

Secession theories and processes in plurinational democracies. The Catalan case*

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1. Political legitimacy in plurinational states. Theories of secession

Practical experience shows that the legitimisation of political decisions that are taken in liberal democracies is not only based on values and objectives of a democratic or liberal nature. Broadly speaking, it could be said that there are up to nine different sources of legitimisation in modern-day democracies. These are associated with a variety of political and intellectual schools of thought and traditions which are employed by institutions and parties when they attempt to legitimise their decisions (Requejo 2005): political liberalism (individual and collective rights, techniques for limiting power, representation, protection of minorities, etc.); democratic popular sovereignty (universal suffrage, referendums, etc.); (internal and external) security; the (state or non-state) national collective; socioeconomic objectives (development, redistribution, fight against poverty, etc.); functional values (stability, efficacy, efficiency, etc.); “post-materialist” values (ecology, etc.); values and models for the territorial division of powers (federalism, decentralisation, etc.); and the maintenance and promotion of cultural values (linguistic values, cultural values, etc.).

It is well known that a number of different institutional models are available when one wishes to put these legitimising values into practice. In fact, no two democracies are the same. At the institutional level they differ with regard to the regulation of individual and collective rights; types of state and government; the practical expression of the separation of powers and the principles of legality and constitutionality; the recognition and protection (or not) of national, linguistic or religious minorities; electoral systems; territorial models; welfare systems; or control procedures and constitutional reform.

Apart from these differences, however, all democracies experience tensions between their main legitimising factors. A classic example of these tensions is the relationship between the principles of constitutionalism, popular sovereignty and nation-building processes that are present in all contemporary democracies. We are aware that the existing borders between states were not established through consensual processes, but by means of violent actions such as wars, territorial an-

nexations, deportations and the forced separation of populations, etc. Thus, when one talks about “popular sovereignty” a number of questions immediately emerge: What “people” does it refer to? Are there or should there be democracies of more than one “people”?; Who has the right to decide who the “people” is?; etc. Obviously, the response cannot be that “the people is that which the constitution identifies as such”, because that leads to a conceptual vicious circle. This is an issue that, somewhat surprisingly, the theories of modern democracy have never satisfactorily resolved – whether they have liberal or republican roots. National pluralism is a specific kind of pluralism faced with which the classic ideologies often reveal themselves to be hostile, perplexed or disorientated. But, in reality, all states, including democracies, continue to be nationalist and nationalising agencies.

A few years ago, the United Nations clearly established that a *politics of recognition* is an integral part of the struggle for human dignity (*Human Development Report*, 2004). Moreover, it established that national and cultural freedoms, which include both individual and collective dimensions, are an essential part of the democratic quality of a plurinational society. Furthermore, it stated once again that when analysing legitimacy in plurinational contexts one often observes a juxtaposition between the perspectives of the paradigm of equality (equality vs inequality) and the paradigm of difference (equality vs difference). This juxtaposition interacts with the individual and collective rights of liberal democracies. As a result, values such as dignity, freedom, equality and pluralism become more complex in plurinational contexts than in those of a uninational nature. The overall challenge of plurinational democracies can be summed up in the phrase “one polity, several *demoi*”.¹

On the other hand, there is a tendency for the number of states in the world to increase – this number has increased almost fourfold over the last century. This is a phenomenon that occurs in parallel with the creation of supra-state institutions such as the European Union. In a 21st century democracy it does not seem legitimate to force the citizens of a national collective to remain within a state against the will of the majority of that collective. Divorce is almost always better than an unhappy marriage. However, traditional constitutionalism has often treated internal national differences as “particularist deviations”. Until quite recently these issues have been largely neglected by traditional political schools of thought (liberalism, socialism, republicanism and conservatism).

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

The classic institutional measures offered by comparative politics in order to achieve the practical accommodation of national pluralism are basically of three types: federalism (in a broad sense, including processes of “devolution”, confederations, associated states, etc), consociationalism, and secession. While the first two types of measures have been studied for a number of decades through both theoretical and normative models and the analysis of different empirical cases and comparative analyses, secession has received renewed analytical attention in recent years, especially in plurinational contexts. One consequence of this has been the analytical refinement of the literature on normative theories of secession. In contrast with the traditional liberal and constitutional approaches that usually deny the possibility of secession, a current established typology divides theories of secession into three basic groups: 1) *Remedial Right Theories*, which link secession with a “just cause”, in other words, they regard secession as a remedy for specific “injustices”; 2) *Adscriptive or Nationalist Theories* and 3) *Associative or Plebiscitary Theories*, both of which regard secession as a right belonging to certain collectives that fulfil a number of conditions.²

Table 1. Secession theories in liberal democracies

Theories	Legitimacy of Secession	Rights at stake	Right to Self-determination
Constitutional and traditional liberal	No	Individual and collective rights only for the state	Only for the state
Just cause	Yes, in some cases	Violation of basic individual or collective rights	In case of violation of human rights, violation of federal agreements, no safeguard of economic interests, permanent negative redistribution.
Nationalist	Yes	Individual and collective rights of minority nations	In order to protect culture, to achieve better social justice, recognition and political accommodation.
Plebiscitary	Yes, with territorial conditions	Individual	To improve individual autonomy and freedom of voluntary association.
Kantian/Hegelian approaches applied to secession (different practical and institutional consequences regarding recognition and accommodation of national pluralism).			

2. For an analysis of the possibilities and limits of these three types of theories of secession in plurinational democracies, see Requejo-Sanjaume 2014.

Remedial Theories, or those relating to a “just cause”, give priority to a number of reasons or specific cases that justify political secession, which is not regarded as a primary right of specific collectives, but as a legitimate remedy for a series of circumstances, such as territorial annexation by force (for example, the case of the Baltic states and the USSR), the violation of the basic rights of a group of citizens by the state, genocidal practices, permanent negative discrimination regarding redistribution or socioeconomic development, non-compliance with previous agreements of self-government or collective rights by the state, etc. (Beran 1984, Birch 1984, Buchanan 1991, 2003).

Adscriptive or Nationalist Theories take as their central element that the nation is a legitimate political subject endowed with this right. Thus, the legitimacy of secession would be based on a previous political unit that possesses this right, which would basically be understood nowadays in inclusive and universal liberal-democratic terms. The collective rights of minority nations are seen as complementary to individual rights, not antagonistic to them (Walzer 1994, Tamir 1993, Margalit & Raz 1990).

Finally, *Associative or Plebiscitary Theories* give priority to democratic procedure in order to legitimate secession, whether this is through a referendum or based on the decisions of representative institutions. The key values here are individual moral autonomy and the right to choose voluntary political associations. They represent the pillars of the consensual legitimacy of a democratic political authority. If this consensual base regarding the state’s authority is not shared by the majority of individuals of a collective, secession is a legitimate act and constitutes a right that must be legally regulated. Thus, in this kind of theories secession is not regarded as a possible solution to the infringement of the rights or interests of a collective, nor is it linked to any kind of specific national or ethnic group. Rather it is a *primary right* of a political and territorialized nature based on the individual preferences of the members of a group of citizens (Beran 1984, Wellman 2005).

2. From regionalism to secessionism within the European Union. The Catalan case

2.1. Domestic politics

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

The reasons for this change are to be found in Catalonia's political evolution over the past decade, especially in the shortcomings with regard to constitutional recognition and political and economic accommodation displayed by the Spanish political system. The latter have been exacerbated by the reform process of Catalonia's Statute of Autonomy (2006) and the subsequent judgement of Spain's Constitutional Court regarding this Law (2010).

The process resulted in a clear watering down of the objectives established at the beginning of the reform process of the Statute. This is a key element if one wishes to understand the subsequent emergence of secessionist demands in Catalonia. First of all, the reform had demanded the legally binding recognition of the national reality of Catalonia within the framework of the Spanish Constitution. This demand had been stripped of all legal value by the end of the process. Secondly, greater depth and protection for self-government had been sought in order that the Catalan Government (Generalitat) could further develop its own distinct powers, but we have already seen that this demand resulted in extremely modest gains. Thirdly, it was not possible to attain either a finance model which ended a system of territorial "solidarity" regarded as unjust (quantified as between 7% and 10% of Catalonia's GDP, figures that have provoked use of the term "fiscal despoliation" in political debates), or respect for the ordinal principle once the territorial transfers have been made.

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

Despite the clear will of the Spanish government to prevent Catalans from voting for constitutional reasons, the figures show that a large majority of citizens in Catalonia are in favour of holding a consultation on their political future. This position is also defended by the majority of members of the Catalan parliament (87 out of 135 MP's).³

3. Four political parties are in favour (June 2015) of holding this consultation (CiU, ERC, ICV, CUP); two parties are against (PP and C's) and the socialist party (PSC) remains in the middle, supporting in principle a "legal" referendum, but opposed in practical terms to this general claim. See also J. Muñoz's empirical analyses in this volume.

Graphic 1. Estimated support for holding a consultation by municipalities

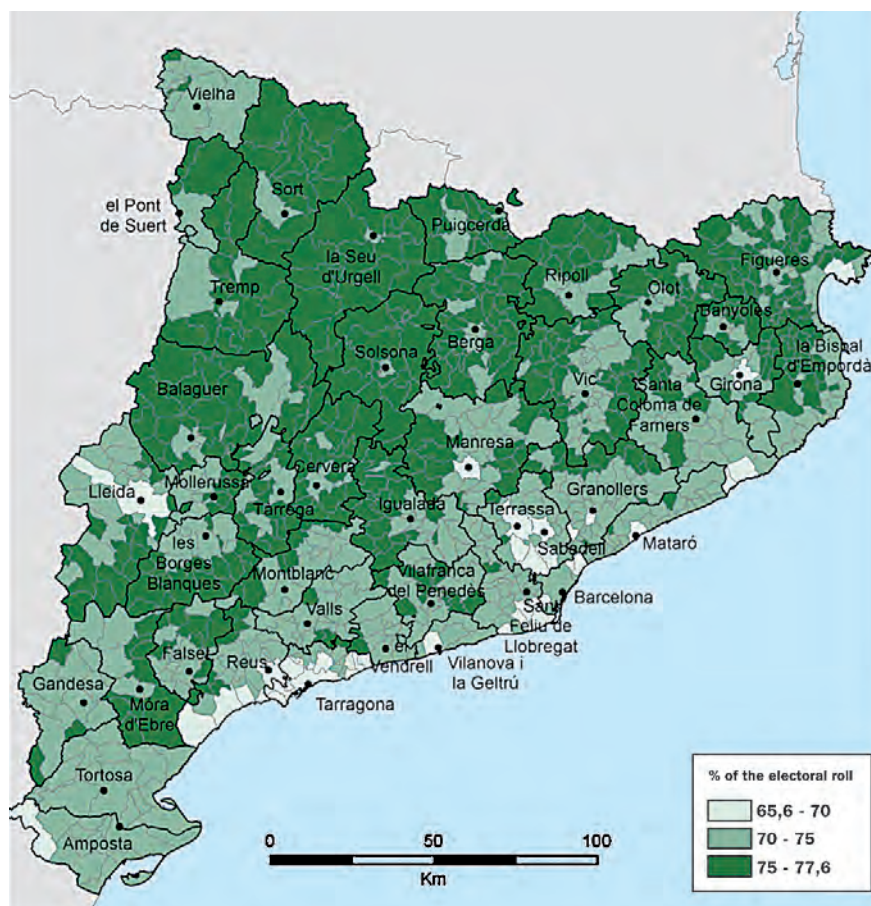


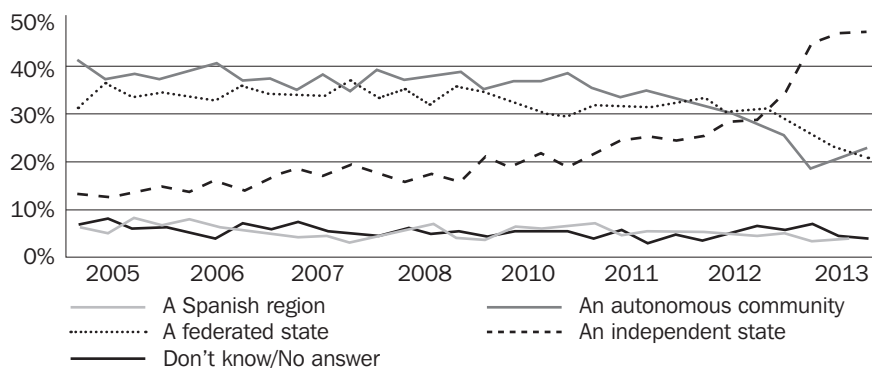
Table 2. Catalan Parliament: electoral results (1999-2012).
Number of seats out of 135 (percentage of vote)

	1999	2003	2006	2010	2012
CiU	56 (37.7)	46 (30.9)	48 (31.52)	62 (38.4)	50 (30.7)
PSC	52 (37.9)	42 (31.2)	37 (26.8)	28 (18.4)	20 (14.4)
PP	12 (9.5)	15 (11.9)	14 (10.7)	18 (12.4)	19 (13)
ERC	12 (8.7)	23 (16.4)	21 (14)	10 (7)	21 (13.7)
ICV-EUiA	3 (2.5)	9 (7.3)	12 (9.5)	10 (7.4)	13 (9.9)
Ciutadans	-	-	3 (3)	3 (3.4)	9 (7.6)
CUP	-	-	-	-	3 (3.5)
SI	-	-	-	3 (3.3)	0 (1.3)

Source: Catalan Government

A variety of arguments have been put forward to legitimise the consultation: historical, democratic, liberal, functional and legal.⁴ Secessionist positions have also been growing in the last decade in Catalonia, especially since the ruling of the Spanish Constitutional Court (2010):

Graphic 2. Evolution of territorial-system preferences in Catalonia, 2005-2013



Source: CEO's Public Opinion Barometer, 2005-2013

4. See the Report, "The Consultation on the Political Future of Catalonia", *Advisory Council for National Transition* (CATN), Barcelona, July 2013, (<http://www20.gencat.cat/portal/site/Departament-de-la-Presidencia>)

Spanish opposition to a referendum in Catalonia, in contrast with the agreement established in 2012 between the British and Scottish governments, leads the current political process into unknown territory. The current political situation in Catalonia is an example of tension between legality and democratic legitimacy. The future prospects of Catalan and Spanish politics regarding the territorial question remain open. There are a number of different possible scenarios: either through agreements – which currently seem unlikely – within the context of the Spanish state, or through agreements with European or international mediation, or through an institutional rupture and the mobilization of the citizenry. Moreover, this is an issue that is juxtaposed with the management of the economic crisis in Europe (in which the Catalan Government – Generalitat – does not participate).

In practical terms, macroeconomic decisions (management of the public deficit and public debt) remain in the hands of the central government, as do decisions relating to the management of the main taxes and money transfers which enable the Generalitat to pay everything from the salaries of its employees to its suppliers. The economy is currently one of the central government's key instruments for putting pressure on the Catalan government. However, citizens' support for the implementation of a referendum about their political future remains high (between 70% and 80%), secessionism continues to be the first preference of citizens in Catalonia and both positions are backed by a majority of the members of the Catalan Parliament.

Despite the negative attitude of the Spanish government, the Catalan government called for a "consultation" of Catalan citizens -to be held in November 9th 2014 (9-N)-, according a new law passed in the Catalan parliament and a governmental decree that established the practical rules of this event (census, organization, etc). This law and this decree were appealed by the Spanish government to the Constitutional Court, which suspended both norms in provisional terms. However, although this formal suspension seemed to cancel the possibility of implementing a consultation to the Catalan citizens, an alternative "participatory process" was called and implemented by the Catalan government. It was organized with "volunteers" (citizens and members of civil society organizations) which were supported in practical terms by the government (use of buildings and other infrastructures). The turnout of this participatory process, which had no juridical validity, was higher than expected (around 1/3). The success of this process politically reinforced the position of the Catalan government and more particularly reinforced the position of its president. The final results of this participatory process are summarized in the table below:

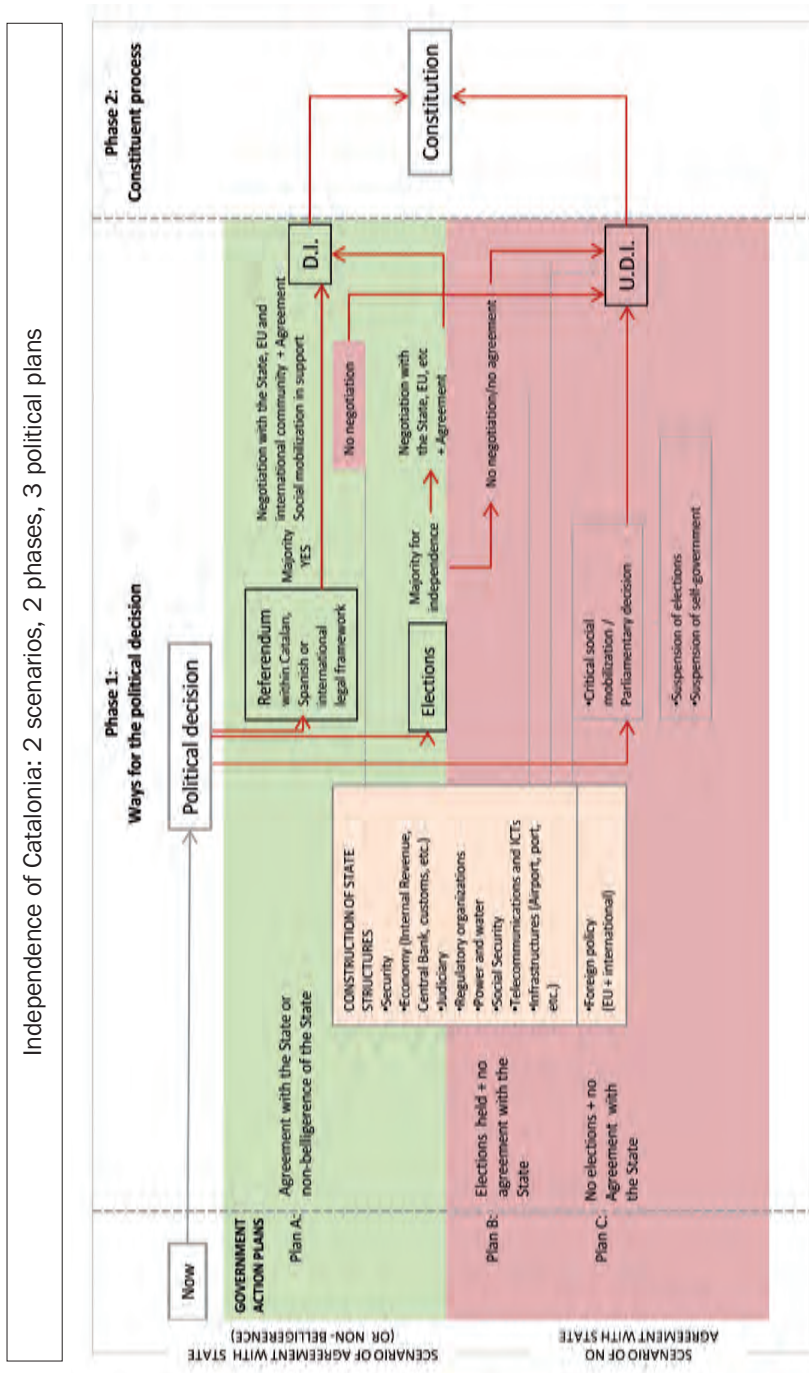
Table 3. Participatory process (9-N). Results

	Number of votes	Percentage
Vote Yes-Yes	1,897,274	80.91%
Vote Yes-No	234,848	10.02%
Vote Yes-Blank	22,755	0.97%
Vote No	105,245	4.49%
Blank votes	13,201	0.56%
Others	72,023	3.05%
Total	2,344,828	100%

Source: Catalan Government

To sum up, it has been not possible for the Catalan government to call for an official referendum. It is probable that the Catalan government will find alternative ways, such as calling for parliamentary elections that political parties could transform into a plebiscitary decision about independence. This is not surely the ideal way, because in elections parties talk about different issues besides secession (socioeconomic and cultural policies, transparency and democracy, European and international relations, etc). However, it could be the only possible way in the hands of the Catalan government if the central government maintains its negative and close position regarding the implementation of a referendum following the British or Canadian ways. In this case the final position of the European Union and other international actors may play an important role in the short- and mid-term. The graph below summarises different potential phases and scenarios of the Catalan political process.

Graphic 3. Phases and scenarios of the Catalan political process



2.2. European politics

A recurrent issue in the Catalan-Spanish political debate is the potential future of an independent Catalonia with regard to the European Union. Spanish political actors maintain that Catalonia would be out of the EU, while Catalan actors, taking also into account the Scottish case, defend that the most probable outcome would be to remain in the EU, perhaps after a transitory stage.

A previous element of this discussion is that neither international law nor European law have clear rules about this subject. However, the EU has adopted a pragmatic and flexible position when some unexpected cases or controversial processes of ratification of treaties have occurred in recent decades. So, taking into account this non-explicit regulation and the previous pragmatic attitude of the EU to solving problems, the final decision would probably be based more on political and economic patterns than on those of a juridical nature. Political decisions will probably arrive first, juridical norms will come later. In this sense, the report of the *Consell Assessor per a la Transició Nacional (CATN)* (National Transition Advisory Council) has established four potential scenarios for relations between an independent Catalonia and the EU:⁵

Scenario of permanence. A new Catalan state would remain in the EU with no transitory exclusion stage. The EU would not force these European citizens to leave the Union and ask to be reintegrated at a later date (Articles: 15, 48 TEU) *Scenario of ad hoc adhesion.* The EU does not accept Catalonia as a new member state, but taking into account the practical patterns of this collective, decides to start a specific accession process through a transitory and shorter period of time. In this period most economic, political and juridical relationships (rights and duties) will remain alive for Catalan citizens and firms that work in this territory (Article 49 TEU with *ad hoc* simplifying procedures) *Scenario of standard adhesion.* The EU agrees to open an immediate process of accession for Catalonia without taking *ad hoc* measures; that is, treating Catalonia like Turkey or Serbia (Article 49 TEU) *Scenario of exclusion.* The Union refuses to open an accession process for Catalonia; that is, the latter would remain *sine die* out of the EU. In this case, there are several alternatives for the relations between Catalonia and the European organizations: on the one hand, to establish a bilateral agreement with the EU and, on the other hand, to start an accession process to the EFTA (with Switzerland, Iceland, Norway and Liechtenstein), the EEE (Norway, Iceland and Liechtenstein) and to Schengen (a group of 26 states – 28 in the near future when Bulgaria and Rumania join this area of security policies). The table below summarises these scenarios.

5. See the Report, "Paths for Catalonia's integration in the European Union", *Advisory Council for National Transition (CATN)*, Barcelona, April 2014 (<http://www20.gencat.cat/portal/site/Departament-de-la-Presidencia>).

Table 4. European scenarios for Catalan citizens and for political and economic actors in case of independence

Member state	<ul style="list-style-type: none"> • Catalonia remains within the EU. • Specific transitory procedures. 	<ul style="list-style-type: none"> • Art. 15, 48 TEU. • Few legal changes.
Ad hoc membership	<ul style="list-style-type: none"> • Non-automatic membership. Transitory regime. • Maintenance of rights and duties of citizens and actors. 	<ul style="list-style-type: none"> • Art. 49 with <i>ad hoc</i> simplifying procedures. • Transitory rules maintaining most current agreements. • Possibilities: <ul style="list-style-type: none"> – Like Cyprus, but other way round. – Bilateral transitory agreement EU-Catalonia.
Ordinary application process	<ul style="list-style-type: none"> • The EU agrees to open an immediate process based on standard rules. 	<ul style="list-style-type: none"> • Art. 49 without simplifying procedures (Catalonia is treated like Turkey or Serbia).
Membership application rejected	<ul style="list-style-type: none"> • The EU refuses to open an immediate process of integration. • The new state remains outside the EU <i>sine die</i>. 	<ul style="list-style-type: none"> • Possibilities: <ul style="list-style-type: none"> – Bilateral agreement Catalonia-EU. – Integration in EEA, EFTA, Schengen.

The possibilities of each one of these four scenarios would depend on several elements, including the evolution of international politics, the EU's interests and the final position of Spain as a member state of the Union. It seems clear that if the process of secession of Catalonia happens through an agreement with the Spanish state, it would be easy to accept that Catalonia would remain within the Union, perhaps with a transitory and non very long *ad hoc* regime. If this agreement does not exist, a hypothetical veto by the Spanish state could postpone Catalonia's final accession to the EU, in spite of the detrimental effect that the temporary long-term exclusion of Catalonia would have for the Union itself. In the mid-term, however, to imagine an isolated Catalan political entity between France and Spain seems extremely unlikely taking into account the interests of the members of the Union themselves, the political and economic role that this territory plays in the Mediterranean area, the dynamic nature of Catalan society and the weight played by its political institutions and the international companies that work in Catalonia. In the above mentioned report (footnote 6) a conclusion (p. 64) states that "The dilemma, in fact, is not therefore whether or not Catalonia will ever come to form part of the EU, but when and how it will do so. And if this is so, although logic and

pragmatism might seem to favour the permanence scenario, in the event of a punishing or deterrent veto, the most plausible scenario would be that of rapid accession under a transitional regime, which nevertheless, as we have repeatedly stated, could have almost exactly the same practical consequences as the permanence scenario”.

To sum up, the lack of national recognition and accommodation shown by the Spanish state has played a decisive role in causing the predominant Catalan demands to shift from being pro-autonomy or federalist towards secessionism. On the one hand, these recent political events have made the Catalan case a clear empirical point of reference within the sphere of comparative politics on secessionist processes, and have made it necessary to look into normative theories of secession in plurinational democracies. On the other hand, this case constitutes a dynamic element in the implementation of the values of the European Union in this kind of democracies in an increasingly globalised world.