to self-determination”, which would encounter legal obstacles in being accepted by both Spanish and international law; however, it was gradually incorporated by the will to seek independence from Spain (Marcet, 2019). Under the slogan “Now is the time, united for the new country”, about 2 million protesters gathered in the streets of Barcelona, many wearing commemorative red and yellow T-shirts and waving Catalan flags, symbolically forming a gigantic “V” to stress their determination in demanding their right to vote (della

³³ As described in the official website, Diplocat is “a public-private consortium that has been working since 2012 to publicize the values and assets of Catalonia to international public opinion” and “aims to connect Catalonia with the world and promote the country’s image abroad”. <https://diplocat.cat/en/about-us/>.

³⁴ The Government of Catalonia. 2014. White paper on The National Transition of Catalonia. Synthesis. <https://govern.cat/govern/docs/2014/10/09/01/13/11431c82-91dc-42ed-ba03-9f173edc65d1.pdf>.

Porta & Portos, 2020). Around 2.3 million people symbolically expressed their *illegal* votes, in an enormous unofficial electoral performance (Muñoz & Guinjoan, 2013). The “Yes-Yes” option reached 1,897,234 votes (80,74%), and the Catalan Government estimated a turnout of around 37-40% (Sanjaume-Calvet, 2016). Following the referendum, the Catalan president Artur Mas and two other members of his former cabinet have been charged with disobedience, abuse of power, and embezzlements of public funds in defiance of Madrid’s government and the Constitutional Court (Kassam, 2015). Nevertheless, despite the legal and political rejection of the Catalan independentist demand by the Spanish central institutions, the massive turnout of 2014 confirmed that the Catalan separatist push had grown to become one of Madrid’s main domestic challenges (Minder, 2013).

4.a.iv. Internationalising the Catalan debate

Such a steady and powerful momentum for Catalonia’s separatist claims surely has benefited from the internationalisation strategy implemented by Catalan governmental and civil society actors. Focusing mostly, but not exclusively, on European actors, the Catalan government diversified its external approach by mobilizing different resources, such as the expertise of the academic appointees of the Advisory Council for the National Transition, deploying dozens of commercial and diplomatic offices abroad, and its secretariat for foreign and European affairs (Bourne, 2014).

In late 2013, in order to gather the attention of the international community on the referendum that was planned for the successive year, the Catalan government sent letters to every heads of state of the European Union, as well as to the EU Commission. The strategic purpose was threefold: (1) emphasizing the great level of parliamentary and popular support for the referendum; (2) challenging the arguments of the Spanish government, that defined the referendum as unconstitutional; and (3) asking for support by the EU, in order to guarantee a peaceful, democratic and transparent transition to independence process (Bourne, 2014). Additionally, Artur Mas made numerous symbolic visits to EU institutions and to foreign states like Israel and India, to discuss about the goal of statehood (Rios, 2014). Furthermore, the Catalan government founded a regional diplomatic service called “Diplocat”, composed of volunteers who aimed to help the Catalan Government to externalise and promote the Catalan sovereignty cause abroad (Noguer, 2013). The Catalan adviser to the Presidency, Francesc Homs, explained that the Diplocat was funded by the Catalanian public budget and worked in coordination with a network of 34 commercial offices and five political delegations that the *Generalitat* already has abroad (Noguer, 2013). Likewise, the pro-independence civil society organization “Assemblea Nacional Catalana” (Catalan National Assembly, ANC), also supported the externalisation

strategy of its government by creating and distributing videos and pamphlets, organising demonstrations, and attracting the attention of the international press through its ten European branches and eight more branches located globally, mostly in Latin American countries (Bourne, 2014).

As aforementioned, the externalisation strategy surely cemented the internal unity of the Catalan political project, as well as fomented the support of its population. Nevertheless, the international response itself was feeble. Authorities and heads of state of the Europe Union were clearly reluctant to get involved into such a delicate national matter (Bourne, 2014). Similarly, in response to a letter sent to the White House, US institutions regarded the issue as an internal Spanish matter that should be resolved in respect of Spanish law (Roger, 2014). Artur Mas did not even want to publicize the responses to the letters he sent to 27 European leaders, demanding support for the sovereignist consultation (Roger M., 2014).

The only known response was the one made public by the former President of the European Commission, José Manuel Barroso, that claimed the Commission preferred not to interfere in the sovereignty process because he considered it to be a Spanish internal matter (Roger M., 2014). However, the Catalan adviser to the Presidency, Francesc Homs, censored Barroso's vision and gave his own interpretation of the content of the letter, claiming that Barroso's speed in the response -18 days- showed that the Catalan debate was an international matter (Roger M., 2014). Unsurprisingly, also the British Prime Minister David Cameron supported the position of Spain and underlined the domestic nature of the matter (Bourne, 2014).

4.a.v. Declaration of the Initiation of the Process of Independence

Catalan nationalist parties gained a majority of seats in the Catalan regional elections held on the 27th of September 2015 and, on the 9th of November 2015, the Catalan Parliament adopted the Declaration of the Initiation of the Process of Independence. The declaration of independence, that was opposed by Catalan anti-independentist parties in the Parliament, initiated a process that was supposed to reach effective self-determination throughout the next 18 months (BBC News, 2015). This Declaration also pronounced the lack of legitimacy of the Spanish Constitutional Court, and revealed the start of a participatory constituent, comprehensive of active citizenship, to draft the foundations of the future Catalan Constitution (Sanjaume-Calvet, 2016). Despite the opposition of the Spanish state, Catalan pro-independence parties claimed they considered it a de facto referendum on independence from Spain, whose central government had consistently rejected to consent a legally recognised

referendum, ignoring the unofficial vote demanding independence in November 2014 (BBC News, 2015).

However, even if the Declaration was sold nationwide as a grand victory achieved by a united secessionist front, an internal political deadlock after the results of the parliamentary elections of September 2015 almost caused the abortion of the strategy, and delayed the secessionist scheme until the beginning of 2016 (Sanjaume-Calvet, 2016). Only a last-minute parliamentary agreement between the secessionist alliance *Junts pel Sí* (Together for Yes) and the far-left party CUP (Popular Unity Candidacy) created the conditions for a fairly solid majority (Sanjaume-Calvet, 2016). One of the principal causes of disagreement regarded the figure of Artur Mas, former regional president and candidate of *Junts pel Sí*. The CUP considered him responsible for the measures of austerity and excessive privatization policies implemented by the Catalan government during his mandate, and thus strongly refused to support his re-election (Sanjaume-Calvet, 2016). Finally, *Junts pel Sí* and the CUP agreed on the figure of Carles Puigdemont, former mayor of Girona (Sanjaume-Calvet, 2016).

4.a.vi. The 2017 Catalan Independence Referendum and the Spanish State Repression

Whereas Catalonia and Basque Country are Spanish regions alike, both characterised by a strong identity component and by claims for independence, Basque separatist claims resonated much stronger internationally, due to the fear caused by the terrorism of extremist separatist groups like ETA (Busquets, 2018). In contrast, western public opinion did not pay real attention to the Catalan case until the violent repression imposed by the Spanish state during the Independence Referendum of October 2017 (Busquets, 2018).

After having won the 2015 regional elections, Catalonia's pro-independence government led by Carles Puigdemont continued following its 18-months strategy outlined in the Independence Declaration, which forecasted a unilateral referendum planned for October 2017. Despite the declaration of illegality expressed by the Constitutional Court of Spain, the referendum was held on the 1st of October 2017 (BBC News, 2019). The ballot paper contained the following question: "Do you want Catalonia to become an independent state in the form of a republic?"; about 90% of Catalan voters supported independence, but the electoral turnout was low, around 43%, due to the repressive intervention of Spanish police officers (BBC News, 2019), that interfered to prevent people from voting, confiscating ballot papers and boxes at polling stations (BBC News, 2017).

In Barcelona, police intervention was particularly fierce, as the use of batons and rubber bullets was deployed to disperse pro-referendum protesters and to push back voters to force their way inside the polling stations (BBC News, 2017). In the town of Girona, where Carles Puigdemont was expected to vote, police riots smashed their way into the polling station breaking the glass of the entrance door and forcibly dispersing voters (BBC News, 2017). Puigdemont, who still managed to cast his vote, publicly condemned the violence deployed by the national police and Guardia Civil: “The unjustified use of violence... by the Spanish state will not stop the will of the Catalan people” (BBC News, 2017).

The brutal intervention of the Spanish national police, beating voters and boycotting the elections, followed by the arrest of Catalan politicians and leaders, surely revived for some worrying memories of the Franco dictatorship (BBC News, 2019). As a matter of fact, the events of October 2017 represent Spain’s major political crisis since 1975, when democracy was restored after the death of Francisco Franco (BBC News, 2019). Carles Puigdemont fled to Belgium to avoid arrest, while several other leaders that remained were arrested and charged with treason. Following these events, the Economist Intelligence Unit, that publishes every year an influential democracy ranking, claimed that Spain risked being lowered from a “full democracy” to a “flawed democracy” due to its violent handling of the pro-independence elections (BBC News, 2019).

Despite the unarguably violent approach of a member state, the European Union decided not to scold Spain, defining the crisis as an internal matter of the government (El Tiempo, 2019). In its European Commission Statement/17/3626³⁵, issued on the 2nd of October 2017 to comment on the Catalan Independence Referendum, the Commission took a clear stance in favour of Spain declaring that *“Under the Spanish Constitution, yesterday's vote in Catalonia was not legal. For the European Commission, as President Juncker has reiterated repeatedly, this is an internal matter for Spain that has to be dealt with in line with the constitutional order of Spain. We also reiterate the legal position held by this Commission as well as by its predecessors. If a referendum were to be organised in line with the Spanish Constitution it would mean that the territory leaving would find itself outside of the European Union”*.

With the purpose of obtaining further clarifications on the Statement, I have personally addressed the European Commission through the Europe Direct Contact Centre, specifically focusing on the aforementioned *“legal position held by this Commission as well as by its predecessors”*. Thus, I have asked whether the legal position the Commission referred to was based upon a specific legal text

³⁵ EU Com Statement/17/3626, 02/10/2017. Available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_3626.

or document and, eventually, whether I could have access to it. The Commission answered to me mentioning the replies to written parliamentary questions given by Romano Prodi in 2004³⁶, and José Manuel Barroso in 2013³⁷, further underlining that *“the EU is founded on the Treaties which apply only to the Member States who have agreed and ratified them. If part of the territory of a Member State would cease to be part of that state because it was to become a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU”*.

4.a.vii. Suspension of the Catalan Autonomy and Recent Developments

Following the ferocious developments of the referendum, on the 27th of October 2017, the Catalan parliament unilaterally declared Catalonia an independent and sovereign state (El Tiempo, 2019). The parliamentary resolution gathered 70 votes in favor and 10 against, but the Constitutional Court of Spain intervened again declaring the process unconstitutional (El Tiempo, 2019). Furthermore, the Spanish government, headed by Mariano Rajoy, applied for the first time article 155 of the 1978 Constitution and suspended temporarily the Catalan autonomy: following prior authorization of the Senate, article 155 allows the Spanish government to impose measures that oblige the autonomous communities to abide by the Constitution³⁸. As a result of the intervention, the Spanish State imposed its authority over Catalonia between the end of October 2017 and the beginning of June 2018, during which Madrid blocked several candidates, until Quim Torra was appointed President of the Catalan government (El Tiempo, 2019).

One year later, around 600,000 Catalan supporters marched in Barcelona for the Diada, the National Day of Catalonia, celebrated on the 11th of September of each year. However, the Diada of 2019 showed the lowest turnouts in history of the annual march (BBC News, 2019). The protesters also demanded the release of the separatist leaders facing charges of sedition and rebellion for the facts of October 2017, for which they were risking up to 25 years in prison (BBC News, 2019). One month later, on the 14th of October 2019, new protests erupted in Barcelona following the decision of Spain's

³⁶ Parliamentary Questions, 01/03/2004. Available at: <https://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2004-0524&language=en>.

³⁷ Parliamentary Questions, 20/12/2013. Available at: <https://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2013-013409&language=EN>.

³⁸ Spanish Constitution. Section 155. Execution by Government of Community's obligations in case of non-compliance

1. If a Self-governing Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to meet said obligations, or to protect the abovementioned general interest.

2. With a view to implementing the measures provided for in the foregoing paragraph, the Government may issue instructions to all the authorities of the Self-governing Communities.

Supreme Court to sentence nine Catalan separatist leaders to a conviction of 9 to 13 years of prison, following their apical involvement in the 2017 independence Referendum (El Tiempo, 2019).

Carles Puigdemont, still in exile abroad, and against whom another international arrest warrant was issued on grounds of sedition and misuse of public funds, claimed that Catalan citizens were victims of a “strategy of repression and revenge” (BBC News, 2019). However, the hardest sentence was issued against Oriol Junqueras, former vice-president of Catalonia, president of ERC, and the highest-ranking pro-independence leader on trial, convicted with 13 years of prison for the same accusation of sedition and misuse of public funds (El Tiempo, 2019). In reply to the accusations of Puigdemont and Junqueras, who blamed the Spanish government of jailing people to repress political ideals, Spain's new Prime Minister Pedro Sánchez claimed that the former Catalan leaders had been exclusively jailed for criminal conduct (BBC News, 2019).

Finally, the most recent and relevant development regarding the internal conflict between Spain and Catalonia involves a spy story that is worth including in the analysis, as it reveals the state of crisis, mutual mistrust, and aggression characterising the political relationship between the interested parties. Roger Torrent, newly elected President of the Catalan Parliament, and Ernest Maragall, former representative of the party ERC, provided proofs of espionage activities against them deployed by structures of the Spanish central government (Gil, 2020). Madrid denied all allegations, but all the details were revealed in a joint investigation conducted by the newspapers “The Guardian” and “El País” (Gil, 2020). Since 2019, the mobile phones of Torrent, Maragall, and other 1,400 individuals were attacked by the Pegasus software, an Israeli computer espionage system developed by the NSO Group and supplied only to police units and intelligence agencies (Gil, 2020). The developers of the espionage tool commented they exclusively sell it to governments chasing criminals and terrorists (Baquero, 2020).

Roger Torrent exploited the international resonance of the issue to demand a thorough investigation and to publicly denounce the political repression of the independentist movement: *“This is the first time that we have concrete confirmation of what many of us knew and had been denouncing. We knew that illegal practices were being directed against the independence cause. Now we have certain proof”* (Baquero, 2020). Additionally, he took advantage of the circumstance to request a fair political dialogue with Madrid for the future (Gil, 2020).

The aforementioned historical events, as well as the most recent developments, seem to confirm the presence of a rooted, determined, and now particularly angry support for independence, with separatist sentiments flamed by acts of repressive violence deployed by the central state. However, the Spanish state used force in impunity, reminding Catalans that nothing can be done in absence of its will. Hence, the current political and diplomatic approach of Roger Torrent appears more directed towards de-escalating frictions and establishing a dialogue with Madrid, but it might be insufficient. The realisation of self-determination would require an improbable defying of the Spanish government's political will as well as Spain's legal structures.

4.b. Legal Framework in Spain

4.b.i. The 1978 Spanish Constitutional Framework

According to the Spanish Constitution, the separation of a part of the territory of the state is illegal, and it would therefore entail a process of constitutional reform through majoritarian decision of two-third of both chambers, new elections, and ratification with another referendum (Sanjaume-Calvet, 2016). Clearly, the legal and procedural obstacles are difficult to overcome, especially considering that the recent developments of the Spanish-Catalan relationship have made it particularly clear that Madrid has absolutely no intention of granting space for negotiations on any Catalan manoeuvre. Therefore, at the moment, a solution similar to the Scottish agreement does not seem pursuable (Sanjaume-Calvet, 2016). Likewise, I argue, the political costs paid by the Catalan government after their unilateral 2017 referendum have been extremely high, and it is therefore difficult to imagine other non-negotiated unilateral actions from Catalonia. Hence, the path towards Catalan independence appears to be even more arduous than the Scottish one.

As a matter of fact, the strategies of the Catalan separatist movements were not completely unlawful, but rather based on the ambivalent definition of “autonomy” outlined in the 1978 Spanish constitutional framework (della Porta & Portos, 2020). Specifically, Article 2 states that: “*the Constitution is based upon the indissoluble unity of the Spanish Nation, the common and indivisible patria (homeland) of all Spaniards, and recognises and guarantees the right to autonomy of the nationalities and regions that make it up and solidarity between all of them*” (Guibernau, 2013). The Constitution also includes a right to autonomy that can be claimed through specific procedures, and three political principles ruling the matter: *unity, autonomy and solidarity* (Sanchez Agesta, 1980).

For the purpose of this thesis, it will be useful to examine the context of the first two principles, unity and autonomy. The political implications of the principle of *unity* are the following (Sanchez Agesta, 1980):

- There is only one reference to the people as a subject exercising national sovereignty, and its representatives are granted the approval of the constitutional reforms and a power of ratification;
- Spain is a single state in the international order, based on a nation with a single form of government, one nationality, one language, one flag, one King;
- All the Spanish are subject to the same legal regime and are equal before the Law anywhere in the territory of the State;
- *Unity of the territory as a political space*: autonomy involves a principle of territorial division of powers, but there are aspects in which the superior power of the State is reaffirmed throughout Spain and the Spanish territory by the Supreme Court. For example, the State monopolizes the international relations; issues of immigration and asylum; homeland security, sovereignty, and defense; economic and financial unity; management and export of natural and cultural resources.

Basically, the principle of unity supports, both internally and externally, the idea of a single and indivisible homeland and territory, united politically, economically, territorially, and diplomatically.

Furthermore, the principle of *autonomy* establishes the following (Sanchez Agesta, 1980):

- Article 137 mentions the concept of autonomy as a general principle for the organisation of municipalities, provinces and autonomous communities, that “enjoy autonomy for the management of their respective interests”. Hence, the concept of “their respective interests” already limits the autonomy to local and regional matters that have no direct impact on the aforementioned national unity;
- *Normative autonomy*: although there is no explicit recognition in the Constitution, the provision in article 152 mentions rights of legislative Assembly between the institutional autonomous communities, that have “faculty to dictate for themselves legislative norms”, but only in

delegation a state law and within the framework provided by it. Basically, article 152 gives a tool for autonomous communities to harmonise top-down state law, but nothing more;

- *Financial autonomy*: in this regard, article 156 establishes that “The Autonomous Communities will enjoy financial autonomy for the development and execution of its competences (...) in accordance with the principles of coordination with the State Treasury and solidarity among all the Spanish”.
- Finally, the last aspect worth mentioning regards the participation and influence of the autonomous communities on the national agenda. Article 87 specifies that autonomous communities can give substantial contribution to define general policies, but these initiatives have to be submitted to the Government or to the Congress, that shall approve any project of law.

4.b.ii. State Control of the Autonomous Communities in the Spanish Constitution

The basic regulations of the Spanish autonomous communities are constituted by their respective Statutes of Autonomy, which contain the most relevant aspects of their organization and their legal regime. Article 147 of the constitutional text specifies that the Statutes of Autonomy must contain the name of the community; the delimitation of its territory; and the denomination, organization and headquarters of the autonomous institutions and the powers assumed by them (Wagner, 1979). It is the role of the state to approve, recognize, and protect the Statutes as an integral part of its legal system (Wagner, 1979). In this regard, both Catalan and Basque statutes say the Spanish State could designate, at any time, the delegates deemed necessary to ensure the enforcement of laws, eventually establishing an intervention of the Constitutional Court (Wagner, 1979). According to article 121 of the 1931 Constitution, the Constitutional Court is competent and intervenes in case of unconstitutionality of the laws, and in case of eventual legislative conflicts that may arise between the State and the autonomous regions, and between regions themselves (Wagner, 1979).

A special tool to facilitate State control is the one contained in Article 161, which allows the central government to challenge before the Constitutional Court, with suspensive effect, any provisions and resolutions adopted by the autonomous communities (Wagner, 1979). This power cannot be exercised *vice versa*, by the autonomous communities against the State, although article 162 legitimizes

communities to file an appeal on unconstitutionality (Wagner, 1979). Moreover, if the Court were to attribute to an autonomous community the power to dictate legislative norms on a specific matter which normally falls within the framework of state control, the State would be entitled to establish the modalities of control of such norms (Wagner, 1979).

4.b.iii. The Principle of “Indissoluble Unity” of Spain and Catalonia’s “Right to Decide”

In Spain there is a very strong political feeling about the intangible unity of its territory, specified in the aforementioned Article 2 of the Spanish Constitution, which is “*based upon the indissoluble unity of the Spanish Nation, the common and indivisible patria (homeland) of all Spaniards (...)*” (Basaguren, 2013). The dictatorial regime of Francisco Franco has historically exacerbated the aversion towards separatists, which were indicated as the worst enemies of Spain along with communists and Jews; such tensions are historically rooted, and have contributed to rendering any secessionist claim a political taboo (Basaguren, 2013). On the same matter, the UK has surely demonstrated more tolerance, granting space for negotiation and making important concessions that Spain has never considered tolerable. Hypothetically, a process of secession would necessitate a constitutional amendment to modify the current affirmation of unity indivisible from Spain (Basaguren, 2013).

However, as a matter of fact, the Spanish law contains two major points of unclarity, which separatist leaders have attempted to exploit to their benefit by interpreting the norms in their favour. The first one is represented by article 92, that grants the legitimacy to call a referendum for “political decisions of special importance” (Basaguren, 2013). Clearly, an autonomous community willing to pursue its desire of independentism might unarguably consider its self-determination a special political matter. However, the article possesses a final precision in the constitutional provision, establishing that the referendum will be “of all citizens” (Basaguren, 2013). Hence, appealing to a literal interpretation of the legal text, the referendum does indeed require to be held nation-wide, at the state level, consequently denying *de facto* the legality of a regional unilateral referendum. Considering the lack of clarity of article 92, some scholars argue that a flexible interpretation should be followed in order to guarantee all citizens, in the sense of “all voters in the census of a specific territory” to express their position (Basaguren, 2013). However, considering Spain’s rigid attitude towards its internal separatist claims, it is improbable that the Government and the Constitutional Court would ever guarantee such instrument to the Catalan electorate. Therefore, also in this case, the possible controversy dies out in

the bud, as all the decisional powers remain in the hands of the Government and the Court (Basaguren, 2013).

The second issue arises following the Judgement 42/2014 of the Spanish Constitutional Court, executed on the 25th of March 2014, on the resolution passed by the Catalan parliament on the 23rd of January 2013, which basically approved the “*right to decide*” of the Catalan people (Comella, 2014). By coining this expression, the Catalan separatist movement promoted its strategy for sovereignty trying to transmit to the electorate the idea that they actually possessed the legal right to decide for their future, including whether or not to become an independent State through secession (Basaguren, 2013). However, despite the symbolic significance that the Catalan leaders attached to the Judgement 42/2014, in practice this right to decide is actually a “non-existent right” (Comella, 2014). According to Basaguren (2013), Catalonia can unarguably pretend the political recognition of their right to decide within the framework provided by the Spanish law, but cannot pretend its incontestable acceptance and exercise outside of legality. As Comella (2014) puts it, “instead of the right to ‘decide’, they are actually invoking the right to be ‘heard’ or ‘consulted’, which is different.” Indeed, once again, the Court actually preserved its power by establishing that this right has to be contextualised and exercised within the existing legal framework of Spain (Comella, 2014) that, apparently, leaves no space to separatist sentiments.

4.c. The impact of the economic crisis on the Catalan secessionist movement

The 2008 financial crisis, followed by severe cuts to public spending implemented by the Spanish government, fuelled the widespread belief that Spain “takes from Catalonia much more in taxes than it gives back in services” (BBC News, 2019). In Catalonia, various studies have argued that the severity of the economic crisis has indeed turned the predominantly *autonomist and regionalist* nature of the Catalan movement to a *secessionist and nationalist* one (Bourne, 2014). Spanish austerity policies resulted ineffective in addressing increasing inequality, unemployment, and stagnating salaries for the middle classes, in addition to low state investment in infrastructure and general welfare (della Porta & Portos, 2020). Moreover, the austere economic policies implemented by the European Union to address the crisis of the sovereign debt of its Member States, has indirectly exacerbated these secession sentiments (Bourne, 2014).

The factors which generally foment the independentist claims of the population, such as cultural and linguistic differences, lack of autonomy, poverty and weak economic prospects, are transversal to each separatist case in Western Europe (Sorens, 2005). Nevertheless, in the Catalan case, the rise in support of the secessionist forces was particularly affected by the economic crisis. In 2006, only 15% of the Catalan population supported secession; on the contrary, during the elections held after 2008, secessionist forces gathered 48% of votes (Guibernau, 2013). As a matter of fact, between 2006 and 2011, Catalan unemployment rates increased from 7.5% to 23.6%; furthermore, Catalan contribution to Spain's gross domestic product (GDP) declined from 25.6% in 1979 to 19.0% by 2010 (Sanjaume-Calvet, 2016). Besides, the classist roots of Catalan nationalism have often been underscored, because Catalonia is one of the richest areas in Spain (della Porta & Portos, 2020). Nevertheless, in contrast to the traditional narrative of Catalan independentism as a middle-upper class movement, support for independence has always been grounded on the electoral mobilization of citizens belonging to heterogeneous social classes, including the working class, upon which the economic consequences of the Great Recession have been particularly severe (della Porta & Portos, 2020).

Attritions between Madrid and the Catalan regional government worsened, as both entities were hit by severe liquidity problems. In June 2012, following the collapse of the housing market's bubble, the reduction of mass consumption, and the dramatic growth of the public deficit, Spain requested a €100 billion loan from the European Union in order to inject capital into the banking sector (Sanjaume-Calvet, 2016). This matter is relevant because, financially, Catalonia depends on the centralised tax-collecting system of the state, and on central government transfers (Sanjaume-Calvet, 2016). Even regarding the financial ground, in comparison to Scotland, Catalonia has always received a much more limiting degree of autonomy by its central government, and several rulings of the Constitutional Court against the Catalan Statute of Autonomy have constantly severed Catalan tools for self-government, that also suffered important economic cuts from the central government in the aftermath of the crisis, fuelling separatist and nationalist sentiments (Sanjaume-Calvet, 2016).

5. Conclusions - Comparative Analysis of the Scottish and Catalan Cases

This conclusive chapter has the purpose of extracting essential facts and information provided throughout the thesis, and presenting a comparative analysis between the independentist movements of Scotland and Catalonia. In general, considering the historical, legal, political, and diplomatic elements taken into consideration, it is not hazardous to claim that the international regime has mostly focused on inhibiting territorial conflicts and undermining claims of independence, rather than leaving consistent space for the action of secessionist movements. Meaning that, in praxis, the principle of territorial integrity enjoys priority in comparison to the principle of external self-determination. The international legislation ruling the matter prioritizes the defence of states' territorial unity, especially in those cases where, in absence of violations of human rights, the process of secession would entail the violation of the territorial integrity of the larger statal entity. In this sense, also the attitude of the European Union aligns with the strategy of non-intervention, disincentivizing secessionist movements, despite their attempts to internationalise their networks in reach for external support. And obviously, at the heart of the issue, the centre of decisional power still lies in the hands of nation states that, despite minor legal loopholes, can indeed rely on national legislations that were carefully designed in order to safeguard their integrity.

In order to present a comparative analysis in a clear and orderly manner, this conclusion will be structured into four thematic subchapters, each of them focusing on a specific area of comparison: the *national legislation* ruling the issue of sovereignty and self-determination of internal territories; the relations with the *European Union and the internationalisation strategies* implemented by the separatist movements; the dynamics and characteristic of *political and diplomatic relations with the Nation State*; and, finally, possible *future outcomes* of Scottish and Catalan separatist claims.

5.a. National Law

Regarding Scotland, the fundamental legal instrument which subdues the Scottish will to the authority of the Kingdom is represented by the “Scotland Act 1998”, issued by the United Kingdom to establish the devolved Scottish Parliament and the Scottish Government. Despite the set of powers which can be exercised in autonomy in areas such as childcare, health, education, and religion, the Act concentrates decisional power in the hands of Westminster, that enjoys absolute *Parliamentary*

sovereignty in respect of Scotland in matters of defence, security, foreign, and economic policy. Hence, as a matter of UK Constitutional Law, Scotland can only become independent with the agreement of the UK Parliament. Consequently, an extremely thorough document such as “*Scotland’s Future: Your Guide to an Independent Scotland*”, has absolutely no legal relevance except being a powerful propaganda instrument to gather secessionist support from the population. There are no legal shortcuts for Holyrood to exploit, and whether a second referendum will be held in the future is a matter of political negotiations and diplomatic terms.

Similarly, the Spanish Constitutional Law has been carefully designed to favour and protect state institutions against the separation of a part of the territory, which is *de iure* illegal and would therefore entail a process of constitutional reform hampered by several procedural obstacles essentially impossible to overcome in absence of statal agreement. Neither the ambivalent definition of autonomy outlined in article 2 of the 1978 Spanish constitutional framework, nor the lack of clarity of article 92, that according to some scholars should guarantee all citizens to express their position on self-determination, could actually represent a challenge for the Spanish Government and the Constitutional Court. Similarly, judgment 42/2014 of the Spanish Constitutional Court, on the “*right to decide*” of the Catalan people is actually a “non-existent right” because no political action can be pursued outside the larger framework provided by the Spanish law. The Madrid government and the Constitutional Court ultimately concentrate all executive and legislative power and can legitimately challenge any provisions and resolutions adopted by the autonomous communities, following Article 161.

5.b. International Relations with the EU and Internationalisation Strategy

The strategies outlined by Griffiths (2016) can be observed in both the Scottish and the Catalan movements. Both regions tried to target and bargain with their central government in order to obtain increased autonomy, and also attempted to amplify the resonance of their debate to attract international support from foreign actors, both governmental and supranational, that could legitimize their independence will: one above all, the European Union. However, Brussels has never reciprocated the interest of separatist movements, despite their openly pro-EU political agenda oriented towards European membership.

Scottish and Catalan leaders have consistently hunted for support. Numerous institutional meetings and speeches have been organised, from Hong Kong to New York, from Paris to the Scandinavian States, Canada, and the Eastern European countries. Important resources have been deployed, from institutional diplomacy to citizens' street demonstrations, coverage of the international press, the entrenchments with civil society movements, commercial networks, and the academic world. Nevertheless, excluding a few bland statements, neither the Catalans nor the Scottish have ever obtained substantial support from the international community. Their externalisation strategies surely cemented the internal unity of the Scottish and the Catalan political projects, and definitely served for purposes of electoral propaganda. However, authorities and heads of state of the Europe Union have always been clearly reluctant to get involved directly. The responses of the European leaders, as well as the statements made by Barroso and other European authorities, clearly highlighted the intention of the Union not to interfere in the sovereignty matters that are internal to Member States, and concern Member States only.

One could argue that, in absence of a clear legislative framework on sub-state independence, the European Union has not yet identified a definitive approach towards the issue. However, recalling Coppieters (2010), I personally believe the EU has indeed developed, in praxis, its *strategic culture on secession*, characterized by (1) the predilection for regional self-government models that respect territorial unity and attain to the status quo; (2) the support for peaceful, reformist, and democratic movements rather than violent ones; and (3), by prioritising the rationale of *just cause* (restoring historical injustices by granting more autonomy or total independence) rather than *democratic choice* (self-determination right overriding the principle of territorial integrity) to justify secession. Hence, considering both movements refuse EU's preference for the preservation of statal unity and territorial integrity, and support the concept of secession for reasons of democratic choice rather than just cause, it is doubtful they could obtain support of any nature from the European Union without prior consent of the Member State.

5.c. Political and Diplomatic Relations with the Nation State

The international community at large agrees it is still the exclusive right of legitimate sovereign states to determine the fate of secessionist aspirations internal to their borders. Unsurprisingly, like both the attitudes of the United Kingdom and Spain have demonstrated, states are definitely not eager to lose

internal territories and resources for independentist sentiments to spill over into other regions. Therefore, national governments exploit all their comparative advantages to settle territorial disputes, thus leaving little space for bargaining. However, I argue, it is possible to identify a substantial strategic difference between the approaches implemented by Westminster and Madrid during the political and diplomatic dialogues with their respective secessionist movements and leaders. Unarguably, Scotland has enjoyed more flexibility throughout its relations with the national institutions of the United Kingdom. For Scotland to call their referendum, England agreed on the amendment of the Scotland Act of 1998 in order to allow Holyrood to legislate on the matter. A concession that Spain has never even remotely considered. Furthermore, during the negotiations for the referendum of 2014, as the polarisation was deepening in the days closer to the vote, former Prime Minister David Cameron also committed to a de facto extension of devolution in favour of Scottish authorities (“Devo-max”). In general, diplomatic and political relations between the leaders of the United Kingdom and political representatives of the Scottish separatist movements have historically been characterised by a greater degree of institutionality.

On the contrary, Madrid’s firm unwillingness to negotiate with Catalonia, along with the historical attempts of the Spanish Crown to exploit Catalan resources and extinguish its culture and language, the modern cultural heritage of Francoist dictatorship, and the contemporary austere economic policies of Spain and the European Union, exacerbated the nationalist nature of the Catalan movement, originally more in favour of an advanced autonomy status for Catalonia. The continuous opposition of the Constitutional Court inflamed the debate and created the pre-conditions for Catalan leaders to pursue an arbitrary path towards independence. As a matter of fact, the setbacks established by the Constitutional Court triggered an increase in support of the independentist cause for the Catalan secessionist movement to gain momentum. From Artur Mas to Carles Puigdemont, several leaders of the Catalan movements have been accused and convicted for treason, disobedience, abuse of power, and embezzlements of public funds in defiance of Madrid’s government and the Constitutional Court. The images of the violent intervention of the Spanish police in the aftermath of the October 2017 referendum, in order to disperse protesters and to push back voters boycotting the unilateral elections, have attracted the attention of the global public opinion on Spain’s major political crisis since 1975.

5.d. Possible Future Developments

In the short term, based on the material proposed and analysed in this dissertation, I personally believe neither the Scottish nor the Catalan movement will be able to accomplish their secessionist aspirations. However, with a perspective on the middle-long term, in spite of the concessions made during the past, the country that might fear -still feebly- to lose its territory in the future is the United Kingdom. In the aftermath of the negative referendum of 2014, and contrary to what would be expected, there was a constant rise of all pro-independence voices. Moreover, Scottish First Minister Nicola Sturgeon has proven determined to demand the transfer of powers from Westminster since the aftermath of the Brexit referendum that has undeniably altered the conditions and exacerbated the debate. Through the public statements of Boris Johnson, the Kingdom is making its position clear on the impossibility for Scotland to call for a second referendum on a matter that was supposed to be a “one in a generation vote”. However, a unilateral rejection could fuel the secessionist cause and possibly increase the violence of secessionist discourses and actions. Clearly, Scotland can only become *de iure* independent with the agreement of the UK Parliament, and the Scottish Government’s mandate to hold a referendum is politically important but legally irrelevant. Nevertheless, the political relevance of the debate has gained momentum due to Johnson’s incautious handling of the Covid-19 pandemic. In synthesis, Brexit and Coronavirus have dramatically altered the status quo, and even in absence of will, it might be difficult for the United Kingdom to ignore such an urgent political matter throughout the next decade, especially in conjunction with the economic and unemployment crisis unpredictably worsened by the pandemic.

On the contrary, the firm attitude and violent repression implemented by Spain have apparently shut down any concrete independentist aspiration. The international community, including the European Union, remained silent on the brutal use of force exerted by Madrid, essentially legitimising the severe intervention of the State to sedate the internal dispute. The political costs paid by the Catalan government in the pursuit of a unilateral and arbitrary independence have been extremely high, and it is currently difficult to imagine other unilateral and non-negotiated actions from Catalonia. Furthermore, with diplomatic relations characterised by mutual mistrust, Spain is seemingly deploying intelligence resources to maintain strict monitoring on Catalan strategies. After the investigations conducted by newspapers “The Guardian” and “El País” revealed proofs of espionage activities against Roger Torrent, Ernest Maragall, and other 1,400 individuals belonging to the Catalan political network, the reaction of the Catalan leader was to demand a fair political dialogue with Madrid. Such a passive

position seems distant from the fierce attitude deployed during the past and unveils how, in spite of the presence of a rooted and angry popular support for independence, the current political and diplomatic approach of Roger Torrent appears inevitably more directed towards de-escalating frictions and establishing a dialogue with Madrid. The realisation of self-determination would require defying the Spanish government's political will as well as Spain's legal structures, which I believe are highly improbable also in the middle-long term.

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