

CHIARA CERSOSIMO\*

SECESSION:  
THE STRICT LINE BETWEEN LAW AND POLITICS.  
A COMPARATIVE ANALYSIS  
OF QUEBEC, CATALONIA AND SCOTLAND

ABSTRACT. *The spread of secessionist movements over recent decades has jeopardized compliance with the constitutional order of well-established democratic legal systems. The aim of this paper is to indicate available lawful procedures which may help find a compromise between the aspirations of those who wish for secession and central Governments' prerogative to maintain their States' territorial integrity.*

CONTENT. 1. The principle of self-determination – 2. A domestic “right to secession” – 3. The principle of sovereignty and the claim to independence – 4. A referendum on secession – 5. The “right to decide” – 6. The principle of effectivity – 7. European Union Membership for a new State 8. Final Remarks

***1. The principle of self-determination***

The notion of self-determination has its roots in the wake of the First World War, when new States emerged from the collapse of the Austro-Hungarian and Ottoman empires. In this period, some world leaders took up the idea of the right of national peoples, groups of individuals with a shared ethnicity, language, culture, and religion, to determine their own destiny, *i.e.* to decide on their affiliations and *status* on the world

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\* PhD Candidate in Comparative Law, University of Roma Tre.

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scene.<sup>1</sup> Although they did not regard such a principle as a means of ensuring the decolonization process, a few decades later, the same idea was applied to colonial peoples and, by the 1960s, it had become widely accepted that oppressed colonized groups ought to have similar rights to choose their political and sovereign *status*.<sup>2</sup>

The UN General Assembly's *Declaration on the Granting of Independence to Colonial Countries and People*<sup>3</sup> was the starting point for the rise of self-determination as a principle for creating legal rights, deriving its moral force from the general statement that all people have the right to determine their own destiny.<sup>4</sup> Soon afterwards, this principle was embodied in two International Conventions on human rights (the *Charter of the United Nations* and the *Vienna Declaration and Programme of Action*)<sup>5</sup> and, consequently, its scope *ratione personae* was enlarged, without any colonial overtones, to all people.<sup>6</sup>

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1 The Soviet leader, Vladimir Lenin, was the first in the international arena to insist that the principle of self-determination had to be established as a general criterion for the liberation of people. He conceived of such a principle as a justification for a violent secession in order to liberate people from bourgeois governments. At the same time, President Wilson also proposed his own philosophy of self-determination, which basically consisted of the right of peoples to choose their government freely. See, A. CASSESE, *Self-determination of peoples. A legal reappraisal*, Cambridge, Cambridge University Press, 1995, p. 14 at 19; H. HANNUM, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press, 1990, p. 27 at 29.

2 See, M. J. KELLY, *Pulling at the Threads of Westphalia: "Involuntary Sovereignty Waiver"? Revolutionary International Legal Theory or Return to Rule by the Great Powers?*, *Journal of International Law & Foreign Affairs*, 10, 2005, p. 389 at 390; M. STERIO, *On the Right to External Self-Determination: "Selfistans", Secession, and Great Power Rule*, *Minnesota Journal of International Law*, 19:1, 2010, p. 137.

3 G. A. Res. 1514 (XV) of 14 December 1960.

4 In this sense, C. TOMUSCHAT, *Secession and self-determination*, in M. G. KOHEN (ed.), *Secession. International Law Perspectives*, Cambridge, Cambridge University Press, 2006, p. 23.

5 Article 1 of the *Charter of the United Nations* states that one of the purposes of the UN is "to develop friendly relations among nations based on the respect of the principle of equal rights and self-determination of the people...". Art. 55 of the UN Charter further states that the UN shall promote goals such as higher standards of living, full employment, economic and social development and human rights "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Art. 1 par. 2 of the *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights in 1993, equally affirms that "All peoples have the right of self-determination. By the virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development".

6 In this sense, the UN General Assembly's *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, G. A. Res. 2625 (XXV)

Even since then, it has been quite clear that not only peoples under colonial domination, but also peoples subject to other forms of foreign subjugation, domination or exploitation have the right to take legitimate actions to realize their right to self-determination.<sup>7</sup> According to a number of commentators,<sup>8</sup> such a right (in particular, entitlement in terms of unilateral secession) may also appear within a third scenario, namely when an existing State denies its people (or, more realistically, a part of it) the right to exercise civil and political rights (so-called “remedial right to secession”).<sup>9</sup>

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of 24 October 1970.

7 See, in particular, the *UN General Assembly's Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*, G. A. Res. 50/6 of 9 November 1995.

8 See, e.g. K. DOEHRING, *Self-Determination*, in B. SIMMA (ed.), *The Charter of the United Nations. A Commentary*, New York, Oxford University Press, 1994, p. 56, 66; J. A. FROWEIN, *Self-Determination as a Limit to Obligations Under International Law*, in C. TOMUSCHAT (ed.), *Modern Law of Self-Determination*, Dordrecht, Martinus Nijhoff, 1993, p. 211; D. MURSWIEK, *The issue of a Right of Secession- Reconsidered*, in C. TOMUSCHAT (ed.), *op. cit.*, p. 21, 26 at 27; R. MCCORQUODALE, *Self-Determination: A Human Rights Approach*, *International and Comparative Law Quarterly*, 43, 1994, p. 857, 880 at 881; J. CRAWFORD, *State Practice and International Law in Relation to Secession*, *British Year Book of International Law*, 69, 1998, p. 87 at 117.

The legal basis of this third scenario is generally found in art. 1, par. 2, of the *Vienna Declaration*, which provides for the duty of the Government to “represent the whole people belonging to the territory without distinctions of any kind”. Thus, it adds credence to the idea that a complete denial of citizens’ civil and political rights may give rise to a right of secession.

9 The “remedial right” to secession has its origin in the *Aaland Island case*. The Aaland Island is a small island situated between Finland and Sweden, belonging to the former, but which sought to join the latter. In 1920, the Aalanders claimed, before the Council of the League of Nations, that they were ethnically Swedish, so they were entitled to break away from Finland and reunite with Sweden. The Commission of Rapporteurs, appointed by the League of Nations to recommend a solution to the question, suggested that the Aaland Island remain under the sovereignty of Finland, but that this country be obliged to increase the guarantees provided to the Aaland Islanders. The Aalanders held the right to cultural and ethnic autonomy, but the latter had to be exercised within Finland. Only if Finland failed to respect their cultural and ethnic autonomy, would the Aalanders have the right to secede from the mother State. See, A. CASSESE, *Self-determination of people*, *op. cit.*, p. 27 at 31.

In the same vein, a more recent judicial decision has been given by the African Commission on Human and Peoples’ Rights. In 1992, the Katangese People’s Congress requested, under art. 65 of the *African Charter on Human and Peoples’ Rights*, that the African Commission recognized the right of the Katangese people to secede from Zaire. The Commission stated that, in the absence of concrete violations of the human and political rights of the Katangese people, it should uphold the sovereignty and the territorial integrity of Zaire. Consequently, Katanga was obliged to exercise a variant of self-determination (independence, self-government, federalism, confederalism, unitarism and so on) which was compatible with the sovereignty and territorial integrity of the mother State. See, *African Commission on Human and Peoples’ Rights*, Communication 75/92, *Katangese Peoples’ Congress v. Zaire*, par. 26-28. The full text is available at: [http://www.achpr.org/files/sessions/16th/comunications/75.92/achpr16\\_75\\_92\\_eng.pdf](http://www.achpr.org/files/sessions/16th/comunications/75.92/achpr16_75_92_eng.pdf)

In all three scenarios, a common distinction is made between internal and external self-determination. Internal self-determination (potentially) applies to all peoples and implies that they should have cultural, social, political, linguistic and religious rights within the framework of an existing state. As long as those rights are respected by the State, the people are not entitled to challenge its territorial integrity or its sovereign stability.<sup>10</sup>

External self-determination, on the other hand, arises in the most extreme cases where an existing state does not respect the basic rights of the people or, worse still, violates their human rights. Under such exceptional circumstances, the principle of territorial integrity does not prevail and the principle of self-determination may lead to a modification of the external boundaries of the existing State.<sup>11</sup> The exercise of such a right can take a more or less intrusive form on State sovereignty and lead the oppressed people to self-government, some sort of autonomy, a free association or, as *extrema ratio*, to independence.<sup>12</sup>

There would seem to be three constitutive parameters for the international legal right to external self-determination and, as a consequence, for the right to secession. Firstly, there must be a group of people who, although in a minority in relation to the rest of the population of the parent State, represent a substantial part of the territory of that State. In order to be considered a people, such a group should also share the same

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However, undoubtedly, the most important case-law on this matter is the Canadian Supreme Court's Advisory Opinion of 1998, *Reference re Secession of Quebec*. On the basis of the international law right of self-determination, the Court argued that the existence of such a right in favour of peoples who are blocked from the excising of their civil and political rights and, in particular, its entrustment to secession, does not correspond to a well-established standard of international law, see, Supreme Court of Canada, *Reference re Secession of Quebec, International Law Materials*, 37, 1998, 1340 ss., par. 134-138.

10 The UN General Assembly's *Declarations on Friendly Relations and on the Fiftieth Anniversary of the United Nations*, as well as the *Vienna Declaration and Programme of Action* of 1993, reflect the general principle that the right to self-determination is limited by the territorial integrity and the political unity of sovereign States. Furthermore, while art. 1 of both the UN *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* do not specifically refer to the protection of territorial integrity, they both define the ambit of the right to self-determination in terms that are normally attainable within the framework of an existing state. See, *Supreme Court of Canada, Reference re Secession of Quebec*, in op. cit., par. 130.

11 J. DUGARD and D. RAIČ, *The role of recognition in the law and practice of secession*, in M. G. KOHEN (ed.), *Secession. International Law Perspectives*, op. cit., p. 106.

12 M. STERIO, *On the Right to External Self-Determination*, op. cit., p. 142.

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cultural, social, linguistic, political and/or religious attitudes.<sup>13</sup> Secondly, the State from which the people in question wish to secede must have exposed that people to a serious violation or denial of their civil and political rights and/or to serious and recurrent violations of human rights. Thirdly, there must be no realistic and effective alternative remedy which might lead to the peaceful settlement of the conflict between the people in question and the parent State.

An act of unilateral secession that does not fulfil the above-mentioned conditions constitutes an abuse of the right to self-determination. Such an act represents a violation of international law and the international community will most likely deny recognition of any new state.<sup>14</sup>

In short, from the perspective of international law, the obligation to respect the right to self-determination includes the prohibition of abuse of that right, *alias* the prohibition of unlawful violation of the territorial integrity and national sover-

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13 According to all the relevant texts dealing with self-determination, all “peoples” are holders of these rights, but the problem with such a construction is the definition of this concept of “people”. In particular, if we equate the juridical concept of “people”, contemplated by the instruments of international law, with the concept of people in the ethnic sense, then the majority of existing States would be composed of different peoples, entitled individually to a right to self-determination. Furthermore, considering that the drafters of such texts were the representatives of States, it can be presumed that they did not wish the destruction of those States. Whereas the legal position was fairly simple during the colonial period (all peoples under colonial rule were considered as a unit together with the territories which the colonial power had fixed), nowadays determining who is a “people” is extremely complex. Although many studies have been conducted in accordance with both legal and political science methods, the enigma remains unresolved.

See, A. CASSESE, *Self-Determination Revisited*, in *Liber Amicorum Eduardo Jiménez de Aréchega*, vol. 1, Montevideo: F. C. U., 1994, p. 229; M. P. SCHARE, *Earned Sovereignty: Judicial Underpinnings*, *Denver Journal of International Law and Policy*, 2003, p. 373, 379. From the political science perspective see, A. BUCHANAN, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Boulder, Colorado, Westview Press, 1991, p. 174; IDEM, *The International Institutional Dimension of Secession*, in P. B. LEHNING (ed.), *Theories of Secession*, London-New York, CRC Press, 1998, p. 227; L. BRILMAYER, *Secession and Self-Determination: A Territorial Interpretation*, in *Yale Journal of International Law*, 16, 1991, p. 177 at 202.

14 J. CRAWFORD, *The creation of States in International Law*, New York, Oxford University Press, 1979, p. 105 at 106. This is what happened when Southern Rhodesia (now Zimbabwe) decided, unilaterally, to separate from Great Britain. Most of the international community refused to recognize the new independent State, which remained isolated for a long time and was unable to conduct international relations. See, J. E. S. FAWCETT, *Security Council Resolutions on Rhodesia*, *British Yearbook of International Law*, 41, 1965-1966, p. 103, 112 at 113.

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eignty of an existing State.<sup>15</sup>

## 2. A domestic “right to secession”

Having made clear under what conditions a unilateral act of secession may be considered, by international law, as a lawful exercise of the right to external self-determination, we now have to verify whether a right to secession may be allowed by domestic legal systems.

This question has acquired central importance in recent years as separatist minority groups throughout the world have begun challenging the territorial integrity of existing States. For instance, such is the case of the Canadian province of Quebec, of the Spanish Autonomous Community of Catalonia and of the Scottish part of the United Kingdom. In such areas the economic, social, political and legal differences between the regions of the different States have given rise to significant secessionist movements.

The leading case-law on this issue is that of the Advisory Opinion of the Supreme Court of Canada, *Re Secession*, of 20<sup>th</sup> August 1998.<sup>16</sup>

In 1995, a popular referendum on separation from Canada was organized in Quebec. It was narrowly defeated with 50.58% of the population voting to stay with the mother State, while 49.42% voted to secede.<sup>17</sup> As a result of the referendum, the Canadian Government engaged in a heated campaign in opposition to the separatist movement. One aspect of this strategy was the submission of a reference to the Supreme Court of Canada concerning three questions relating to a hypothetical unilateral secession by Quebec.<sup>18</sup>

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15 See, J. DUGARD and D. RAIČ, *The role of recognition*, in M. G. KOHEN (ed.), *Secession. International Law Perspectives*, op. cit., p. 109.

16 Supreme Court of Canada, *Reference re Secession of Quebec*, op. cit.

17 The question put before voters in 1995 was “Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995 (*i.e.* the “Tripartite Agreement”)?”.

18 The questions submitted by the Federal Governor in Council to the Supreme Court of Canada read as follow: “1. Under the Constitution of Canada, can the National Assembly, legislature or Government of Quebec effect the secession of Quebec from Canada unilaterally?

2. Does international law give the National Assembly, legislature or Government of Quebec the right to effect the

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The first question to the Court was whether Quebec could legally secede unilaterally under the Constitution of Canada. The Canadian Constitution does not expressly authorize or prohibit the secession of a province from the Confederation,<sup>19</sup> nevertheless, according to the Supreme Court, such an act would alter the governance of the Canadian territory *in a manner which is undoubtedly inconsistent* with the current constitutional arrangements and would, therefore, be illegal.<sup>20</sup> As a consequence, a lawful secession of Quebec from Canada would require an amendment to the Canadian Constitution.<sup>21</sup>

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secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or Government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

3. In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or Government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?”.

19 More generally, in no democratic legal system is there a Constitution which provides the right of secession. The only two exceptions are the Ethiopian Constitution and the Saint Christopher and Nevis Constitution Order. Art. 39 par. 1 of the Ethiopian Constitution lays down that “Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession”. This article was included in the Ethiopian Constitution of 1994 in the aftermath of the bloody secession war with Eritrea. On the other hand, art. 113, par. 1, of the Saint Christopher and Nevis Constitution Order 1893 provides that “The Nevis Island Legislature may provide that the island of Nevis shall cease to be federated with the island of Saint Christopher and accordingly that this Constitution shall no longer have effect in the island of Nevis”. This provision is justified by the fact that Saint Christopher and Nevis has only been an independent State since 1983 and, until then, the only feature the two islands had in common was that they were parts of the British Empire.

20 *Supreme Court of Canada, Reference re Secession of Quebec*, op. cit., par. 84.

21 The approach of the Supreme Court of Canada is in marked contrast with the position adopted by the US Supreme Court in the famous case law *Texas v. White Case*. Dealing with the issue of the legality of Texas’ desire to secede, the US Supreme Court stated that “The US Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. When, therefore, Texas became one of the United States, she entered into an indissoluble relation [...] The union between Texas and the other States was as complete, perpetual, and as indissoluble as the union between the original States”. See, *Texas v. White* (1869) 74 US (7 Wallace) 700, 725 (1868), at 726.

It’s interesting to note how two legal systems, both of which belong to the common law legal tradition and have a written Constitution, endorse a completely different doctrine of secession. However, more recently the Supreme Court of Alaska has embraced a theory of secession closer to that of the Supreme Court of Canada. In the case of *Scott Kohlbaas v. State of Alaska, Office of the Lieutenant Governor*, Alaska’s Supreme Court stated that the secession of Alaska from the United States would firstly require an amendment to Alaska’s Constitution. By arguing in this way, it did not exclude the possibility of Alaska’s independence. See, Alaska Supreme Court no. S-13024, January 15<sup>th</sup> 2010. See, on this point, V. FERRERES COMELLA, *Cataluña y el derecho a decidir*, in *Teoría y realidad constitucional*,

The Supreme Court recognized the dual nature of the act of secession, both legal and political, and linked these two dimensions by four unwritten constitutional principles: federalism; democracy; constitutionalism and rule of law; and respect for minorities.<sup>22</sup> These foundational principles function in symbiosis, cannot be read in isolation and no one of them prevails over the others.<sup>23</sup>

The main constitutional novelty, introduced by the *Secession Reference*, was the identification of the political actors' right and duty to negotiate in good faith. The Canadian federal legal system distributes public power to both the federal and the provincial governments.<sup>24</sup> Federalism enables the provinces to pursue policies suitable to the particular demands and interests of provincial inhabitants. At the same time, Canada, as a whole, is a democratic community and sovereignty belongs to all Canadian citizens, democratically represented by their elected representatives. The principle of democracy does not allow one majority to be conceived as being more legitimate than others in its expression of the opinion of the people. On the contrary, the principle of democracy requires a continuous process of discussion at both federal and provincial levels. The *Canadian Constitutional Act* embodies this value by conferring a right to initiate constitutional changes on each participant in the Confederation. As a consequence, it confers legitimacy on the effort of the Government of Quebec to initiate the Constitutional amendment process in order to secede lawfully. Moreover, the existence of this right corresponds to a duty of the Federal Government and the other provinces in the Confederation to engage in constitutional discussions and take Quebec's will to secede seriously.<sup>25</sup>

The whole process has to comply with the principle of the rule of law, which requires all government action to comply with the law, including the Constitution. For

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37, 2016, pp. 470-471.

22 From a comparative law perspective, it is interesting to note that civil law legal systems, as opposed to common law legal systems (which have a written Constitution, like Canada), are used to codifying their fundamental constitutional principles in the text of the Constitution itself and not to leaving them unwritten. See, for example, arts. 1 to 12 of the Italian Constitution (*Fundamental Principles*); arts. 1 to 9 of the Spanish Constitution (*Preliminary Part*); arts. 1 to 14 of the Portuguese Constitution (*Fundamental Principles*).

23 *Supreme Court of Canada, Reference re Secession of Quebec*, op. cit., par. 83, 32.

24 *Ibidem*, par. 56-58.

25 *Ibidem*, par. 61-69.



this reason, the negotiation *iter* must be governed by respect for the same foundational constitutional principles (federalism; democracy; constitutionalism and rule of law; and respect for minorities).<sup>26</sup> Consequently, Quebec is not entitled to a right to self-determination such that it can dictate, unilaterally, the terms of its proposed secession to other parties. Negotiation implies addressing the interests of the federal government, of Quebec, of other provinces and of minorities, as well as the rights of all Canadians within and outside Quebec.<sup>27</sup> The outcome of the negotiations is not predictable; it is a political process whose content is not determined in the Opinion. The Canadian Court adopted a quite ambiguous position on this point. It rejected two absolutist hypotheses: there would not be a legal obligation on the other provinces and the federal government to accede to the secession of Quebec, as they were subject only to negotiation on the logistic details of secession, while much less still would a clear expression of self-determination by Quebec impose obligations upon the other provinces or the federal government.<sup>28</sup> It seems that the content of this obligation lies somewhere between a mere bargaining point about the details of secession and a redistribution of powers between federal government and the provinces, but it's hard to be precise about what it is exactly.

The Canadian Supreme Court also clarified that the role of a judicial court in the independence process is really marginal. It is a complex political process which implies political judgments and evaluations. The Court may just identify the broader constitutional values at stake, but it has no supervisory role over the political aspects of negotiations on constitutional amendments.<sup>29</sup>

A similar position was, partly, adopted by the Spanish Constitutional Court in 2014. In Judgment 42/2014,<sup>30</sup> the above-mentioned Court ruled on the constitutionality of the Catalan Parliament's resolution of 23<sup>rd</sup> January, 2013.<sup>31</sup> This resolution is

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26 *Ibidem*, par. 72, 89.

27 *Ibidem*, par. 89-96.

28 *Ibidem*, par. 90-93.

29 *Ibidem*.

30 STC in *Boletín Oficial del Estado*, Jueves 10 de Abril de 2014, Núm. 87, Sec. TC, pp. 77-99.

31 *Resolució 5/X del Parlament de Catalunya, per la que s'aprova la Declaració de sobirania i del dret a decidir del poble de Catalunya*. The resolution was published in the *Butlletí Oficial del Parlament de Catalunya*, no. 13, Jan.

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known for proclaiming the Catalan people sovereign and, furthermore, for conferring on Catalans the “right to decide” on their future.

### ***3. The principle of sovereignty and the claim to independence***

The Spanish Constitutional Court invalidated the part of the abovementioned Act which established the “principle of sovereignty” because of its conflict with arts. 1.2 and 2 of the Spanish Constitution,<sup>32</sup> but upheld the proposition of Catalans’ “right to decide”.

Of course, the Catalan people cannot be sovereign because their sovereignty would involve the denial of the sovereignty of the Spanish people. Two sovereignties, at the same time, cannot legally exist.<sup>33</sup> On the other hand, Catalans may be entitled to exercise their “right to decide”. According to the Court, this right can be interpreted within the existing legal framework, as the “political aspiration” of Catalans to decide on their future.<sup>34</sup> Spain is not a militant democracy, there is no essential limit to constitutional amendments if they are brought about through constitutional means.<sup>35</sup>

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24, 2013.

32 Art. 1 of the Spanish Constitution: “1. Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as the highest values of its legal system.

2. National sovereignty belongs to the Spanish people, from whom all State powers emanate.

3. The political form of the Spanish State is that of a Parliamentary Monarchy”.

Art. 2 Spanish Constitution “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all”.

33 In this sense, V. FERRERES COMELLA, *The Spanish Constitutional Court Confronts Catalonia’s “Right to Decide”* (Comment on STC 42/2010), *European Constitutional Law Review*, 10, 2014, p. 580.

34 STC 42/2014, in op. cit., p. 97 “Estos principios, como veremos, son adecuados a la Constitución y dan cauce a la interpretación de que el «derecho a decidir de los ciudadanos de Cataluña» no aparece proclamado como una manifestación de un derecho a la autodeterminación no reconocido en la Constitución, o como una atribución de soberanía no reconocida en ella, sino como una aspiración política a la que solo puede llegarse mediante un proceso ajustado a la legalidad constitucional con respeto a los principios de «legitimidad democrática», «pluralismo», y «legalidad», expresamente proclamados en la Declaración en estrecha relación con el «derecho a decidir». Cabe, pues, una interpretación constitucional de las referencias al «derecho a decidir de los ciudadanos de Cataluña», y así debe hacerse constar en el fallo”.

35 In the same sense, STC 103/2008; STC 90/2017; STC 114/2017.

In the end, the Court invited the political players to enter into discussions in order to find a solution to the constitutional crisis. During the process of negotiation, the parties should act and cooperate, following the constitutional values of democracy and the rule of law. As a consequence, if a region (Catalonia) submits a proposal to change the Constitution, the Spanish Parliament should take it into account.

These parts of Judgment 42/2014 recall the statements by the Supreme Court of Canada on the right of a province/region to promote constitutional amendments;<sup>36</sup> on the duty of the central government to take seriously the proposal of a constitutional reform and on the invitation to political negotiation. The Spanish Court seems to share the Canadian idea about the marginal role of the judicial authorities in political negotiations on constitutional change.<sup>37</sup>

Nevertheless, judgment 42/2014 was strongly criticised by scholars.<sup>38</sup> The *Tribunal Constitucional* reinterpreted the Declaration in question in order to save, partly, its validity and sustained that the “right to decide” was not directly tied to the declaration of Catalan sovereignty. This interpretation is not sustainable: the Declaration explicitly affirmed that the Catalan people is already sovereign. It did not express the wish of the

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Conversely, the Italian and the German Constitutional Courts adopted a very different position on the same matter, see *Italian Constitutional Court* Judgment no. 118/2015, par. 7.2 according to which “[...] L’unità della Repubblica è uno di quegli elementi così essenziali dell’ordinamento costituzionale da essere sottratti persino al potere di revisione costituzionale”. See also, 2 *Bundesverfassungsgericht* 349/16, according to which “In der Bundesrepublik Deutschland als auf verfassungsgebenden Gewalt des deutschen Volkes beruhendem Nationalstaat sind die Länder nicht “Herren des Grundgesetzes”. Für Sezessionsbestrebungen einzelner Länder ist unter dem Grundgesetz daher kein Raum. Sie verstoßen gegen die verfassungsmäßige Ordnung”. See, S. RAGONE, *Los Länder no son «señores de la Constitución»: el Tribunal Constitucional Federal Alemán sobre el referéndum separatista bávaro, Teoría y Realidad Constitucional*, 41, 2018, p. 407 at 416; I. SPIGNO, *Constitutional Judges and Secession. Lessons from Canada... twenty years later, Perspectives on Federalism*, 9, 2017, p. 117 at 121.

36 Art. 87.2 The Spanish Constitution empowered the Assembly of Self-Governing Communities to request the central Government to adopt a bill about constitutional changes.

37 In this sense V. FERRERES COMELLA, *The Spanish Constitutional Court Confronts Catalonia’s “Right to Decide” (Comment on STC 42/2010)*, op. cit., p. 585.

38 For a comment on STC 42/2014 see, V. FERRERES COMELLA, *The Spanish Constitutional Court Confronts Catalonia’s “Right to Decide” (Comment on STC 42/2014)*, op. cit., p. 571 at 590; Id., *Cataluña y el derecho a decidir, Teoría y Realidad constitucional*, 37, 2016, p. 461 at 475; E. FOSSAS ESPALDER, *Comentario a la STC 42/2014, de 25 de marzo, sobre la Declaración de soberanía y el derecho a decidir del pueblo de Cataluña, Revista española de derecho constitucional*, 101, mayo-agosto, 2014, p. 273 at 300.

Catalan people to be sovereign in the future (after the necessary adoption of constitutional reforms). Despite this, the Court detached the “right to decide” from the principle of sovereignty, which it invalidated. In the Declaration, the idea of sovereignty and of the “right to decide” are strictly linked: the Catalan people is sovereign, so it is entitled to exercise the right to decide. If the Court has invalidated the premise, it is hard to sustain that the derivative right will survive.<sup>39</sup>

#### **4. A referendum on secession**

Another criticism of STC 42/2014 was expressed with regard citation of the Supreme Court of Canada Advisory Opinion *Re Secession*. The *Tribunal Constitucional*, in support of the invalidation of the Catalan people’s “principle of sovereignty”, made, improperly, reference to the former judgment.

The Spanish Court failed to focus on the subject-matter of the cited Opinion. The question referred to the Supreme Court of Canada’s being concerned whether a province (in particular, Quebec) is entitled to secede unilaterally, not whether a province can hold a referendum on unilateral secession. Despite this, the *Tribunal Constitucional* agreed with the Canadian final statement which excluded the existence, according to the domestic legal order, of the right of a province (in the Spanish case, of the Autonomous Community of Catalonia) to secede unilaterally and, as a consequence, added that Catalonia could not hold a referendum on independence unilaterally.<sup>40</sup>

Actually, the Supreme Court of Canada did not question the legality of the referendum of 1998 nor of the previous referendum of 1980, both organized unilaterally

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39 In this sense, V. FERRERES COMELLA, *The Spanish Constitutional Court Confronts Catalonia’s “Right to Decide”* (Comment on STC 42/2014), op. cit., p. 581 at 582; Id., *Cataluña y el derecho a decidir*, op. cit., p. 471 at 473; E. FOSSAS ESPALDER, *Comentario a la STC 42/2014, de 25 de marzo, sobre la Declaración de soberanía y el derecho a decidir del pueblo de Cataluña*, op. cit., p. 285 at 286; p. 294 at 299.

40 STC 42/2014, in cit., p. 95 “Igualmente este Tribunal ha declarado que autonomía no es soberanía [STC 247/2007, FJ 4]. De esto se infiere que en el marco de la Constitución una Comunidad Autónoma no puede unilateralmente convocar un referéndum de autodeterminación para decidir sobre su integración en España. Esta conclusión es del mismo tenor que la que formuló el Tribunal Supremo de Canadá en el pronunciamiento de 20 de agosto de 1998, en el que rechazó la adecuación de un proyecto unilateral de secesión por parte de una de sus provincias tanto a su Constitución como a los postulados del Derecho”.

by Quebec.

In common law legal systems, such as that of Canada, the Constitution is generally silent on the matter of referendum. A referendum does not have a legal value, but just a political one: it is simply a tool for assessing the desire of the people, whose outcome, although requiring political feedback, is not legally binding.

For these reasons, it is generally easier, in common law countries, to promote and organize (consultative) referenda at the regional/provincial level. This is what happened with the Quebec referenda of 1980 and 1998: thanks to the silence of the Constitution, the provincial Parliament was able to hold the referenda without requiring any authorization from the federal Government.<sup>41</sup>

By way of contrast, although the United Kingdom does not have a written Constitution, because of the fundamental principle of Parliamentary Sovereignty, Scotland does not have the power to hold a referendum unilaterally.<sup>42</sup> Consequently, the Scottish referendum on secession from the United Kingdom of 2014 could be held only after authorization was given by the UK Parliament.<sup>43</sup> So, in both the Quebecois and the Scottish referenda, the fundamental principle of the rule of law was fully complied with.

The legal system in Spain belongs to the civil law legal tradition and the Constitution expressly provides that only central government can authorize referenda (art. 149.1.32 Spanish Constitution)<sup>44</sup>. As in the United Kingdom, it is not possible to con-

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41 In this sense, A. LÓPEZ BASAGUREN, *Demanda de secesión en Cataluña y sistema democrático. El Procés a la luz de la experiencia comparada, Teoría y realidad constitucional*, 37, 2016, p. 173.

42 Under Sections 28 and 29 and Schedules 4 and 5 of the *Scotland Act 1998*, the Scottish Parliament has a general legislative jurisdiction limited by certain express restrictions and reservations. The power to consult the electorate on the question of secession was conceived of as a *reversed matter*, beyond the competence of the Scottish Parliament.

43 As set out in the *Scotland Act 1998*, in the field of *reserved matters* (Schedule 5), the UK Parliament remains sovereign. So, to allow the Scottish Parliament to legislate for an independence referendum, Schedule 5 needed to be modified through Section 30 of the *Scotland Act 1998*. A Section 30 order meant that the UK government could temporarily devolve power to the Scottish Parliament. In this regard, on 15<sup>th</sup> October, 2012, the UK and Scottish Governments signed an Agreement on a Referendum on Independence for Scotland. Attached to the Agreement was an Order in Council which, under the terms of Section 30 of the *Scotland Act 1998*, devolved to the Scottish parliament the competence to legislate for a referendum to be held before the end of 2014 on whether Scotland should become independent of the rest of the United Kingdom.

44 Art. 149 Spanish Constitution: “1. The State shall have exclusive competence over the following matters: 32. Authorization of popular consultation through the holding of referendums”.

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voke a regional referendum in Spain without the *placet* of the central authorities. We would argue that the principle of Parliament Sovereignty in Great Britain, in a similar way to the Constitution in civil law systems, prohibits, as a matter of law, a regional Parliament from promoting a referendum unilaterally.

Furthermore, according to the *Tribunal Constitucional* legal doctrine on referenda, matters which affect the foundations of the constitutional order and would, thus, require a constitutional amendment are excluded from popular consultation<sup>45</sup>. So, even if the Spanish government authorized a secession referendum in Catalonia, it could not take place. This doctrine is justified by the fact that Spain has a written Constitution which already provides the procedures necessary to introduce constitutional amendments (arts. 167 and 168 Spanish Constitution). In particular, art. 168 establishes a special procedure for modifying the most important parts of Constitution,<sup>46</sup> such as

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45 This doctrine was stated, for the first time, by the Spanish Constitutional Court in the STC 103/2008 judgment. On that occasion, the *Tribunal Constitucional* ruled on the law of the Basque Parliament, which fixed the date and the questions to be posed in a unilateral regional referendum on secession from Spain (*Plan Ibarretxe*).

From the perspective of comparative law, it is interesting to note that Italian constitutional law allows Regions to hold regional referenda (art. 123 Italian Constitution), but the subject of such referenda may not affect the foundations of the constitutional order. In this sense, the *Corte costituzionale italiana*, judgment n. 118/2015, par. 5 “Nel merito, occorre anzitutto ribadire che non v’è dubbio che le questioni di interesse della comunità regionale, su cui la Regione può attivare la partecipazione delle popolazioni del proprio territorio tramite referendum consultivo, possono riguardare anche ambiti che superano i confini delle materie e del territorio regionale, fino a intrecciarsi con la dimensione nazionale (sentenze n. 496 del 2000, n. 470 del 1992, n. 256 del 1989). Tuttavia, l’esistenza di un tale interesse qualificato non abilita la Regione ad assumere iniziative – anche di consultazione popolare – libere nella forma o eccedenti i limiti stabiliti in virtù di previsioni costituzionali. [...] Per questo, i referendum popolari, nazionali o regionali, anche quando di natura consultiva, sono istituti tipizzati e debbono svolgersi nelle forme e nei limiti previsti dalla Costituzione o stabiliti sulla base di essa. 6. La disciplina dei referendum regionali ha la propria sede nello statuto regionale, secondo quanto previsto dall’art. 123 Cost. Nell’esercizio dell’autonomia politica a essa accordata da tale disposizione (sentenza n. 81 del 2012), da svolgere in armonia con i precetti e con i principi tutti ricavabili dalla Costituzione (*ex multis*, sentenze n. 81 e n. 64 del 2015), ciascuna regione può stabilire forme, modi e criteri della partecipazione popolare ai processi di controllo democratico sui propri atti; può introdurre tipologie di referendum anche nuove rispetto a quelle previste nella Costituzione (sentenza n. 372 del 2004); può pure coinvolgere in tali consultazioni i soggetti che prendano parte consapevolmente e stabilmente alla vita della comunità, ancorché non titolari del diritto di voto e della cittadinanza italiana (sentenza n. 379 del 2004)”.

46 Art. 168 Spanish Constitution “1. If a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Preliminary Part, Chapter II, Division 1 of Part I, or Part II, the principle of the proposed reform shall be approved by a two-thirds majority of the members of each House, and the *Cortes Generales* shall immediately be dissolved.

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the principle of indissoluble unity of the Spanish Nation (art. 2 Spanish Constitution). Therefore, in the case of Catalanian secession, this should be the procedure to be followed, towards a final necessary (national) referendum in order to ratify the amendment previously approved by the Spanish Parliament.

The position of the Spanish Constitutional Court could not, though, be more different:<sup>47</sup> its task is the preservation of the Constitution. As long as the Constitution is not amended, it cannot empower Catalonia to unilaterally organize a referendum on secession. What the Court can do, and did, is send the political actors a message, *i.e.* its upholding of the “right to decide” may suggest that a consultative (non-binding) regional referendum on Catalonia’s independence should be authorized by the Spanish government.<sup>48</sup> In this regard, some legal authors proposed a set of feasible solutions in order to achieve, legally, a consultative referendum, without awaiting prior modifications of arts. 92<sup>49</sup> and 168 of the Spanish Constitution.<sup>50</sup> However, the position of the Spanish

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2. The House elected thereupon must ratify the decision and proceed to examine the new constitutional text, which must be passed by a two-thirds majority of the members of each House.

3. once the amendment has been passed by the *Cortes Generales* it shall be submitted to ratification by referendum.”.

47 The Spanish Constitutional Court’s doctrine on referenda was recently confirmed in the STC 114/2017 judgment of 17<sup>th</sup> October, 2017, on the Law of the Catalan Parliament 19/2017, of 6<sup>th</sup> September, 2017, regarding the referendum on self-determination, in *Boletín Oficial del Estado*, Núm. 256, Martes 24 de octubre de 2017, Sec. TC., p. 102547: “Esta modalidad referendaria carece de previsión expresa alguna tanto en la Constitución (que solo menciona referendos consultivos nacionales en los que votan todos los ciudadanos, se entiende que españoles: art. 92.1) como en la citada Ley Orgánica 2/1980 y en el EAC. La exigencia de previsión expresa presupone que la figura referendaria tiene que estar claramente establecida o bien directamente en la norma suprema o bien en la ley orgánica que satisface la doble reserva de los arts. 81.1 (en relación con el 23.1) y 92.3 CE y solo a partir de ello podrían los Estatutos de Autonomía prever, a su vez, referendos en que participara el cuerpo electoral de la Comunidad Autónoma. El Parlamento de Cataluña, en suma, carece de competencia para regular y convocar un referéndum, citándose al respecto determinados pasajes del ATC 24/2017 y de las STC 51/2017 y 90/2017”.

48 In this sense, V. FERRERES COMELLA, *The Spanish Constitutional Court Confronts Catalonia’s “Right to Decide”* (Comment on STC 42/2014), op. cit., p. 588.

49 Art. 92 Spanish Constitution “1. Political decisions of special importance may be submitted to all the citizens in a consultative referendum.

2. The referendum shall be called by the King on the President of the Government’s proposal after previous authorization by the Congress.

3. An organic act shall lay down the terms and procedures for the different kinds of referendum provided for in this Constitution”.

50 *I.e.*, the approval by the Spanish Parliament of a new *Ley Orgánica* on consultative regional referenda (a

Government remained firm: it could not authorize a referendum on secession in Catalonia since the Constitution could not be amended in such a sense.

In this context, the lesson by the Canadian Supreme Court, according to which *a system of government cannot survive through adherence to the law alone. A political system must also possess legitimacy*, acquires even more importance.<sup>51</sup> Legitimacy is the key aspect. Firstly, Spain has to ascertain through a consultative referendum whether the majority of Catalans actually aspire to secession from Spain and if, and only if, an effective *clear* majority of Catalans expressed its *clear* preference for secession, would the negotiation on constitutional changes have to be triggered.

So, what would constitute a *clear* majority on a *clear* question?

The Supreme Court of Canada stated that only an affirmative vote by a *clear* majority of provincial inhabitants on a *clear* question about independence would precipitate the duty to negotiate, but it refused to venture into the dilemma of what a clear majority was and what question would be free of ambiguity. After all, these are political, not judicial, matters.

The question put before the Quebecois voters in 1995 was manifestly confusing:<sup>52</sup> the lack of the words “independence” or “secession” led to confusion among the electorate, which had always preferred, and still prefers today, a more decentralized federalism rather

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kind of referendum not yet included in the existing *Ley Orgánica 2/1980 sobre las distintas modalidades de referéndum*), in this sense F. RUBIO LLORENTE, *Un referéndum para Cataluña*, *El País*, 8 octubre 2012. On the other hand, J. VINTRÓ, in *Legalidad y referéndum en Cataluña*, *La Vanguardia*, 2 de noviembre 2012, proposed reform to Catalan Law 4/2010, attributing to Catalonia an express power to promote a regional referendum on secession, in the light of the power of a regional Parliament to propose constitutional amendments to the *Cortes Generales*.

51 Supreme Court of Canada, *Reference re Secession of Quebec*, op. cit., par. 67.

52 The question put before voters in 1995 was “Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12<sup>th</sup>, 1995 (*i.e.* the “Tripartite Agreement”)?”. The question put before the Quebecois in the previous referendum of 1980 was equally confusing. It literally asked “The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad – in other words, sovereignty – and at the same time maintain with Canada an economic association including a common currency; any change in political status resulting from these negotiations will only be implemented with popular approval through another referendum; on these terms, do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?”.



than a divorce from Canada.<sup>53</sup> The people might have improperly believed that the referendum question referred to setting up an association with Canada akin to state relations within the European Union and not the achieving of independence from the mother State.<sup>54</sup> So, in order to prevent future misconceptions and give effect to the requirement for clarity set out by the Supreme Court, the Canadian government decided to act.

The Federal Parliament adopted the *Clarity Act* in 2000.<sup>55</sup> This provided a two-fold clarity test, conducted by the Federal House of Commons. It firstly had the task of determining whether a question “would result in a clear expression of the will of the population” of a province to secede from Canada.<sup>56</sup> The *Act* provided that a *clear* question should focus expressly on secession and not be combined with other ambiguous proposals.<sup>57</sup> If the House of Common found the referendum question unclear, “the Government of Canada shall not enter into negotiation on the terms on which a province might cease to be a part of Canada”.<sup>58</sup> In the case of a positive test result, the House of Common would also check, after the referendum took place, whether “in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province to cease to be a part of Canada”.<sup>59</sup> A negative result to this second

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53 J. GAUDREALU-DESBIENS, *Algunos de los desafíos legales y políticos que debe afrontar el movimiento de independencia de Quebec*, *Teoría y Realidad Constitucional*, 37, 2016, p. 142 at 43.

54 C. HÉBERT-J. LAPIERRE, *Confessions post-référendaires. Les acteurs politiques de 1995 et le scénario d'un oui*, Montréal, Éditions de l'Homme, 2014, p. 33 at 34.

55 S. C. 2000, Chapter 26, passed by the House of Common on 15<sup>th</sup> March, 2000 and in force since 29<sup>th</sup> June, 2000. The version currently in force, as consolidated in 2018, is available at: <https://laws-lois.justice.gc.ca/pdf/C-31.8.pdf>

56 Section 1 (5), *Clarity Act*.

57 Section 1 (4), *Clarity Act* expressly states that a *clear* clear referendum question could not merely focus “on a mandate to negotiate” without soliciting a direct expression on secession, and it could not envisage “other possibilities in addition to secession of the province from Canada, such as economic or political arrangements with Canada”.

58 Section 1 (6), *Clarity Act*.

59 Section 2, *Clarity Act*. The paragraph 2 of Section 2 establishes factors that the House of Commons will be taking into account “(a) the size of majority of valid votes cast in favour of the secessionist option; (b) the percentage of eligible voters voting in the referendum; and (c) any other matters or circumstances it considers to be relevant”. According to paragraph 3, the House of Common should also take into account “the view of all political parties represented in the legislative assembly of the province whose government proposed the referendum on seces-

test would also prevent the Canadian government from entering into negotiation.

It is evident that the *clarity* test puts a great degree of discretion into the hands of the House of Commons, which, in times of institutional crisis, may block access to a referendum. The rejection by Quebec of the *Clarity Act* was obviously explosive. The National Assembly passed the *Act Respecting the Fundamental Rights and Prerogatives of the Quebec People and the Quebec State*,<sup>60</sup> which declares the existence of the inalienable right of the Quebec people to freely decide its political regime and its legal *status*.<sup>61</sup> It also establishes that in the case of a provincial referendum, the winning option is that which obtains a simple majority of valid votes cast (50%+1).<sup>62</sup>

The legislative clash between the federal and provincial acts continues and the Canadian dilemma over what would constitute a clear majority in a clear referendum question remains unresolved.<sup>63</sup> Furthermore, another controversial aspect of the “Canadian referendum model” is the uncertainty about the aftermath to the referendum. If there were, in Quebec, a referendum on a *clear* question (regarded as such by the Federal House of Common) and a *clear* majority voted “yes”, what would the content be of the negotiations between the Quebec government, the other Canadian provinces and the Federal Government? The Canadian Advisory Opinion is not clear on this point,<sup>64</sup> and the *Clarity Act* has done very little to settle the matter.

The only reasonable way to prevent any kind of uncertainty would be through the federal and provincial governments entering into a prior agreement on both the re-

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sion, any formal statements or resolutions by the government or legislative assembly of any province or territory of Canada, any formal statements or resolutions by the Senate, any formal statements or resolutions by the representatives of the Aboriginal peoples of Canada, especially those in the province whose government proposed the referendum on secession, and any other views it considers to be relevant”.

60 Revised Statutes of Quebec, Chapter E-20.2, passed by the National Assembly on 7 December 2000, and in force since 28 February 2001. It is available at: <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/E-20.2>

61 Section 2, *Act Respecting the Fundamental Rights and Prerogatives of the Quebec People and the Quebec State*.

62 Section 4, *Act Respecting the Fundamental Rights and Prerogatives of the Quebec People and the Quebec State*.

63 See, J. GAUDREALU-DESBIENS, *Algunos de los desafíos legales y políticos que debe afrontar el movimiento de independencia de Quebec*, op. cit., p. 145. See also P. DUMBERRY, *Lesson learned from the Quebec Secession Reference before the Supreme Court of Canada*, in M. KOHEN (ed.), *Secession. International Law Perspectives*, Cambridge, Cambridge University Press, 2006, p. 446 at 450.

64 Supreme Court of Canada, *Reference re Secession of Quebec*, op. cit., par. 90-93.

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ferendum modalities (question and winning option) and its effects.

This was actually the strategy followed in the United Kingdom on the occasion of the Scottish referendum on independence (2014).<sup>65</sup> Westminster and Edinburgh reached a prior agreement on the question, the majority and the effect of the referendum.<sup>66</sup> This agreement ensured the clarity of the entire process.

The Parliament of the UK and Parliament of Scotland ruled that the consequence of a majority of valid votes in favour of secession would be Scottish independence. The outcome of the referendum would be politically binding and the subsequent negotiations would be about the details of Scottish secession from the United Kingdom.<sup>67</sup>

The “British referendum model” seems to ensure the authority of the votes more than its Canadian equivalent. A clear question, like the one put before the Scottish people in 2014 (“Should Scotland be an independent country?”), and the prior knowledge of the effects of the referendum outcome, led voters to express a more conscious preference. Vagueness of the question and obscurity regarding the referendum consequences might push the electorate to vote for independence even though it does not really want it. So, in other words, if the question does not clearly refer to independence or if the consequence of the affirmative vote does not imply a negotiation on independence, but a more general negotiation on institutional arrangements, people might vote “yes” just to achieve a reform of federalism (and not secession). This means a separation between the referendum question and the political meaning of the vote, *i.e.* an infringement of the fundamental values of legitimacy.<sup>68</sup> How could a referendum outcome that does not correspond to the wishes of the electorate be legitimately upheld?

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65 The United Kingdom and Scottish Parliaments agreed to promote an *Order in Council under Section 30 of the Scotland Act 1998* to allow a single-question referendum on Scottish independence. The text of the agreement is available at <https://www2.gov.scot/resource/0040/00404789.pdf>

66 J. GAUDREALU-DESBIENS, *Algunos de los desafíos legales y políticos que debe afrontar el movimiento de independencia de Quebec*, op. cit., p. 146.

67 A. LÓPEZ BASAGUREN, *Demanda de secesión en Cataluña y sistema democrático. El Procés a la luz de la experiencia comparada*, op. cit., p. 181.

68 In this sense, V. F. COMELLA, *Cataluña y el derecho a decidir*, op. cit., p. 469.

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### 5. The “right to decide”

As a result of the great difficulty of achieving independence within the existing legal frameworks, both in Quebec<sup>69</sup> and in Catalonia,<sup>70</sup> secessionists have called for an alleged “right to decide”. This right is something different from the basic right to vote in general elections, a right routinely exercised by both Quebecois and Catalans.<sup>71</sup>

This “right to decide” is conceived of as the collective right of a community of individuals, settled in the territory of an existing State, to express its wish to leave the mother State or, further, to secede unilaterally. Neither meaning of the “right to decide” has a legal basis, either in the Canadian or in the Spanish legal system.

If such a right is conceived of as the right of a community to be heard,<sup>72</sup> *i.e.* to express its will in a referendum, and independence were the winning option, should negotiations be opened up between the seceding province/region, the federal government and the other provincial/regional governments anyway. The same question re-emerges: what does the obligation to negotiate imply? Should the parties negotiate on the details of a province’s independence or on any feasible institutional settlements?<sup>73</sup>

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69 Nevertheless, in Quebec the calling for the “right to decide” is less vigorous than in Catalonia. See, J. GAUDREALU-DESBIENS, *Algunos de los desafíos legales y políticos que debe afrontar el movimiento de independencia de Quebec*, op. cit., p. 153.

70 In Spain, the origin of the “right to decide” dates back to the *Plan Ibarretxe*, named after the Basque President in Office, who wanted to promote a regional referendum to decide on the future status of the Basque Country.

71 See, V. F. COMELLA, *Cataluña y el derecho a decidir*, op. cit., p. 461 at 462.

72 The configuration of a “right to be heard” in terms of a positive right is quite difficult, see, *Ibidem*, 466-469.

73 Same Spanish scholars sustain that the “right to decide” is an implicit right, different from the right to self-determination, as it has its legal basis in the democratic principle. See, M. BARCELÓ, M. CORRETTA, A. GONZÁLEZ BONDIA, J. LÓPEZ, J. M. VILAJOSANA, *El derecho a decidir. Teoría y práctica de un nuevo derecho*, 2015, Barceloma, Barcelona, p. 24 at 28. See also, J. RIDAO MARTÍN, *La jurisdicción del derecho a decidir en España. La STC 42/2014 y el derecho a aspirar a un proceso de cambio político del orden constitucional*, *Revista de Derecho Político*, 91, septiembre-diciembre, 2014, p. 101 at 102, 128, who considers that “el derecho a decidir no es equivalente al derecho a la autodeterminación puesto que tiene sustantividad propia: constituye una aspiración política amparada por la libertad de expresión y el derecho de participación”.

*In contra*, F. ESPALDER, *Comentario a la STC 42/2014, de 25 de marzo, sobre la Declaración de soberanía y el derecho a decidir del pueblo de Cataluña*, op. cit., p. 292 “el derecho a ser consultado no forma parte del derecho fundamental de participación política de los ciudadanos garantizado por el artículo 23.1 CE, ni existe un «derecho» a las instituciones catalanas a organizar cualquier tipo de referéndum o consulta sobre la independencia de Cataluña”. See also V. F. COMELLA, *Cataluña y el derecho a decidir*, op. cit., p. 466 at 469.

On the other hand, if the “right to decide” entitled a community of individuals to secede unilaterally,<sup>74</sup> it would be a “right” that does not feature in domestic law or international law. A right to secede is not generally foreseen by democratic legal systems (with very few exceptions)<sup>75</sup> and international law admits it only under particular circumstances. Both the *Vienna Declaration and Programme of Action* and the UN General Assembly’s *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations* laid down that as long as the domestic Government represents the whole people belonging to its territory, without any distinctions, people cannot impair the territorial integrity or the political unity of the State. As a consequence, only discriminated people can be allowed to secede from the parent State in the exercising of their civil and political rights. This is not the case with the Quebecois or the Catalans. The residents of Quebec and Catalonia freely make political choices and pursue their economic, social and cultural development, like all other Canadian and Spanish citizens.<sup>76</sup>

For these reasons, the recognition by the Spanish Constitutional Court of the Catalans’ “right to decide” did not confer a “legal” right to decide upon the Catalan people, but just accepted as legitimate the “political aspiration” to secede lawfully. Such an aspiration can actually be realized only through the existing constitutional procedures

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74 Three big theories were drawn up to justify this unilateral right to secede, respectively referred to as the principle of democracy; the principle of nationality and the concept of just cause. All of these are open to criticism, see V. F. COMELLA, *Cataluña y el derecho a decidir*, op. cit., p. 463 at 466.

75 Even where this right is covered by a national constitutional provision (*i.e.* the Constitution of Ethiopia and the Constitution of Saint Christopher and Nevis), its effective exercise is quite complex. Art. 39.4 of the Ethiopian Constitution provides that “The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect: a) when a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned; b) when the Federal Government has organized a referendum which must take place within three years of the time it received the concerned council’s decision to secede; c) when the demand for secession is supported by a majority vote in the referendum; d) when the Federal Government has transferred its powers to the council of the Nation, Nationality or People that has voted to secede; and e) when the division of assets is effected in a manner prescribed by law”; while Section 113.2 of the Constitution of Saint Christopher and Nevis states that “A bill for the purpose of subsection (1) shall not be regarded as being passed by the Assembly unless, on its final reading, the bill is supported by the votes of not less than two-thirds of all the elected members of the Assembly and such a bill shall not be submitted to the Governor-General for his or her assent [...]”.

76 Supreme Court of Canada, *Reference re Secession of Quebec*, op. cit., par. 134-138; STC 114/2017, in *Boletín Oficial del Estado*, Núm. 256, Martes 24 de octubre de 2017, Sec. TC., p. 102557-102558.

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and cannot take place outside the Spanish constitutional order.<sup>77</sup>

It is evident that the Spanish Court's interpretation of the "right to decide" is completely different from that of the Catalan independents,<sup>78</sup> who consider the "right to decide" as a moral right to decide on their future and that it entrusts them with the power to use all legal frameworks to make its exercise possible. So, if the Spanish Constitution is a barrier to the right to decide, they may subvert it.

### 6. *The principle of effectivity*

The existing barriers to finding a legal basis for the aim to secede have led many secessionists to seek support from the principle of effectivity.<sup>79</sup> According to this principle, international law may adapt to recognize a factual reality, regardless of the legality of the steps undertaken to its realization.<sup>80</sup> So, in other words, the international community may recognize a *de facto* entity as a new State, albeit it emerges from an unlawful act of secession (so-called "remedial secession").

The legal grounds for a remedial secession would be the International Court of Justice's Advisory Opinion of 22<sup>nd</sup> July, 2010, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*.<sup>81</sup> On this occasion, the UN General Assembly requested the International Court of Justice (ICJ) to decide whether the unilateral declaration of independence on the part of Kosovo was in accordance

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77 STC 42/2014, in cit., p. 97 "una aspiración política a la que solo puede llegarse mediante un proceso ajustado a la legalidad constitucional con respeto a los principios de «legitimidad democrática», «pluralismo», «legalidad»".

78 The position of Catalonia was confirmed by the Catalan Parliament's resolution 1/XI, of 9<sup>th</sup> November, 2015, which proclaimed the beginning of the process of creating an independent Catalan State; by the Catalan Parliament's resolution 306/XI, of 6<sup>th</sup> of October 2016, on the general political orientation of the Government; by the Law of the Catalan Parliament 19/2017, of 6<sup>th</sup> September, on the «referendum de autodeterminación»; by the Law of Catalan Parliament 20/2017, of 8<sup>th</sup> of September, on the «transitoriedad jurídica y fundacional de la República».

79 See, for instance, J. LÓPEZ, *A Right to Decide? On the Normative Basis of a Political Principle and its Application in the Catalan Case*, in K. J. NAGEL & RIXEN (eds.), *Catalonia in Spain and Europe. Is There a Way to Independence?*, Baden, Baden: Nomos, 2015, p. 28.

80 *Supreme Court of Canada, Reference re Secession of Quebec*, cit., par. 141.

81 G. A., Res. 63/3 requested the Opinion of the Court on the following question "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?".

with international law. Embracing the so-called avoidance doctrine,<sup>82</sup> the ICJ just responded that neither general international law nor the *lex specialis* created by Security Council resolution 1244 (1999)<sup>83</sup> prohibited the declaration of independence in question. So, the Kosovan declaration of 2008 did not violate any applicable rule of international law.

The ICJ expressly refused to deal with the matter of whether international law provided for a right to “remedial secession” and, if so, under what circumstances.<sup>84</sup> It distinguished between the question put before it and that put before the Supreme Court of Canada in 1998. The Canadian Court was questioned whether international law entrusted people to a positive right to secede, while the ICJ was asked whether international law prohibited a unilateral declaration of independence.<sup>85</sup> It is clear that the scopes of the two assessments were different: the Canadian Court evaluated, *ex ante*, the existence of a positive right to secession, whilst the ICJ assessed, *ex post*, the compatibility of a specific unilateral declaration of independence with international law. Therefore, the mere fact that a particular act, such as the Kosovan declaration of independence, had not violated international law was not to be considered as an exercise of a right conferred by the ICJ.<sup>86</sup>

Ultimately, it is hard to sustain that the ICJ’s Advisory Opinion on Kosovo’s unilateral declaration of independence should be the basis for the recognition of a “legal” “right to decide”. This Opinion deals with a very concrete factual situation which does not permit

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82 The avoidance doctrine is the technique, used, in particular, by the US Supreme Court, of avoiding having to rule on a constitutional issue, resolving the case on other grounds. On the using of avoidance doctrine by international courts, see J. ODERMATT, *Patterns of avoidance: political questions before international courts*, *International Journal of Law in Context*, 14, 2018, p. 221 at 236.

83 S. C. Res. 1244 (1999) on the situation relating to Kosovo, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

84 International Court of Justice’s Advisory Opinion of 22nd July, 2010, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, par. 82-83. The full text is available at: <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>

85 *Ibidem*, par. 56.

86 *Ibidem*.

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the ICJ statements to be taken out of context.<sup>87</sup> Of course, in some cases, international law may, *ex post facto*, draw legal conclusions from a factual situation, but it does not create *per se* a new right. If a unilateral declaration of independence is not in contrast with international law, it does not imply the right to infringe the domestic legal order.

### ***7. European Union Membership for a new State***

According to the Vienna Convention on the Succession of States in Respect of Treaties of 1978, when a part of a territory of a State separates to form a new State and the predecessor State continues to exist, the automatic application of an international treaty constituting an international organization is excluded if it would be incompatible with the object and purpose of the treaty or it would radically change the conditions of its operation (arts. 34 (2) (b) and 35 (c)).

There is no doubt that an automatic accession of an independent Scotland or Catalonia to the EU would be both incompatible with the object and purpose set out in the Treaty on European Union (TEU) and would radically change the conditions for the operation of EU treaties (*i.e.* the existence of particular Member States and their relative size of territory and population). However, it is worth noting that, although the rules of the Vienna Convention on Succession of States in Respect of Treaties apply to any treaty which is the consistent instrument of an international organization, they do not jeopardise any relevant rule of the international organization itself (first of all, those concerning the acquisition of membership).<sup>88</sup> Thus, the effect of a state succession on membership of an international organization depends firstly on the relevant rules of the organization at issue.<sup>89</sup>

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87 What, in particular, should not be generalized is the affirmation contained in par. 121 of the International Court of Justice's Advisory Opinion of 22<sup>nd</sup> July, 2010, according to which "the authors of the declaration of independence were not bound by the framework of powers and responsibilities established to govern the conduct of the Provisional Institutions of Self-Government", and, so, it should not be sustained that secessionists may act outside the rules of their national constitutional framework.

88 See art. 4 Vienna Convention on Succession of State in Respect of Treaties.

89 See J. CRAWFORD SC and A. BOYLE, *Annex A. Opinion: Referendum on the Independence of Scotland-International Law Aspects*, p. 92 at 94 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79408/Annex\\_A.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/79408/Annex_A.pdf)

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EU Law does not include any specific rule on the accession (automatic or not) to the EU of a new entity created by its obtaining independence from the territory of a pre-existing Member State. Moreover, there is no precedent for a metropolitan part of an EU Member State becoming independent and claiming automatic membership or seeking to join the EU in its own right. As a consequence, the following considerations must necessarily be somewhat speculative.

Taking into account the norms of the EU Treaties, it is most likely that an independent Scotland or Catalonia would be required to follow the ordinary procedure on joining the EU as a new Member State.<sup>90</sup> According to art. 49 TEU, any European State which respects the values of art. 2 TEU and is committed to promoting them may apply to become a member of the Union. The EU institutions must consider the application in accordance with the procedural requirements and the existing EU Member

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90 The three last Presidents of the European Commission have spoken in favour of this assumption. Firstly, Romano Prodi, President of the Commission, on 1<sup>st</sup> March, 2004, stressed that a new independent region would become, as a result of its secession from an existing EU Member State, a third country in relation to the Union and all treaties would not apply to its territory from the first day of its independence (*Official Journal of European Union*, 3<sup>rd</sup> April, 2004). Secondly, the same answer was given by José Manuel Barroso, President of the Commission, eight years later, on the behalf of another College of Commissioners (*Official Journal of European Union*, 3<sup>rd</sup> December, 2012 and 1<sup>st</sup> February, 2004). Thirdly, exactly the same answer was given by Jean-Claude Juncker, President of the Commission, as recently as in September 2015 Van Rompuy, President of the European Council, has also taken the same position, see *Remarks by the President of the European Council on Catalonia*, 12<sup>th</sup> December, 2013, EUCO 267/13, PRESS 576 (European Council).

On the contrary, the supporters of both Scottish and Catalan independence had argued, at least at the beginning, that the new Scottish and/or Catalan States, as a result of secession, would have the right to preserve, automatically, their membership in the EU without the need to amend the EU Treaties or have negotiations with the other EU Member States. See, K. CONNOLLY, *Independence in Europe: Secession, Sovereignty, and the European Union*, *Duke Journal of Comparative and International Law*, 24, 2013, p. 51 to 105, which mentions the declarations of both Nicola Sturgeon, the Scottish Primer Minister, actually in office, and Oriol Junqueras, a Catalan nationalist. Artus Mas, the President of the Government of Catalonia from 2010 to 2015, spoke in the same terms in a speech given in Brussels on the 7<sup>th</sup> November, 2012. Given the absence of any legal basis for such argumentation, certain members of both Scottish and Catalan independence movements have supported the idea that, in order to ensure the EU Membership of the new independent States, just a modification of the EU Treaties would be necessary under art. 48 TEU, while the procedure under art. 49 TEU would be redundant. In this sense, N. MACCORMICK, *The European Constitutional Convention and the Stateless Nations, International Relations*, vol. 18, 3, 2004, p. 331; D. EDWARD, *EU Law and the Separation of Member States*, *Fordham International Law Journal*, 36, 2013, p. 1151; S. DOUGLAS-SCOTT, *How Easily Could an Independent Scotland Join the EU?*, *University of Oxford. Legal Research Paper*, 14, 2014. For a critical analysis on this last theory, J. PIRIS, *La Unión Europea, Cataluña y Escocia (Cuestiones jurídicas sobre las recientes tendencias secesionistas en los Estados Miembros de la UE)*, *Teoría y Realidad Constitucional*, 37, 2016, p. 120 to 127.

States and the applicant(s) must unanimously ratify a treaty on the admission.

So, in order to achieve EU membership, a new entity must be firstly recognised as a new State by the international community and, secondly, it must respect and promote the values of art. 2 TEU.

Art. 2 TEU entails respect for the rule of law, *i.e.* compliance with the normative provisions of the national legal system, this condition can clearly not be met if Scotland and/or Catalonia declare independence unilaterally in breach of the constitutional rules of the metropolitan State to which they belong. As a consequence, other EU Member States will be forced to refuse recognition of Scotland and/or Catalonia as States which are independent of UK and Spain respectively and any application for EU membership on the part of Scotland or Catalonia could not be accepted.<sup>91</sup>

On the other hand, if Scotland and/or Catalonia lawfully achieved independence, the accession process could be simplified by the fact that they are already subject to EU Law as a part of a EU Member State (UK and/or Spain), although it could never lead to an automatic accession. The eventual simplification would still be an effect of negotiations between the new independent States, the EU institutions and the EU Member States. However, in any case, the ultimate result of the accession would be a necessary treaty to make amendments to all EU treaties as a consequence of this increase in membership.<sup>92</sup>

The issue of EU membership for Scotland was hotly debated during the 2014 campaign for the referendum on independence. The idea that an independent Scotland would be able to achieve EU membership was especially challenged by the so-called “Better Together” campaign. Membership of the EU became a debatable issue and the possibility of an independent Scotland’s joining was disputed. The doubt around EU membership moulded the election as the uncertainty influenced some otherwise “yes” voters.<sup>93</sup> Notwithstanding this, the safe “no” vote that ensured EU membership seems

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91 In this sense, J. PIRIS, *La Unión Europea, Cataluña y Escocia (Cuestiones jurídicas sobre las recientes tendencias secesionistas en los Estados Miembros de la UE)*, op. cit., pp. 111-112.

92 In this sense, J. CRAWFORD SC and A. BOYLE, *Annex A. Opinion: Referendum on the Independence of Scotland-International Law Aspects*, op. cit., p. 101.

93 It is worth noting that EU membership would be vital to an independent Scotland’s economy, thus the

to have now been nullified by the Brexit vote.<sup>94</sup>

Indeed, in June, 2016, the majority of British citizens voted to leave the European Union<sup>95</sup> and, shortly after, Prime Minister Theresa May declared the intention to pursue a “hard” Brexit, severing most ties with EU. This resulted in the possibility of there being a fresh Scottish referendum on independence.

The Scottish anti-Brexit rhetoric is focused on a new push for secession by leveraging on the (problematic) constitutional relationship between England and Scotland. In a nutshell, Brexit would be the latest example of Westminster’s policies being forced upon the Scottish people without their consent because Scotland would be subject to the unwanted consequences of leaving the EU, one of the main causes of the negative outcome of the 2014 referendum.

What is more, a 2018 poll indicates that a majority of Scots are in favour of independence once the UK leaves the EU, but, at the same time, it also shows that a majority of Scots are in favour of the union if Brexit is abandoned.<sup>96</sup> Under these circumstances, it is more than likely that if and when a hard Brexit takes place, the (majority of the) Scottish Parliament, in reference to the continuing political divergence between Edinburgh and Westminster, will be ready to call formally for a second referendum on secession.<sup>97</sup>

In short, the EU membership of an independent Scotland and/or Catalonia

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doubt around membership was a powerful push for citizens to vote “no”. See B. RILEY-SMITH, *Alex Salmond and William Hague clash over an independent Scotland’s EU membership*, *The Telegraph*, 28 April 2014, available at <https://www.telegraph.co.uk/news/uknews/scottish-independence/10795070/Alex-Salmond-and-William-Hague-clash-over-an-independent-Scotlands-EU-membership.html>; I. TRAYNOR, *Alex Salmond Insists Independent Scotland Would Remain in EU*, *The Guardian*, 28<sup>th</sup> April, 2014, available at <https://www.theguardian.com/politics/2014/apr/28/alex-salmond-independent-scotland-remain-european-union>.

94 See M. K. THOMPSON, *Brexit, Scotland and the Continuing Divergence of Politics*, *The Midwest Quarterly*, 60, 2, 2019, pp. 141-142.

95 The Brexit referendum was actually passed by a narrow margin of 4% of the vote. Furthermore, not all of the nations in the UK favoured leaving: 53.4% voters in England supported Brexit, while Scottish voters rejected it with 62% voting to stay in.

96 Deltapoll, *Scotland Poll*, September 2018, available at [www.deltapoll.co.uk/wp-content/uploads/2018/09/Scotland-website.pdf](http://www.deltapoll.co.uk/wp-content/uploads/2018/09/Scotland-website.pdf)

97 See M. K. THOMPSON, *Brexit, Scotland and the Continuing Divergence of Politics*, op. cit., p. 151 to 156.

seems to be one of the focal points of the campaigns on secession. It has the power to strongly influence public opinion and even overturn election results. That said, the issue of secession of a metropolitan part of an existing EU Member State, such as the UK and Spain, is strictly related to the position that is taken by the EU institutions,<sup>98</sup> as well as the outcome of any possible negotiations between the EU, its Member States and the applicant(s) for membership.

### **8. Final Remarks**

A community of individuals, established in the territory of an existing State, who enjoy the same civil and political rights as the other citizens may not claim a “positive” right to secede. The demands relating to the desire for independence of the Catalan, Quebecois and Scottish peoples can materialize solely and exclusively within the framework of their respective domestic legal systems.

Even if the difficulty of achieving secession lawfully were to lead one of these peoples to a unilateral declaration of independence, recognition by the international community of the resulting entity as a new State is not a foregone conclusion. A successful outcome to the independence process largely depends on the support of the most powerful countries in the World.<sup>99</sup> On the other hand, the recognition of a new State also relies on the legitimacy of the process by which the *de facto* secession is pursued. If an emergent State has disregarded legitimate obligations laid down in the legal system of the State to which it previously belonged, it can expect that disregard to hinder its being granted international recognition.<sup>100</sup>

Would Catalonia obtain the support of other European Union Member States

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98 On the position so far adopted by European institutions, see n. 90.

99 In this sense, M. STERIO, *On the Right to External Self-Determination*, op. cit., p. 149, according to whom the classical theories of recognition under international law (the constitutive theory and the declaratory theory) remain unapplied in practice and it is often the international political reality that dictates whether an entity is treated as a state by international community. On the recognition of States, see J. CRAWFORD, *The creation of States in International Law*, New York, Oxford University Press 1979, p. 3 at 29; J. DUGARD and D. RAIĆ, *The role of recognition in the law and practice of secession*, in M. G. KOHEN (ed.), *Secession. International Law Perspectives*, op. cit., p. 94 at 111.

100 In this sense, Supreme Court of Canada, *Reference re Secession of Quebec*, cit., par. 143.

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against Spain?<sup>101</sup> It would seem improbable.<sup>102</sup> Would France support the independent State of Quebec and put pressure on other States in order to recognize it?<sup>103</sup> Probably not. A French policy of this kind could trigger the dissatisfaction of European Union Member States, such as Spain or Belgium, which are facing secessionist threats. France itself could face problems with Corsica, where there is a well-established nationalist movement looking for more autonomy, or even independence.<sup>104</sup>

For the above reasons, the best way to manage the disaffection of the would-be secessionists would be to find a political solution within the borders of the State. It implies cooperation in good faith between federal and provincial/regional political actors. The central Government should refrain from stubbornly adhering to a strict concept of the rule of law and the provincial/regional Government ought to comply with the domestic legal order. A collaborative effort by both parties could lawfully give voice to the different political aspirations, as shown by the case of the Scottish referendum of 2014.

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101 This question arose during the mandate of *the Consell Assessor per a la Transició Nacional*, a commission of experts appointed in 2013 by the Catalan Government in order to give advice on the creation of the State of Catalonia. This commission contended that, if Spain did not allow a referendum on Catalonia's secession, it would breach the democratic principle on which European Union law is based. In such a case, the Catalan authorities should look for the support of European Union Member States in order to start a procedure against Spain, under article 7 of Treaty of the European Union, which empowers the Union to attest that there is a risk of violation of democratic values in a specific country and to suspend the rights (including the right to vote in the Council of European Union) of that Member State.

102 A practical demonstration of this was given on the 27<sup>th</sup> October, 2017 when, after the unlawful unauthorized Catalan referendum on independence of the 1<sup>st</sup> October, Catalan authorities declared the independence of Catalonia from Spain. As a consequence, the Spanish Government applied, with the approval of the Spanish Senate, the exceptional mechanism of art. 155 of the Spanish Constitution, removing the Catalan President in charge and his Cabinet and calling new elections for December 2017. In the interim, no European Union countries or United Nations Member States supported the cause of Catalan secession.

103 Because of its linguistic and cultural kinship with Quebec, France has consistently adopted a policy of non-indifference, but also of non-intervention, with regard to the former.

104 J. GAUDREALU-DESBIENS, *Algunos de los desafíos legales y políticos que debe afrontar el movimiento de independencia de Quebec*, op. cit., p. 159.

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