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Federalism and Secession: Recent Secessionist Tensions in Catalonia and Lessons we can Learn in Spain from the Canadian Federal Experience

• **Abstract** •

Secessionist tensions in Quebec recently put in serious risk the continuity of Canada's territorial integrity. Nevertheless, the clever doctrine of the Canadian Supreme Court was particularly useful in order to resolve this problem. Many lessons may be learned in the European Union from this risky Canadian experience, especially in countries such as Spain, with similar secessionist tensions. The Catalan experience shows many similarities. The so-called 'right to decide', has great expressive force. Behind this idea there is a large dose of political marketing, demagogy and also hidden problems and challenges for modern federalism.

Keywords: Secession, Federalism, Canada, Quebec, Spain, Catalonia.

Historical Introduction

Canada is an excellent and great example of the interaction of different cultural traditions because of the long history of coexistence and struggle between the First Nations and the French and English cultures.

John Cabot travelled around Canada in 1497, and Jacques Cartier arrived in Prince Edward Island and Quebec in 1534 and explored the Gulf of Saint Lawrence on his second voyage to Canada between 1535 and 1536. He gave the area the name Kanata, which means city or territory in Iroquois. Wars against the Huguenots diverted French interest in the area. Samuel Champlain arrived in Canada in 1603 and established permanent French settlements such as Port Royal, found-

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ed in 1605, and Quebec in 1608. However, the Treaty of Utrecht (1713) marked the beginning of the decline of French power, and the Treaty of Paris (1763) put an end to it. According to Voltaire, it wasn't worth so much blood for a few acres of snow. The Treaty of Paris allowed the permanent settlement of 75,000 French in the St. Lawrence Valley because of the difficulty of evacuating them and, perhaps, because it was thought that they would be easy to assimilate. The error of this prediction was soon verified (Conrad, 2012, pp. 34 and 79; Black, 2014, p. 7).

In the years to come, the living conditions of the French minority would vary according to the political climate. The Royal Proclamation of George III (1763) forbade the access of Catholics to public employment, but the Act of Quebec (1774) allowed the use of French as an official language, recognised the religious freedom of Catholics and the right of the Church to collect tithes, allowed Catholics to hold public office and restored French civil law. This legal change was a consequence of political pragmatism in the context of the War of Independence of the British colonies in North America (Coyne and Valpy, 1998, pp. 9 and 11; Francis et al., 2004, pp. 160–161; Lacoursière et al., 2015, pp. 163–164 and 170; Linteau, 2014, p. 41).

The Constitutional Act of 1791 divided the remaining British territories into North America between, Upper Canada, (Ontario), anglophone and Protestant, and Lower Canada, (Quebec), francophone and Catholic. These territories were united by the Act of Union, passed by the British Parliament in July 1840, and proclaimed in Montreal on February 10, 1841.

The British North America Act of 1867, passed by the Parliament of London, will create the modern Canadian Confederation, initially divided into only 4 provinces: Ontario, Quebec, New Brunswick and New Scotland. This new legislation, now in force, was supported by Macdonald and Cartier, the leaders of the anglophone and francophone communities, respectively. There were many reasons for this gentlemen's agreement, such as consolidating an area of economic and commercial exchange, or controlling US expansionism. There was no other reason, such as a possible rejection of British imperialism. It was a law made by the Parliament of Westminster in London, with Canadian consent, to facilitate better administration of these territories. The Imperial Parliament in London could make laws for Canada, and the British Government would continue to appoint the Canadian Governor and refuse to approve or reserve laws passed by the Canadian Parliament, and the decisions of the Canadian courts could be appealed to the Metropolitan Tribunals (Black, 1975, p. 5; Bonenfant, 1969, p. 15; Brooks, 1996, p. 125; Conrad, 2012, pp. 149–150; Lacoursière et al., 2015, pp. 325–328; Morton, 2006, pp. 94–98).

Canada became an independent actor in international law with the Balfour Declaration of 1926 and the Westminster Statute of 1930, which limited the abil-

ity of the British Parliament to pass laws enforceable in Canada. However, in the absence of an internal agreement in Canada on constitutional amendments, the formal competence in this matter will be maintained until the Constitutional Act of 1982. This act denies Quebec the right to veto constitutional amendments and limits the ability of the Quebec legislature to legislate in relation to the French language (Cook, 1989, p. 503; Thomson, 2010, pp. 97–98).

The Beginning of Secessionist Tensions in Canada: The Referendum of May 20 1980, the *Patriation* of the Constitution, and the Failure of the Meech Lake and Charlottetown Accords

The arrival to power of the *Parti Québécois*, Quebec Party, in the 1976 elections had the final result of an increase in secessionist tension. It was evident the incompatibility between Pierre Trudeau and René Lévesque. The Quebec Party proposed a sovereign association which included (McRoberts, 1993, pp. 300–301; Smiley, 1980, p. 244):

1. The configuration of a customs union, which implied the non-erection of barriers which would hinder trade between both parties.
2. Freedom of movement of people and capital.
3. To maintain the dollar as a single common currency, although with separate central banks, which would require coordination of monetary policies.
4. Coordination in the management of railway and air transport lines, especially Canadian National and Air Canadian, respectively.
5. Quebec would continue to be part of NATO and the North American Aerospace Defense Command.

The referendum question was particularly dense: "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 to 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?".[1]

[1] French version: "Le Gouvernement du Québec a fait connaître sa proposition d'en arriver, avec le reste du Canada, à une nouvelle entente fondée sur le principe de l'égalité des peuples; cette entente permettrait au Québec d'acquérir le pouvoir exclusif de faire ses lois, de percevoir ses im-

A successful result in the referendum would only enable the Government of Quebec to negotiate said agreement or economic association proposal, but any change in the Quebec provincial statute would have to be submitted to a second referendum to be held later, so full access to the *independence* would be framed in a later stage, within the framework of the gradualist procedure politically adopted.

From the federal ranks, it was noted during the campaign that, despite the deliberately ambiguous wording of the question, the real dilemma was choosing between remaining within the Federation, or independence. Federalist announced the impracticality of an intermediate solution, such as the intended *economic association*, which would never be assumed by the rest of the country in the terms in which it had been proposed (Simeon and Robinson, 1990, p. 252).

The final result was *clear*, the "No" obtained the 59.5% of the votes, ant the "Yes" only the 40.5% (Torres Gutiérrez, 2019, 2024).

After the referendum, it was open the constitutional reform process promised by Pierre Trudeau and his Minister of Justice, Jean Chrétien. The aim was to seek a better fit for Quebec in Canada. The intention was to introduce a formula for amending the Constitution, which would allow to modified its text in Canada, without the intervention of the Parliament of London, and to introduce some additional modifications, the most important of these would be the development of a Charter of Rights and Freedoms, limiting Quebec's ability to legislate on linguistic issues (Morton, 2006, p. 331).

The Supreme Court of Canada, on September 28, 1981, in the *Patriation Reference*,[2] pointed out a *constitutional convention*: it should have the support of a *substantial number of the provinces* (by 6 votes to 3). It was not necessary the unanimity of all provinces, but it was not possible a unilateral decision of the federal authorities. After long political conversations, and agreement was reached between the anglophone provinces in order to pass a new Constitution, the amending formula, and a Charter of Rights and Freedoms. This solution did not obtain the *approval* of Quebec authorities. On April 17, 1982, the Queen proclaimed the Constitution Act. The Supreme Court, on December 6, 1982, rejected the existence of an alleged prerogative of *provincial veto* by Quebec, in the *Quebec Veto Reference*.[3]

pôts et d'établir ses relations extérieures, ce qui est la souveraineté, et, en même temps, de maintenir avec le Canada une association économique comportant l'utilisation de la même monnaie; aucun changement de statut politique résultant de ces négociations ne sera réalisé sans l'accord de la population lors d'un autre référendum; en conséquence, accordez-vous au Gouvernement du Québec le mandat de négocier l'entente proposée entre le Québec et le Canada?"

[2] *Resolution to amend the Constitution*, [1981] 1 S.C.R. 753.

[3] *Objection by Quebec to a Resolution to amend the Constitution*, [1982] 2 S.C.R. 793.

The Supreme Court will deny the existence of an alleged *constitutional convention*, supported by the so-called duality principle of Canada, (the original federal pact between the Anglophone and Francophone communities), which should require the consent of Quebec for any constitutional reform which affected its legislative powers, or its constitutional status.

The constitutional reform of 1982 was criticized from Quebec, because even having all the requirements from the point of view of its formal legality, it would nevertheless suffer from a defect in legitimacy, since in a federal model it should have had the consent of all the parties involved in the founding pact. Since 1867, Quebec had participated in all the constitutional reform procedures, and some of them could not be carried out, because consensus could not be achieved.

The effort to bring Quebec into constitutional consensus began. But the Agreements of Meech Lake (1987) and Charlottetown (1992), recognizing Quebec as a 'distinct society', didn't obtain the green light.

Playing with Fiire: The Referendum of 1995

The Quebec authorities called a second referendum on October 30, 1995. In English, the question on the ballot paper 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 the Agreement signed on 12 June 1995?".[4]

It was a long and cumbersome question, which included a reference to the formulation of an offer of a new economic and political association with Canada, something that could be seen as a ploy, to make the undecided population believe that secession would not be traumatic and that reaching the association agreement would be relatively easy, which was not at all true, especially when no attempt had even been made to open negotiation prior to the referendum.

How could it be acceptable that 25% of the population living in the Beautiful Province wanted to break up the country by secession, only to return later and hold 50% of the decision-making power in the country's joint institutions, including a veto on some of the most strategic political issues? In reality, they wanted to obtain a larger number of votes, thereby disguising the inadequacy of the secessionist vote to achieve their goal (Dion, 1999, pp. 38–39).

[4] French version: "Acceptez-vous que le Québec devienne souverain, après avoir offert formellement au Canadaa un nouveau partenariat économique et politique, dans le cadre du projet de loi sur l'avenir du Québec et de l'entente signée le 12 juin 1995?" https://www.sqrc.gouv.qc.ca/documents/positions-historiques/positions-du-qc/part3/Document30_en.pdf

The more than foreseeable rejection by Canada after the plebiscite would make secession inevitable, given the failure of the negotiations, and this would have consequences as irreversible as they were undesirable for those voters who went to the polls for the plebiscite and for those for whom this condition was essential in deciding the meaning of their vote.

It looked like a game in which one of the players asks the question, makes all the rules of the game and ignores them when it suits him. If the player loses, he loses unfairly, and the game is repeated over and over again until he wins. At that point, the game ends and any attempt to start again is declared illegal (Scheinberg and Decarie, 1998, p. 84).

The final result was decided by a narrow margin of 49.42% for the "Yes" side and 50.58% for the "No" side. Never before had Canada been so close to the abyss. A "Yes" victory would have had unforeseen consequences (Hogg, 1997, p. 20):

1. An inexhaustible source of uncertainty about the legal rules of the game to be applied in such sensitive areas as trade, taxation or the recognition of citizenship.
2. A very pessimistic economic outlook, as the climate of political instability would discourage investment, devalue the Canadian dollar and could even undermine confidence in the payment of public debt by causing a significant increase in interest rates.

   It would also mean the interruption of federal transfers. Quebec is one of the most indebted provinces and its sovereign debt rating could be downgraded. A foreseeable increase in Quebec's public deficit should be accompanied by cuts in public spending and increased fiscal pressure. A possible population exodus, particularly in the Montreal area, would deprive Quebec of important human capital with higher levels of wealth and education, and could trigger an exodus of commercial firms.

   This Canadian music sounds familiar in Catalonia. It was alarmingly evident in the Catalan crisis at the end of 2017. It was not necessary to verify the effective secession of this territory, and the consequence was the exodus of several thousand companies that moved their headquarters outside this Spanish autonomous community, including the main banks based in Catalonia, for fear of being left out of the European Central Bank's umbrella.
3. It would be a source of political instability, with consequences that would not necessarily be good.

In addition, there are other consequences to be considered in the event of Quebec seceding. It would split the rest of Canada in two, leaving the Maritime provinces virtually isolated from the rest of the country and posing a challenge to

the movement of people and goods between the two halves. How could this be solved? Perhaps by creating a corridor between the two sectors, allowing the free movement of people and goods between Quebec and the rest of Canada? This potential corridor would face the double challenge of being wide enough (it has been proposed to be between 30 and 50 kilometres, for example) and of its route (along the border with the United States, for example). Would this solution be efficient? Or would it raise many unknowns and correlative risks of conflict? (McRoberts, 1995, p. 413).

The Doctrine of the Supreme Court and its Consequences, the Clarity Act

The Supreme Court of Canada will answer these 3 questions on August 20, 1998, in its *Reference re Secession of Quebec*:[5]

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 secession of Quebec from Canada unilaterally? In this regard, is there a right to selfdetermination 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?

The Supreme Court's answer is based not only on the written text of Canada's Magna Carta, but also on what it calls the unwritten rules, because it will not limit itself to a mere literal reading of the Constitution. The Supreme Court will engage in construction based on a set of principles that go beyond the literal tenor of the Constitution and form the firm foundation upon which the entire Canadian constitutional system rests. These constitutional principles are federalism, democracy, the principle of constitutionality and the rule of law, and the protection of minorities (Leclair, 1999, p. 22; Monahan, 1999, p. 75; Young, 1998, p. 15):

[5] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

1. Federalism is seen as the best formula for integrating diversity. It creates mutual obligations between the provinces and the federation. It was the legal response to the underlying political and cultural realities that existed at the time of the creation of the Confederation. The division of powers between the federation and the provinces was the legal recognition of the diversity of the original members of the Confederation. For the Supreme Court, federalism recognises the diversity of the components of the Confederation and the autonomy of the provincial governments. It allows for political participation by allocating power to the level of government deemed most appropriate to achieve social goals, taking into account this diversity.
2. Democracy is also a founding principle of Canadian federalism. While it is true that democracy is based on majority rule, this principle must be linked to that of federalism. There can be different federal/provincial majorities without one being more legitimate than the other. The need to build federal and provincial majorities involves commitments, negotiations and deliberations. No one has the truth.
3. The principle of constitutionality and the rule of law also has important consequences. The will of the majority of a province must fit into the constitutional rules and mechanisms of the Federation as a whole. The will of the majority of a province alone is not sufficient to justify a right to unilateral secession.
4. The protection of minorities is a key concept in Canadian federalism. Their rights must be protected, especially in the event of secession. The Canadian Constitution is silent on the right to secede. However, secession requires a constitutional amendment that must be approved through the constitutional reform process. Unilateral secession is not possible without prior negotiation, as it would be incompatible with constitutional obligations. Any secession should be supported by the democratic will clearly expressed in a referendum.

A referendum with a clear and unambiguous result would be an important political signal. Quebec could launch a process of constitutional amendment to achieve secession by constitutional means. This would entail the obligation of all parties to come to the negotiating table. The Supreme Court rejected the obligation of other provinces to agree to secession, but also the absence of any obligation on the part of the other provinces and the federal government.

There would be no real negotiation if Quebec could dictate the rules and conditions of secession. The Canadian constitutional order cannot remain indifferent to the clear expression by a majority of Quebecers of their desire to no longer be

part of the federation. Secession cannot be unilateral. The mere effectiveness of a possible *de facto* secession does not make it legal. Under international law, Quebec has no right to self-determination because it is not an oppressed people.

To avoid the negative consequences of an unclear referendum, the Canadian Parliament passed the Clarity Act in 2000. This Act gives the House of Commons the power to decide whether a question is clear before it is put to a vote. The House of Commons would have the power to decide that the answer was clear. All provinces and First Nations must participate in the negotiations. The House of Commons can overturn a decision made in a referendum if it believes that one of the principles of the Clarity Act has been violated. The secession of a province would require an amendment to the Constitution of Canada (Spiliotopoulos, 2005).

Some Lessons for Spain, from the Canadian Experience

The emergence of strong secessionist tensions in the last quarter of the twentieth century and the holding of referendums in 1980 and 1995 threatened to break a long tradition of coexistence between Quebec and the rest of Canada within the same constitutional framework. The narrow victory of the "No" side in the second referendum and the ambiguity of the question put to the citizens compel us to seek an adequate legal response to the magnitude of the problem.

The Supreme Court's reference of August 20, 1998 is an example of the search for flexible formulas that go beyond a mere and ironclad adherence to the literal tenor of the Constitution. The Supreme Court of Canada has sought to find solutions that go beyond the literal wording of the Constitution, offering original answers based on jurisprudential wisdom rather than narrow legalistic interpretations. The Court's position is based on its own original and intelligent elaboration of a new theory of the constitutional principles to be taken into account: federalism, democracy, constitutionalism and the rule of law, and the protection of minorities (Bérard and Beaulac, 2017, p. 116).

The democratic principle cannot be used as a battering ram against the principles of federalism and the rule of law, nor against individual rights, especially those of minorities. At the same time, however, the Canadian constitutional order cannot remain indifferent to a clear expression of the will of the majority of Quebec voters if they do not wish to continue to be part of the federation, in which case a constitutional obligation to negotiate in good faith arises for all parties involved, because there is much at stake. At the same time, a solution consisting in the unilateral secession of a province is not acceptable (Newman, 1999, pp. 86–87).

The Clarity Act is the response of the federal authorities to the need to provide a political (and not judicial) solution in establishing the rules of the game to be followed when it is necessary to recognise the existence of a clear will of the population of a Canadian province to proceed with its secession. It is a fully constitutional norm, since it is dictated within the framework of the powers of the federal government. In a federal state model, the different spheres of decision-making do not operate in watertight compartments. An eventual principle of Canadian indivisibility has never been constitutionally contemplated, either before or after 1982. The question will be whether there is at least a clear will to do so. The two previous referendums, in 1980 and 1995, failed to provide even a minimal guarantee (Monahan, 2000, p. 108).

It is the clear expression of the will of the people, the ultimate source of legitimacy in democratic societies. The Clarity Act, without being complete or perfect, will serve to rid the country of the ghost of the French-English divide that has haunted Canada for 40 years and had haunted it for the previous two hundred years (Black, 2014, p. 956).

Behind the Clarity Act of 2000 is a certain legislative technique of deliberately ambiguous normative construction that has had positive effects. It has served to cool and redirect a problem that seemed to have a very difficult solution. Its political success has been evident, not only because it has decisively calmed pre-existing tensions, as we have already noted, but also because it has served to focus the debate on the question of a clearer recognition of Quebec's role within the Canadian federation itself (Bakvis et al., 2009, p. 259). It is not the best option to try to seek protection in the grey areas left by the *Reference re Secession of Quebec*, in order to try to take advantage of one's own interests. On the other hand, any attempt at partisan manipulation of the rules of the game, to obtain some type of advantage, is not the best way to try to solve the problem in the long term, especially if what is sought is a solution to it that is fair, stable and lasting (Bérard and Beaulac, 2017, pp. 124–125).

Canadian federalism is a formula to consider, not only because it can be a valid response to territorial particularisms, but also because it protects different ways of life and expresses a desire to live together. In contrast to the values and solutions associated with this mutual recognition, we find assimilationism and separatist tensions. Neither of these two formulas seems to us to be a panacea, since assimilationism, whose maximum exponent is found in the Durham report, has proved impossible to achieve in practice, since the tensions between the French and English communities are serious enough to be resolved by this rapid means. On the other hand, secessionism is not the answer either, because while it may be effective in breaking the traditional *de facto* (and *de jure*) ties between the two

communities, it does not provide a satisfactory solution to the pluralism that exists in Quebec society (Laselva, 1996, p. 132).

After the rise of sovereignty debates in the 80s and 90s of the 20th century, we have witnessed a decline in the first decades of the 21st century. Nevertheless, there is a strong nationalist sentiment in Quebec. Much of the responsibility for this reorientation of the sovereignty phenomenon lies with the jurisprudence of the Supreme Court of Canada, which, while denying Quebec the right to unilateral secession, has come to recognise the legitimacy of a possible secessionist desire if it is supported by a sufficiently clear majority and if it is expressed in relation to a clear question. In this case, all political actors involved would be obliged to negotiate in good faith.

We should question the possibility of applying the Canadian experience to Spain, since both are composite states. Canada was created by aggregation. The Spanish autonomous state, on the other hand, is created by decentralisation or devolution. In both cases, Canadian and Spanish, their constitutions do not contain explicit inviolability clauses, so they are reformable, although not in the same way. The Canadian provinces have constituent power, which means that they are legitimised to initiate constitutional reform procedures. In Spain, however, the Autonomous Communities do not have similar powers (López Aguilar, 1999, p. 24).

Furthermore, the Spanish Constitution contains a clause that does not exist in Canada, and that is the affirmation of the indissolubility of the nation, the common and indivisible homeland of all Spaniards (Article 2 of the Spanish Constitution). The existence of this constitutional provision on territorial integrity can close the door to any attempt at secession, or at least make it extremely difficult to carry out, because although this constitutional clause can be revised, the reform process is particularly difficult because it follows the path of rigid reform laid down in Article 168 of the Spanish Constitution.

In Canada, there is no explicit constitutional provision for calling a plebiscite, so there is no a priori obstacle to it. On the contrary, the regulation of referendums in the Spanish Constitution is exhaustive. The two referendums held in Canada were tolerated by the federal authorities, so they were neither suppressed nor were there any attempts to cleverly disguise them as participatory processes (Díaz Noci, 2018).

The Supreme Court of Canada, in 1998, explicitly ruled out the unilateral route, recognising the lack of foundations for a possible protection of secession based on the principle of self-determination of oppressed peoples. It would be sarcastic if prosperous societies such as Quebec (or even Catalonia and the Basque Country) could fall into this category (López Basaguren, 2013, p. 93). There was not a single country in the whole world that recognised the birth of the Catalan

Republic [sic], on October 27, 2017. Let us not forget, moreover, that the Canadian Supreme Court's own ruling of 1998 would open the debate on the possibility of modifying Quebec's borders in the event of secession, in order to protect the important minorities that do not want independence. And Quebec also has its own *Tabarnia* (the important area around Barcelona that does not want independence), because if Quebec has the right to leave, there would also be a part of the population that should have the right to stay, and the same would have to be resolved in relation to Catalonia (Díaz Noci, 2018).

It is not possible to use Comparative Law *a la carte*. It is not possible to forget the existence of limits that affect the ability of the majority to act. These limits are imposed because it is necessary to protect the rights of the minority, excluding the possibility of unilateral secession. The question and the answer must be clear (Castellà Andre, 2014, p. 236).

The new paradigm configured by those countries that allow the referendum on the independence of a territory. It is based on the need to adapt the referendum to the constitutional order of the state in which it is held. The procedure must be agreed with the state authorities. And the clarity of the question put must be guaranteed (López Basaguren, 2013, p. 87; Castellà Andreu, 2014, pp. 227–240).

On September 16, 1995, on the eve of the second secession referendum, *The Economist* published a devastating editorial on the economic consequences of Quebec's secession. The editorialist wondered whether Quebec alone would be able to maintain its credit index and access financial markets on the same terms, if it continued to pay its debts at higher interest rates. Capital could migrate to other regions, raising questions such as: Would a new currency be viable? How would the trade deficit be financed? Many corporate headquarters would move from Montreal to Toronto. The celebration of independence could bring a painful twist to the austerity belt (Brooks, 1996, p. 140). Catalonia's declaration of independence on October 10, 2017 was accompanied by a stampede of several thousand companies moving their headquarters from Catalonia to other regions of Spain. Catalonia was left without the headquarters of a single listed bank with a presence on the IBEX. If independence were to take effect, it would lead to an automatic exit from the European Union and the end of the European Central Bank's umbrella.

At what interest rates would Catalonia's public debt be financed? The anxiety felt by businesses in Catalonia at the end of 2017 seems to recall something that had already happened in Canada, where the economic splendour of Montreal has relinquished its position in favour of Toronto.

The aforementioned editorial in *The Economist* also wondered whether Quebec itself could be expected to offer a fair deal to its own minorities. What would

happen to Spanish speakers in Catalonia? Would they be discriminated against or treated equally? What would happen if a large part of Catalonia preferred to remain part of Spain?

In both the Basque Country and Catalonia, secessionist movements have emerged in recent years, based on a so-called 'right to decide'. This idea is based on the supposed right of the respective electorates of these autonomous communities to decide on their future. This expression, the 'right to decide', has great power. There is a large dose of political marketing behind this idea. The so-called 'right to decide', which we are trying to present as a supposedly unquestionable right in a democratic state, is nothing more than a political claim that is neither accepted in international law nor recognised in any democratic system in the world. There's no existing right behind this expression. There is no 'right to decide', understood as a right to unilaterally determine the legal status of a territory or a community within a State (López Basaguren, 2013, pp. 98–100).

Catalonia has no autonomous capacity for institutional participation in the European Union if it is not within the framework of its membership of Spain. Catalonia outside Spain should apply to join the European Union and start negotiating the various chapters of a sectoral nature. If a secession process were requested, Catalan citizens, by ceasing to be Spanish, would *ipso facto* lose their legal benefits as Europeans. For the citizens, it would mean a return to borders and visas.

Spain's quotas in the European institutions would be reduced: Spain would also have to renegotiate its position in the European Union. Unanimity for the accession of new member states is a requirement explicitly laid down in the European Treaties. A possible – and quite plausible – Spanish rejection of Catalonia's accession to the EU would completely paralyse its candidacy.

Economically, the exclusion of the Catalan banking system from the financial umbrella of the European Central Bank would lead to an immediate devaluation of the Catalan currency, which would increase inflation and a general impoverishment of the society of the new Catalan state. An independent Catalonia would not remain in the Eurozone because it would not be part of the EU and the Euro is the currency of the EU. It would not be in the monetary union at least until it is admitted to the Union, which requires the unanimous vote of all Member States, including Spain. The main banks of Catalonia, Caixabank and Sabadell, have decided to move their headquarters outside Catalonia, precisely to guarantee the shield of the European Bank. Catalonia should renegotiate trade agreements with all the countries of the world. What would happen to the Catalan public debt and pensions? Too many questions, too many problems.

Conclusion

The emergence of strong secessionist tensions in Canada in the last quarter of the 20th century, and the holding of referendums in 1980 and 1995, came close to breaking a long tradition of coexistence within the same constitutional framework of Quebec with the rest of Canada. The victory of the "No" vote, by a narrow margin in the second referendum, together with the ambiguity of the question submitted to the citizens, forced the search for a legal response appropriate to the magnitude of the problem that was looming on the horizon.

The Supreme Court's opinion of August 20, 1998, is an example of how to seek flexible formulas that transcend mere adherence to the literal wording of the Constitution. The Supreme Court of Canada tried to reach solutions that go beyond the literal tenor of the Constitution of Canada, offering original answers, rooted in jurisprudential wisdom, rather than in narrow legalistic interpretations, attached to the literal tenor of the norm, as can be deduced from its assertions on the need for a clear majority on a clear question, and the constitutional obligation to negotiate, based on an original and intelligent elaboration of a new theory of the constitutional principles that must be taken into consideration: federalism, democracy, constitutionalism and the rule of law, and respect for minorities.

The democratic principle cannot be used as a battering ram against the principles of federalism and the rule of law, nor against individual rights, especially those of minorities. But at the same time, the Canadian constitutional order cannot remain indifferent to a clear expression of the majority of Quebec voters who do not wish to remain part of the Federation, in which case a constitutional obligation to negotiate in good faith arises for all parties involved, since they have a great deal at stake. A solution consisting of the unilateral secession of a province would be ruled out at the same time.

The Canadian experience demonstrates how much risk is to play with fire. In Catalonia, secessionist attempts have crystallized in recent years, which have tried to seek their basis in a so-called 'right to decide'. It is an expression, that of the 'right to decide', which has a great expressive force.

It should not be forgotten that behind all this there is a large dose of political marketing, because the simple expression of ideas or complex issues is usually wrong, something that would happen with the aforementioned reference to the so-called 'right to decide', which is presented as a supposed unquestionable right in a democratic state, when in reality it is nothing more than a political claim that is neither accepted in International Law, nor recognized in any democratic system in the world, that is to say, behind this expression, it is presented to us as

unquestionable, which in reality is a non-existent right (López Basaguren, 2013, pp. 98–100).

There is no 'right to decide' that entails a right to unilaterally determine the legal status of a territory or a community within a State, nor to its secession to become an independent State, since there is no alleged right in that sense, which is of incontestable acceptance, and allowed to be exercised outside the law.

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