

Secessionist movements in Europe

A comparative study of the Scotland and Catalonia Cases
within the EU framework

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Outline

1. Introduction
2. EU Framework on Territorial Secession
3. The Case of Scotland
4. The Case of Catalonia
5. Conclusions - Comparative Analysis

1. Introduction

Post WWII era:

- proliferation of sovereign states - crucial characteristic

Nowadays:

- the majority of territorial conflicts are internal to the states

Estimate of 25 active separatist movements in Europe - 3 common features:

- The interests of the states
- The international recognition regime
- The interests and strategies of the secessionist movements

Public International Law - 2 core (and contrasting) principles

Self-determination:

- inherently controversial concept
- flexible interpretations to each particular context

Territorial integrity:

- counterbalancing the destabilizing effects that self-determination might have
- often prioritised vs self-determination

National States

- Trying to preserve territorial integrity and to avoid a domino effect within their territories

Secessionist movements - 2 general strategies

- Targeting their central government, bargaining for increased rights and autonomy
- Attracting international community's attention

EU position on territorial secession

- In principle, EU institutions only discuss with national governments
- Try to avoid involvement in such issues, considering them internal affairs of a MS

2. EU Framework on Territorial Secession

Ar. 49 TEU: enlargement through openness to membership
Could it lead to re-drawing EU internal borders?

- **Absence of clear legislative framework - EU Treaties do not directly legislate over formation of new states**
- **EU disposition against separatist movements expressed through statements:**
 - P. A. Hansen, 2013: *“An independent state, because of its independence, would become a third country vis a vis the EU and as of the day of the independence the EU treaties will no longer apply”* (response regarding the Catalan case)
 - J. M. Barroso, 2014: *“The European Commission welcomes the fact that during the debate over the past years, the Scottish government and the Scottish people have repeatedly reaffirmed their European commitment”* (following the 2014 Scottish referendum)

Opportunity Structure

(Gamson, Meyer, Kriesi)

- the legislative limbo within the institutional environment of the EU provides the separatists with space for action

European Integration Effects

(Bourne)

- European integration;
limit or opportunity for secessionist movements?

Strategic Culture on Secession

(Coppieters)

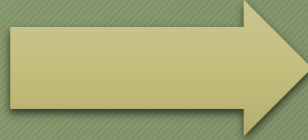
- Attitude developed by nations and the EU towards separatist movements - 3 features:
 1. predilection for regional self-government models
 2. support for peaceful, democratic movements
 3. *just cause* (vindication of historical injustices) **rather than** *democratic choice* (right of self-determination overriding principle of territorial integrity)

Self-determination provisions in International Law

UN Charter Ar. 1, par. 2	Treaty of Lisbon Ar. 3a, par. 2	UN Declaration of Friendly Relations and Cooperation among States (1970)	UN Vienna Declaration and Program of Action Ar. 2 (1993)	Montevideo Convention on the Rights and Duties of the States (1933): <u>4 preconditions for the recognition of a state</u> <ol style="list-style-type: none">1. Permanent population2. Defined territory3. Government4. Capacity to enter into relations with other states <i>Necessary but not sufficient - The formal recognition of another statal entity remains political and discretionary</i>
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Implications regarding the EU citizenship in the event of secession

Deprivation of rights
deriving from EU
citizenship



Violent disruption of daily
lives and activities of the
citizenry

ECJ, Rottmann v. Free State of Bavaria: Principle of proportionality to contain MS discretionary power to unilaterally deprive national citizenship and, by extension, the European one

- This ruling could be invoked by the Scots or Catalans in case UK or Spain deprived them respectively from the British or Spanish nationality to negotiate a more balanced arrangement

Brexit analogy

“Automatic and collective loss of citizenship” (Mindus)

- Transition period until December 2020 with possibility of extension

Unconsented Remedial Secession

- To remediate gross violations of fundamental human rights
- A priori requirement for EU MS to respect and protect human rights
- Incompatible to recur to within the EU context

Consented Remedial Secession

- Agreement between state government and seceding territory
- Would have been the case of Scotland should the 2014 referendum had a positive outcome

Democratic character of the decision

- Voice of the population of concern expressed usually via a referendum
 - Is the principle of democracy respected?

Unqualified majority of 50% + 1, excluding the larger citizenry of the original state

Consequential Membership

- In both cases the separatist movements entrusted much of the positive outcome of their independence to the EU
- Aspirations that the newly independent state would become an EU MS immediately

HOWEVER

- Copenhagen criteria
- Veto power of MS, especially the ones who are afraid of a domino effect

3. The Case of Scotland

Historical Review

Legal Framework in UK

The White Paper on Scottish Independence

1707	<ul style="list-style-type: none"> • Treaty of Union with England - some level of autonomy
After 1720s	<ul style="list-style-type: none"> • Gradual integration with the expansion of the British empire • Scotland handling own domestic affairs
WWI and Great Depression	<ul style="list-style-type: none"> • Economic interventionism by England • Rise of nationalism - 1934 the Scottish Nationalist Party was founded • Early claims for greater autonomy
1970s	<ul style="list-style-type: none"> • Discussions on devolution • Scotland Act 1978 • 1st Devolution Referendum 1979 -> defeat of YES / fear of complete dissolution of the Union
1979-1990, Thatcher administration	<ul style="list-style-type: none"> • All discussions on devolution ceased • Poll Tax - Scotland used as a policy guinea pig
1997	<ul style="list-style-type: none"> • 2nd Devolution Referendum -> massive win of YES
2007-2019	<ul style="list-style-type: none"> • 2007: The SNP 1st in the Scottish Parliament • 2011: Request for an Independence Referendum - 2012: Edinburgh Agreement with UK • 2014: The “Better Together” leaders signed the Vow, promising extensive powers to Scotland in case of remaining in the UK -> defeat of YES - Following rise of the SNP • 2016: BREXIT - 2019: Scottish claims for a 2nd Independence Referendum

BREXIT

Scottish Government, 2019:
“Scotland’s right to choose”

Official request for a 2nd referendum

-radical amendments to the Scotland Act 1998:

- Explicit recognition of self-determination right
- Full competence of on an independence referendum
- UK’s cooperation on a legally binding transition
- Extended legal competence to Scottish authorities to prepare for independence

Rejected by UK Prime Minister Boris Johnson

COVID-19 Crisis

Historical low for the support of the Union

Great support for Sturgeon’s handling of the crisis

-especially vis a vis the UK’s attitude on the matter

Proof of what independence means in form of increased autonomy

Scotland Act 1998

- Act of the Parliament of the UK
- Establishment of **devolved Scottish Parliament and Scottish Government**
- **DEVOLUTION**: policy decisions in several sectors can be made autonomously (i.e. childcare, health, education)
 - Westminster's absolute Parliamentary sovereignty in matters of defence, security, foreign and economic policy
- Legally binding referendum: permission from UK to amend the Scotland Act 1998
 - case of Edinburgh agreement 2012

UK Constitutional Law

- **Scottish Independence only with the agreement of the UK Parliament**
- 2nd referendum: matter of political negotiations

THE WHITE PAPER ON SCOTTISH INDEPENDENCE

Produced
by the
Scottish
Government
in 2013

Guideline enriched by a set of policies
-thorough plan designing the next day
of a newly independent Scotland

Key elements:

Intention to continue
participation
in EU and NATO

Close attention to
welfare matters
(health, education
etc.)

Control of natural
resources

Criticism

Some proposals were already achievable through the devolved powers of the Scottish Parliament (i.e. childcare)

Neuralgic proposals based on assumptions already proven to be wrong (i.e. currency union with the UK, continued membership in the EU)

4. The Case of Catalonia

Historical Review

Legal Framework in Spain

Catalonia

- Independent country until 1714, with **own Institutions** in agreement with the King
- Relationships with the Spanish Crown alternated **between peace and conflicts regarding the Catalan privileges**
- **Catalan language**: central political matter between Barcelona and Madrid

1936 - 1975 Francoist Dictatorship

- Ferocious **repression** of the Catalan separatist movement
- Separatists organising strategic resistance, protecting Catalan identity

1978 Democratic Transition

- **Spanish Constitution - DEVOLUTION**
17 self-governing Autonomous Communities -> **regional parliaments and governments**

2003 - 2010 Zapatero Gov. (PSOE)

- Promise by PM to enhance any reform of the Catalan Statute of Autonomy (Catalonia's fundamental law)
- 2006: **New Statute**, proclaimed Catalonia as a nation -> **was challenged** before the Constitutional Court by PP
- 2010, decision -> **not complete annulment**, relatively moderate modifications, **unconstitutional the provisions regarding the Catalan nation and the language**
- Outburst of demonstrations and **increase of the independence support**

2011
Rajoy Gov. (PP)

- Coalition of pro-independence Catalan parties to organise **referendum in November 2014**
- Double question, asking about only a substantial increase of self-government powers or outright independence as well
- **Unconstitutional by Const. Court**; it was held symbolically, 2.3 million voters, over 80% YES-YES -> charges against Catalan president Artur Mas and members of his cabinet (disobedience, abuse of power, embezzlements of public funds)

CONSULTA SOBRE EL FUTUR POLÍTIC DE CATALUNYA 2014
CONSULTA SOBRE EL FUTURO POLÍTICO DE CATALUÑA 2014

Vol que Catalunya esdevingui un Estat?
¿Quiere que Cataluña sea un Estado?

☐ SÍ ☐ NO

En cas afirmatiu
En caso afirmativo

Vol que aquest Estat sigui independent?
¿Quiere que este Estado sea independiente?

☐ SÍ ☐ NO

Consultation on the political future
of Catalonia 2014

Do you want Catalonia to become a state?

☐ YES ☐ NO

Do you want this state?
to be independent?

☐ YES ☐ NO

2015	<ul style="list-style-type: none"> • Catalan elections - win of nationalists • Declaration of Initiation of the Process of Independence <ul style="list-style-type: none"> -> to reach effective self-determination within 18 months -> forecasting an Independence referendum in 2017 • Const. Court: declaration of illegality of the procedure
October 2017	<ul style="list-style-type: none"> • Independence Referendum Single question: “Do you want Catalonia to become an independent state in form of a republic?” • Violent repression by the Spanish State, arrest of Catalan leaders • Unilateral declaration of Catalonia as an independent state by the Catalan Parliament • Const. Court: declaration of the process as unconstitutional • Activation of Ar. 155 of the Spanish Constitution: <ul style="list-style-type: none"> -> temporary suspension of autonomy -> Spanish State’s complete authority over Catalonia until June 2018

1978 Spanish Constitution

Ar. 2

“The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognises and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity amongst them all.”

- **PRINCIPLE OF UNITY:** single and indivisible homeland and territory, united politically, economically, territorially and diplomatically
- **PRINCIPLE OF AUTONOMY:**
 - in conj. with Ar. 137 “self-government for the management of their respective interests”
=> limited autonomy to local and regional matters
 - in conj. with Ar. 156 par. 1 “The Autonomous Communities shall enjoy financial autonomy for the development and exercising of their powers, in conformity with the principles of coordination with the State Treasury and solidarity amongst all Spaniards”
=> financial autonomy only for the development and execution of their respective competences

Ar. 147 Statutes of Autonomy

- Fundamental laws of Autonomous Communities
- Amendments “*shall conform to the procedure established therein and shall in any case require the approval of the Cortes through an organic law*”

Ar. 161 Constitutional Court

- The central government can challenge before the Court, with suspensive effect, any provisions and resolutions adopted by the Autonomous Communities (not vice versa)

Ar. 92 Referendum

1. Political decisions of special importance may be submitted to all citizens in a consultative referendum.
2. The referendum shall be called by the King at the proposal of the President of the Government, following authorisation by the Congress of Deputies.
3. An organic law shall regulate the terms and procedures for the different kinds of referendum provided for in this Constitution

- Has been considered by scholars to leave room for flexible interpretation:
 - self-determination as a decision of special importance
 - all citizens: all voters in the census of a specific territory
- All the decisional powers remain in the hands of the Government and the Court - Ar. 155

4. Conclusions - Comparative Analysis

The principle of territorial integrity prevails vis a vis self-determination right

International legislation prioritising territorial unity

EU, non-intervention attitude
-> secessionist movements fail to internationalise their networks



	SCOTLAND	CATALONIA
National Law	<ul style="list-style-type: none">Scotland Act 1998: decisional power with Westminster	<ul style="list-style-type: none">Spanish Constitution:Designed to protect state institutions against the separation of a territory
Internalisation Strategies	<ul style="list-style-type: none">Both tried unsuccessfully to attract support from foreign actors and, especially, the EU (mostly managed to cement their internal unity)EU Strategic Culture on Secession: Both movements:<ul style="list-style-type: none">-refuse EU's preference for statal unity and territorial integrity-based on democratic choice rather than just cause	
Diplomatic Relations with the Nation State	<ul style="list-style-type: none">Enjoyed more flexibility with the central StateGreat degree of institutionality	<ul style="list-style-type: none">No room for negotiationsArbitrary path towards independenceViolent interventions by the State
Possible Future Developments	<ul style="list-style-type: none">Following the negative referendum -> constant rise of pro-independence voicesBrexit and Coronavirus were conducive to this riseDifficult for UK to ignore such a matter	<ul style="list-style-type: none">Violent repression and severe political cost paid by the Catalan leaders -> shut down any independence aspirationAnother unilateral and non-negotiated action not a close probabilityDe-escalation

Thank you for your attention!