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Secession Within the Framework of the European Union:
The Case of Catalonia

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ABSTRACT. *The Catalan struggle for secession represents just a portion of a macro problem which is expanding at the supranational level of the European Union: the slowly-paced dismemberment of nation states due to separatist claims. This tries to analyze firstly the Union's behavior through the articles of the TEU which impede secession, while secondly the main features of the EU which have contributed to such rising sentiment of independentism, with a particular outlook on subsidiarity, the Committee of the Regions and an alternative channel for regional representation. Until now, most authors have tackled this issue in various ways and touched several spheres of analysis, from a purely economic one to more generic ones basing themselves on self-determination rights. Instead, the conclusions of this thesis point out the path followed by the Union with its decisions regarding in such cases, while accordingly trying to offer an escape route for stateless nations aspiring to independence.*

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Introduction

During the last years, the Catalan discourse has been at the centre of many debates, as it represents just a portion of a macro problem which is expanding within the supra-institutional character of the European Union. The latter consists in the slowly-paced dismemberment of the institution caused by the rising sentiment of separatism among certain nations without states, which are constantly applying pressure and advancing demands of autonomy both towards their parent states and the European Union. The question under scrutiny is the existence of these stateless nations as singular entities, separated from their original state due to various historical distinctive characteristics and to more recent and globalised matters that will be later discussed. In order to fit the specific case of the Catalan struggle for independence within the context of European integration, it is necessary to consider firstly how this process has been developing in a more recent time-frame than the actual incipit of Spain's modern sub-national claims from the Catalan population. The latter period has been identified by several historians with the end of 1800, almost two centuries after the capture of Barcelona by the twin forces of France and Spain guided by Philip the V's will to unify the Spanish nation. As this period definitely does not coincide even with the embryonal idea of the European Union, it will be set aside and not discussed. Instead, what will be examined is the relation occurring between the hope of Catalonia's most recently undergone independentism claims and the European position regarding it given its role as promotor of regional powers and rights within the community.

What will be stressed throughout the work is, in the first place, the situation of stateless nations such as Catalonia, given that the provisions which the author is going to present are applicable to many of these territories which aspire to independence from their parent state. In particular, the reasons for which a possible secession may not take place within the Spanish territory will be set out through the perspective of the European Union's laws contained in the Treaty of Lisbon. These will regard specifically the principles enshrined in the Treaty, as contained in article 1a, with a peculiar view about the primacy of the rule of law within the Union's framework. To better understand the implications which the Catalan case brings up, especially concerning the relationship between states within the EU, further attention will be placed onto articles 3a.2 and 3a.3, which entail the principles of territorial integrity

and sincere cooperation. The latter will actually strengthen the argument for which the EU may not provide its help in this kind of cases. Finally, the concerns about the Union's limitations to the Catalan cause – and probably the harshest of them – will be represented through the provisions listed in articles 49 and 49A of the Lisbon Treaty. By applying a hypothetical filter to the whole situation, the possibilities for Catalonia's independence will be further restricted.

This has brought us to consider why the hope for secession is still so alive within the Catalan population, and what has increased and developed this sentiment of separation. The answers that we provide for this puzzle are contained once again in the European Union's framework. In particular, what has been considered is the principle of subsidiarity through which the regions and the Union have been empowered throughout the years, stripping the state of some of its core functions and slowly opening possibilities for autonomy and reminiscing desires for independence. However, at the same time, claims for participation and enlargement of the regions' capacities have been reliant on a rather inefficient and poorly considered institution of the EU, namely the Committee of the Regions. Given the ineffectiveness of the latter Committee, the final part of this work will draw on the possibility of Catalonia to consider alternative routes to enter decision making within the EU. This possibility will be identified as the European Free Alliance group within the European Parliament, which has constantly proposed itself as a strong promotor of regionalism since its creation and thus seems the most viable opportunity for stateless nations to advance claims within the supranational institution of the European Union.

Throughout the work, one may evict some sort of critical remarks about the EU's behaviour in such circumstances. Actually, in the author's view, such a progressive institution should play a key role in the management of possibly disruptive events that comprise and thus affect many of its components. Therefore, the real aim of this paper is to create a kind of stimulus in the name of change, on the one hand with regards to the Spanish government's behaviour specifically concerning Catalonia's case, and on the other more generally appealing to the European Union to better consider such type of issues, clarifying within its Treaties the true future for stateless nations.

1. Literature Review

In order to analyse the particular situation in which Catalonia is involved, it must be in first place considered which authors have given their contributions regarding the matter. Most of all, their positions and thoughts on the argument must be evaluated, so as to compare them with the EU's route of (mis)action. As the most recent Catalan struggle for its own independence has begun in 2012, a large concentration of articles have been dedicated to it since then, even though much has been written over the topic also before it saw its renaissance and thus some of them will be taken into consideration in order to collect differing opinions deriving from the antecedent period to the Catalan's "venturous bid for independence."¹ Although it could be made a classification according to date of publication, here it will be rather divided by the stance taken with regards to Catalan self-determination and European integration by the authors.

The first faction on which the analysis has been focused on is the pro-independentist one, that identifies professor Montserrat Guibernau as a prominent contributor thanks to the large array of articles and publications she has destined to the field. In order to present a clearer position from the author's point of view, it has been selected her article from the *Ethnopolitics* journal published in 2013 titled: "Secessionism in Catalonia: After Democracy."² In this specific publication, professor Guibernau offers a wide overview of Catalonia's issue, composed of historical and identity factors which counterpose to the Spanish and European position, in that she affirms and defends the right of Catalan people to claim self-determination. In particular, she offers her own definition of nation as a human group conscious of forming a community and which shares a common culture attached to a clearly defined territory with a common idea of a future political project. She immediately contrasts this definition to the one of nations without states, referring to "nations, which in spite of having their territories included within the boundaries of one or more states, by and large do not identify with them"³, leading them to consider the parent state as an alien entity which maintains a separate sense of national identity. She also takes into consideration the economic crisis affecting both the EU level and the Spanish one, followed by the fiscal arrangements imposed by the latter, as they are significantly

¹ Colomer, Josep M., 2017. *The Venturous Bid for the Independence of Catalonia*. Nationalities Papers, vol. 45 (5).

² Guibernau, Montserrat, 2013. *Secessionism in Catalonia: After Democracy*. *Ethnopolitics*, vol. 12 (4), p. 368-393.

³ *Ibid.* at 369.

contributing to the escalation of the independence sentiment. As Guibernau rightly points out, this could trigger a fundamental reconfiguration of power within the EU, given that the traditional view of nation-state building is being challenged by “transnational and global governance as well as by the legitimate right of peoples to decide upon their political destiny.”⁴

Another author which draws upon the same conclusion and expresses similar thoughts as professor Guibernau is Christopher K. Connolly, who made his contribution in 2013 an article entitled: “Independence in Europe: Secession, Sovereignty, and the European Union.”⁵ As per the aforementioned article, the motives of the current exacerbation of the Catalan struggle towards independence are straightforwardly identified into three interrelated factors: identity, autonomy and economy. While reporting the international community’s clarification which distinguishes self-determination from secession, which leads to the assumption that stateless nations do not possess a right to statehood, he asserts how the “nature of statehood has undergone profound changes...particularly in Europe.”⁶ As many authors have pointed out, the relationship between the project of European integration and the phenomenon of sub-state nationalism can be contradictory under certain circumstances, indicating that while the promotion of nationalist interests that go beyond state borders has been advanced, the participation to the European institutions is still limited to member states. While it is true that States are still considered as the primary actors within the Union, Connolly specifies how, although poorly carried out, an attempt to redesign the distribution of power within it has been made since the Maastricht Treaty’s introduction of the Committee of Regions (CoR), and its successive reforms produced by the Lisbon Treaty enacted in 2009. However, the inefficiency in producing true integrative outcomes has created incentives for the European regions to seek alternative routes to reach channels for formal decision-making in the EU that will be later discussed.

An author which departs from this pro-independence and self-determination track is the expert on the European Union Carlos Closa, which has made the point in regard to European policies concerning the situation in Catalonia and other stateless nations throughout his array of articles focused on the subject. In his 2016 text

⁴ *Ibid.* at 391.

⁵ Connolly, Christopher K., 2013. *Independence in Europe: Secession, Sovereignty, And the European Union*. Duke Journal of Comparative & International Law, vol. 24 (51), pp. 51-104.

⁶ *Ibid.* at 53.

“Secession from a Member State and EU Membership: the view from the Union”⁷ he admits that the European Treaties remain silent about the possibility of secession and that this could lead to different and even contradictory interpretations. However, in his opinion, it is consistent to say that if the Treaties do not specifically prohibit separatist processes it is because Member States do not consider it necessary to do so, since “such an implicit prohibition can be deduced from the values, principles and objectives of the Union”⁸, which will be later on presented through a list of articles deriving from the Treaty on the European Union after Lisbon. He broadens the argument in another contribution entitled “Changing EU Internal Borders Through Democratic Means”⁹, by offering insights on all the problematics deriving from the choice of unilateral secession, both at national and at the EU level. Throughout this article it is specified that while a community may have a right to unilaterally claim secession, according to the uniqueness of its historical and cultural traits, “the original state may have an equally valid claim to retain its unity and this claim may equally derive from legitimate and democratic arguments.”¹⁰ As other authors have deliberated, this is why there is the need to negotiate an agreement between the parent state and the seceding territory given that unilateral secession, at least in Catalonia’s case, also goes against the rule of law, that is considered as the backbone of any modern constitutional democracy¹¹. Thus, Closa concludes by considering that, although EU values and laws are themselves put to dispute and at times contradictory, they provide “enough normative content to orientate the EU positions in cases of secession.”¹²

Moreover, interesting and noticeable is the fact that many authors, including Connolly¹³ and Guibernau¹⁴, draw a comparison between modern nationalist claims for independence, such as the Catalan or Scottish one, and the case ruled by the Canadian Supreme Court regarding the Quebecois will to split from Canada back in the 2000’s. Although the Canadian court measures and rulings have no impact on the European ones, the suggestions made by it will be narrowly discussed to present an example of negotiated attempt within this matter. Their analysis points out the status

⁷ Closa, Carlos, 2016. *Secession from a Member State and EU Membership: the view from the Union*. European Constitutional Law Review, vol. 12, pp. 240–264.

⁸ *Ibid.* at 246.

⁹ Closa, Carlos, 2017. *Changing the EU Internal Borders through Democratic Means*. Journal of European Integration, vol. 39 (5), pp. 515-528.

¹⁰ *Ibid.* at 517.

¹¹ European Commission, 2014. *Communication from the Commission to the European Parliament and the Council: A new Framework to strengthen the Rule of Law*. Date of delivery: 11/03/2014, COM (2014) 158 Final, Brussels.

¹² Closa, 2017, at 526.

¹³ *See supra* note 5.

¹⁴ *See* Guibernau, Montserrat, 2006. *National Identity, Devolution and Secession in Canada, Britain and Spain*. Nations and Nationalism, vol. 12 (1), pp. 51-76.

of external self-determination in opposition to the right of internal self-determination which was granted to Quebec, and which resembles the status retained by the Catalan autonomous government. According to the latter right, the Quebecoise population can freely decide upon their political and economic future both within Canada and across the world and can thus attain to the social and cultural development of their nation without recurring to secession. However, while the Canadian court has concluded that the democratically expressed will of the people of Quebec to secede would oblige Canada to engage in negotiations concerning a possible separation, the EU has maintained a firm stance in regarding Catalan separatism as “an internal matter for Spain that has to be dealt with in line with the constitutional order of Spain.”¹⁵

In general, the thematic of Catalonia’s process of independence has truly been examined in many ways. Research on identity and cultural matters was specifically intense, and many contributions have been made. Just to mention some, Josep-Maria Carbonell, who draws upon “the two main challenges to Catalan identity”¹⁶ in the *American Behavioural Scientist* journal of 2018, or “Foundations of national identity: from Catalonia to Europe”¹⁷ by Josep R. Llobera published in 2004. Moreover, many articles have been written on the economic aspects that are included in this crisis, such as Brandon M. Boylan’s “In pursuit of independence: the political economy of Catalonia’s secessionist movement”¹⁸ or even a more inclusive book edited by Xavier Cuadras-Morató entitled “Catalonia: A new independent state in Europe?”¹⁹ to which many authors, including Marc Guinjoan, Enriqueta Aragonès and Fernando Guirao have contributed.

In addition, many articles from diverse newspapers have been examined to perceive the general perspective emanating from the issue. Most newspapers and online sources declare that the EU has its own hands tied over the Catalan situation, and it is also considered how the ‘Europe of the Regions’ is now an unreachable step as the Union remains silent on such an important issue. Furthermore, as Jordi Solé, Catalan member of the European Parliament, has argued with the president of the

¹⁵ European Commission, 2017. *Statement 17/3626*, Brussels.

¹⁶ Carbonell, Josep-Maria, 2018. *The Two Main Challenges to Catalan Identity*. *American Behavioural Scientist*, pp 1-18.

¹⁷ Llobera, Josep R., 2004. *Foundations of National Identity: From Catalonia to Europe*. Berghahn Books, Oxford, New York.

¹⁸ Boylan, Brandon M., 2015. *In pursuit of Independence: the political economy of Catalonia’s secessionist movement*. *Nations and Nationalism*, vol. 21 (4), pp. 761-785.

¹⁹ Cuadras-Morató, Xavier, 2016. *Catalonia: A New Independent State in Europe? A Debate on Secession Within the European Union*. Routledge, London.

European Commission Jean-Claude Juncker that “the credibility of the European project is being tested in Catalonia...and it is failing.”²⁰

The purpose of this review was to give a preliminary outline to the scope of this research, trying to offer an outlook on the opinions and considerations proposed by various authors on the Catalan issue vis-à-vis the project of European integration and devolution of powers towards sub-national entities. Two major trends arise within the context: the first one defended by some authors is represented by the democratic principle that resides in the popular will of a people to be recognized as a distinct element from its parent state. Instead, the other trend is maintained by the principles contained in the European Union and the state’s constitution, for which the same democratic ideal is upheld. While it is true that the European Union has deliberated its considerations regarding the matter, the ambiguity and contradiction that often permeates the norms regarding the subject have yet to be investigated and clarified, as silence is no more considerable as an option given the escalation of claims deriving from these stateless nations. Without doubts, the situation in which the EU finds itself is harsh given the simultaneous event of Brexit. However, there is no reason for it not to get involved into a debate which nevertheless poses at risk the very existence of the Union and it should assumingly try to mediate solutions and agreements between the Spanish state and the Catalan autonomous government as soon as possible.

²⁰ Reported by Martin Banks for theparliamentmagazine.eu. *Jordi Solé slams EU Commission over handling of Catalonia crisis*, 9/9/2017. [online] Accessed: 17/03/2019.

2. Legal Constraints Within the Treaty of the European Union

The first element to set in place the discussion regards the legal framework and the principles established by Europe in its Treaty on the European Union (TEU²¹), given that it appears to uphold various contradictory norms which basically render the Treaty ambiguous when it comes to issues such as sub-state nationalism and specifically about Catalonia's situation. The following must not be seen as a critique towards The Treaties²², but rather to how the European institutions have dealt with the matter, or better how they did not deal with it in a sufficient manner. The opening of the TEU's preamble focuses on how the Union upholds "the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law."²³ There is no hierarchy between these principles, even though the aftermath of the actions committed on the 1st of October 2017 in Barcelona²⁴ have shown some clear tendency to support the rule of law's side. And this is confirmed by the intervention of the First Vice-President of the European Commission Frans Timmermans in a debate held in the EU Parliament regarding constitution, rule of law and fundamental rights in Spain concerning the latter events. In his words, Europe is set "on the basis of three principles: democracy, respect for the rule of law, and human rights. The three need each other. They cannot exclude each other. You cannot use one against the other. If you remove one pillar, then the others will fall too."²⁵ However, he immediately reminds that respect for the rule of law is not optional, but it is fundamental. However, this should also be true regarding the other pillars, given that the proportionate use of force which Vice-President Timmermans alluded to in the debate referring to the actions of the Spanish police was indeed not so proportionate.

Notwithstanding this violent parenthesis for which the Spanish state and the EU's response will be remembered for some time, within the Catalan cause, the answers and remedies provided by the latter have been strictly limited and funded on the principles

²¹ For a matter of convenience, the wording TEU will be used to indicate the amendments brought by the Treaty of Lisbon, signed on Dec. 13, 2007 and entered into force Dec. 1, 2009. No misunderstanding shall be made with the TEU as per the Treaty of Maastricht, 1992. From now on: TEU.

²² The Treaties is referred to the dual and complementary presence of the Treaty on the European Union and of the Treaty on the Functioning of the European Union.

²³ TEU, Preamble.

²⁴ Many videos have been widespread across the internet showing how police forces in Barcelona brutally hit and clashed upon peaceful citizens, included women and old people, to suspend the referendum declared illegal by the Spanish government.

²⁵ Vice-President of the European Commission Frans Timmermans in a debate held in the EU Parliament regarding constitution, rule of law and fundamental rights in Spain in light of the events in Catalonia, 4/10/2017, 2017/2888 (RSP), Strasbourg.

and articles of the TEU, without granting any space for development in the independentist movement's claims. The arguments for which it is said that the "EU has tied its own hands"²⁶ with respect to Catalonia's will to become independent are mainly covered by several articles of the TEU which will serve as the first step in the analysis demonstrating how the Spanish region is being restrained by various legal boundaries at the EU level. This will lead us to consider that any possibility of assistance within the institutions of the EU and its Member States is almost excluded. The first article examined will refer to what Mr Timmermans reiterated in the Parliamentary debate on Catalonia, specifically the importance of the rule of law in the EU, and some contradictions that arise when observing the remaining principles stated in article 1a of the TEU.

2.1 Art. 1a TEU: The Hierarchy of the Rule of Law?

As previously mentioned, the EU's response regarding Catalonia's future has consisted in a harsh redirection of the problem to the parent Spanish Member State, which apparently is not ready to give a chance for debate to its prosperous industrial region. Why has the EU responded in such a close-minded manner to a situation which directly involves both the future of an entire region of a MS and the existence of the Union itself? Is it correct to identify the issue as a purely internal situation which Spain must deal with alone? In its justifications, the Union has always highlighted the fundamental role that the rule of law represents for the European Community. It has done so also back in 2014, when the European Commission delivered a communication to Parliament and Council entitled "A new EU framework to strengthen the rule of law."²⁷ The communication held that respect for the rule of law is closely linked to the respect for democracy and fundamental rights, and thus there can be no safeguard of the latter without guaranteeing the rule of law first. Interestingly enough, this was published previously to the 9N²⁸ manifestation which counted more than two million citizens at the ballots of an informal referendum which consequently

²⁶ Nougayrède, Natalie for TheGuardian.com. *The EU has tied its own hands. It cannot intervene in Catalonia*, 3/10/2017. [online] Accessed: 19/03/2019.

²⁷ See *supra* note 11.

²⁸ The 9N manifestation was held on the 9th November 2014 in Barcelona, where an informal vote for Catalonia's independence was held. BBC news has reported how more than 80% of the eligible voters who participated to the ballots on the 9N were in favor of secession from Spain. (BBC News, *Catalonia vote: 80% back independence – officials*, 10/09/2014. [online] Accessed: 18/04/2019).

went against the Spanish rule of law. The Catalan unilateral process(es)²⁹, which did not respect the framework of the rule of law provided by the EU and the MS would thus violate article 1a of the TEU which reads:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”³⁰

Catalans who held the referendums in 2014 and 2017 would have thus opposed one of the foundational values of the Union when bypassing article 149, 1.32³¹ of the Spanish constitution which establishes the exclusive competence of the state to authorize popular consultations through the holding of referendums. Even though secession and independence requests in Catalonia are driven by a democratic principle, Spain has never contemplated the option of leaving the EU or granting the permission to one of its local autonomies to unilaterally claim separation. In fact, a first contradiction arises within the respect of the rule of law and the democratic will of citizens. Technically, “the argument holds that decisions on secession result from democratic processes, and hence that any act of the EU, its member states or its institutions contrary or aloof to the purported effects of such a decision would be a violation of the EU’s own values.”³² In light of these considerations and of article 1a’s wording, the EU should guarantee the respect of the democratic decisions of its citizens, which may include the possibility of secession through processes such as plebiscitary referendums. However, Catalans who seek independence seem almost to be captured into a legal trap: the democratic process they would wish to advance is limited by the permission of the Spanish government and, given that the latter has always denied this freedom, referendums have automatically lost their democratic character. This has gradually shifted the hopes for a possible separation into a stalemate between Catalonia and the Spanish state. In circumstances like these, the EU should thus be obliged by its own legal measures to foresee the application of the rule of law exerted by the state, as the latter governs the ultimate decision-making in the democratic channels of expression.

²⁹ Both referendums held in Catalonia, respectively in 2014 and 2017, have violated the rule of law by not respecting the Spanish Constitution.

³⁰ TEU, article 1a (ex-article 2, Treaty of Maastricht).

³¹ “The State shall have exclusive competence over the following matters: authorization of popular consultations through the holding of referendums.” (Spanish Constitution, 1978, *article 149, 1.32*).

³² Closa, 2017, at 520.

The condition that has just been described has brought two authors to develop a hypothesis on the role of the EU regarding the contradictory relation that rule of law and democracy assume within the Catalan discourse. The reasoning that Alfonso González Bondía and Joan Ridaó Martín take over in “The European Union and the eventual establishment of new States emerging from the secession of member States”³³ consists in the appeal to the European Commission power to arbitrate the issue between Catalonia and its parent state. Respectively, according to the authors, the European Commission, which has by now been reluctant or unable to take any action, should arbitrate on the one hand between the Spanish state violating the citizens fundamental rights by not conceding them the possibility of a plebiscitary referendum, and on the other with the citizens breaching the MS’s rule of law³⁴. Decisively a twisted situation for the EU to find itself in.

This is especially true since Spain is totally unwilling to cooperate and set a debate with Catalonia, and this has been repeatedly demonstrated by the choice of recurring to what has been defined as Spain’s “constitutional nuclear button”, or else article 155³⁵ of its constitution, and by the trial instituted against the Catalan *presos polítics*³⁶. The triggering of article 155 for the first time ever in the Spanish constitutional history has definitely marked a point of rupture between the central government and Catalonia, which once again has been deprived of its autonomy through the use of the rule of law. While granting the autonomy to 17 Communities, the Spanish Constitution clearly provides the legal remedy to halt them when they pose a threat for the State’s integrity. Professor Omar Guillermo Encarnación³⁷ has actually defined the 1978 constitution as encapsulating “an exquisitely ambiguous compromise, that recognizes, on the one hand the historic and indissoluble unity of the Spanish nation, while on the other the existence of multiple Spanish nationalities.”³⁸ Having considered the situation in which Catalonia finds itself in, the EU’s response is, in reality, an expectable one. “In the twenty-first century, the nation-state remains the primary actor in international

³³Ridaó Martín, Joan, and González Bondía, Alfonso, 2014. *La Unión Europea ante la eventual creación de nuevos Estados surgidos de la secesión de Estados miembros*. (The European Union and the eventual establishment of new States emerging from the secession of member States). *Revista de Derecho de la Unión Europea* 27/28, pp. 363-389.

³⁴ *Ibid.*

³⁵Article 155 of the Spanish constitution is another remedy for the central government to control its 17 Autonomous Communities and temporarily rule them if the latter do “not fulfil the obligations imposed upon them by the Constitution or other laws, or act in a way seriously prejudicing the general interests of Spain” (Spanish Constitution, 1978, Art. 155, 1).

³⁶ The unlawfulness of the Catalan referendums has brought to the arrest of several politicians belonging to the secessionist movement, consequently giving birth to an intense campaign to promote the freedom for those political prisoners acclaiming the slogan ‘*Llibertat presos polítics*’.

³⁷ Encarnación, Omar Guillermo, 2004. *Democracy and Federalism in Spain*. *Mediterranean Quarterly*, vol. 15 (1), pp. 58-74. Duke University Press, Durham, North Carolina.

³⁸ *Ibid.* at 65.

relations”³⁹, thus the EU is obliged to respect the functions that its Member States can perform before the Union’s intervention, given that unless there are concerns about human rights abuses, national minority issues are still considered as a state’s internal issue. However, even though it would be interesting to see how the Commission might mediate the cause between the parties, there are other issues which limit the effective action of the EU and which also refer to the previous statement that states still own the primacy over the panorama of international relations. In this situation, the EU cannot permit a possible domino effect which could cause the dismemberment of one of its components and place at risk the very existence of the institution. Although the Union has been constantly receiving pressures by the demands of separation from Catalonia and like-minded regions, it can manage to slow this process down through article 3a.2 and 3a.3 of the Lisbon Treaty.

2.2 Territorial Integrity and Sincere Cooperation

Events as the ones witnessed by the advent of Brexit and cases that involve sub-nationalist claims are shaking the EU’s grounds. The prospect of “creating an ever-closer union among the peoples of Europe”⁴⁰ enshrined since Maastricht seems now to be hindered at the same time by unprecedented issues which could redefine the whole institutional and geographical arrangement of the Union. However, while regarding Brexit the decision includes only Europe and the state willing to separate, and can thus not be contested, in Catalonia’s case the framework of the EU creates once again restraints which impede any further development of the sub-national claim. These barriers are created by the effects of article 3a.2 and subsequently 3a.3 of the TEU, which regard the respect for territorial integrity of member states by the Union and include the principle of mutual sincere cooperation between MS as to grant the effectiveness of their tasks. In particular, article 3a.2 states:

“The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions,

³⁹Guibernau, 2013, at 369.

⁴⁰ European Union, 1992. Treaty on European Union (Consolidated Version), Treaty of Maastricht, *Preamble*.

including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security...⁴¹

From this wording it can be derived that the EU recognizes the sole competence of MS to decide on their fundamental political and constitutional arrangements, including provisions addressed to local and regional autonomy. Catalonia wants to separate from the existing Spanish nation-state without its consent, and thus represents a threat for the unity and integrity of the MS. This is another reason for which the Commission had to declare the case as a purely internal situation, given that any type of action would have violated one of the state's essential functions.

Probably, the assistance coming from the supranational level would have actually fostered further complications not only for Spain, which has dealt with various types and degrees of nationalism⁴² throughout history, but also for the entire European Union itself which is now facing the peril of being discredited as a valuable organisation. Any possible help to the Catalan cause could mean establishing precedents for other stateless nations to advance their demands of independence. Moreover, if the EU did this, its own MS would see their territorial integrity put at risk and would thus recur to the exclusivity of their abovementioned functions. For instance, these functions are also guaranteed by the principle of sincere cooperation as listed in article 3a.3 of the TEU, which reads:

“pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties”⁴³

If viewed in a broader sense, this article may encapsulate the assumption that states still do effectively hold primacy over many issues at the European level and can do so through cooperation between each other. According to this outlook, “the EU can be viewed as a voluntary association of like-minded states with a fundamental interest in maintaining control over its membership.”⁴⁴ This is why, when considering the issue of territorial integrity, some of the EU member states rest on a similar line of reasoning and are reluctant to widen up the European sphere. The fact that there is an expressed principle that activates cooperation to ensure the states' functions means that any

⁴¹ TEU, article 3a.2 (ex-article 4.2, Treaty of Maastricht).

⁴² A distinction must be made between the democratic and civic type of Catalan nationalism and the experiences witnessed within the transitory period to democracy in the Basque context, with the presence of the terrorist group ETA. (See Teresa Whitfield, 2015. United States Institute of Peace special report 384. *The Basque conflict and ETA: The Difficulties of an Ending*. Washington DC).

⁴³ TEU, article 3a.3 (ex-article 4.3, Treaty of Maastricht).

⁴⁴ Connolly, 2013, at 87.

attempt to redesign the borders of Spain consequently to the Catalan process represents an issue for every component of the Union. This is exemplified by the reactions of certain EU members when faced with the independence declaration advanced by Kosovo⁴⁵ in 2008. “Five EU member states faced with separatist movements of their own – Spain, Cyprus, Romania, Slovakia and Greece – refused to recognize Kosovo as an independent state”⁴⁶, as doing so would have set a precedent for their own dismemberment. Given this statement, Catalonia’s situation would appear similar to the process established by Kosovo.

Although the clauses of withdrawal and renewed accession will be dealt with in the next sub-chapter, this simply exemplifies what a possible appeal to sincere cooperation might look like in case Catalonia managed to obtain secession somehow. It is useful to make considerations of this kind since every member of the union is, whether directly or indirectly involved, obliged to comply with the tasks set by the Treaties’ provisions. Finally, sincere cooperation also signifies including in the secession formula the externalities caused within the Union. In fact, according to Closa, the decision of a territory to become independent externalises some of its consequences on the EU and thus on any of its member states. Specifically, “this amounts to the adjustment in the composition of the Commission, the redistribution of the seats in the European Parliament and votes in the Council, affecting the distribution of powers among the states and coalition of states.”⁴⁷ Therefore, not only one must consider the consequences that the possible rupture between the Spanish state and Catalonia would raise, but it must also view the hypothetical issues that would concern the Union of cooperative states as a whole. Although problems of reconfiguration of the EU’s institutions could be solved and certainly this could not be used as an excuse not to engage in these kind of situations, the true complexity rests in the challenge to territorial integrity of states. It is precisely because the Catalan process could serve as an incipit for any other secessionist movement’s claims that states, other than – and included – the parent one, are reluctant to provide any assistance. It is mostly unthinkable that MS with similar issues would ever grant recognition to sub-state nationalism claims, given that the derived chain reaction would quickly escalate to their own dismemberment and consequently determine a further EU crisis. In attempting to tackle this possibility, the Treaty on the European Union sets out further

⁴⁵Kosovo’s demand is now set under the Stabilization and Association Agreement with the EU, entered into force in April 2016. (For further information *see* European Commission, *Enlargement, Candidate countries and potential countries*. [online] Accessed: 18/05/2019).

⁴⁶ *Ibid.* note 44.

⁴⁷ Closa, 2016, at 244.

provisions which truly hamper any desire of seceding from a current member state including, once again, the primary position of states within the organization. These provisions are set forth in articles 49 and 49A of the TEU.

2.3 Hypotheses on Withdrawal and (re-)Accession

The last argument to fuel the debate regarding why the EU is prevented from action when analysing the Catalan discourse refers to the complexities that a possible withdrawal and subsequent accession request would create. The further section must be seen as purely hypothetical, given that its arguments would only hold valid in the case Catalonia succeeded in its separation from Spain. The choice to include this scenario derives from the fact that “almost all political forces favouring secession from a current member state, be they in Scotland, Catalonia or other territories, do so on the assumption that gaining independence goes hand in hand with retaining or acquiring EU membership.”⁴⁸ However, this belief has been thoroughly disproved by the EU institutions, mainly the Commission, who appealed to the so called “Prodi Doctrine”⁴⁹ when confronted with the Catalan membership issue. This refers to the eventual separation of a region from a current EU member state. As ex-president of the EU Commission Barroso has precisely highlighted Prodi’s words in a letter of reply to Lord Tugendhat regarding Scotland’s separation from the UK: “the EU is founded on the Treaties which apply only to the Member States who have agreed and ratified them. If part of the territory of a Member State would cease to be part of that state because it was to become a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU and the Treaties would no longer apply on its territory.”⁵⁰ This is basically motivated by the fact that the willingness to cooperate that was assured by the Treaties before independence is no longer granted by the separated ‘new-born’ state and must thus be re-affirmed. Clearly enough, this does not imply an automatic process.

⁴⁸ *Ibid.* at 243.

⁴⁹ The Prodi Doctrine draws back to the answer to the question “could the Commission confirm whether a newly independent region would have to leave the EU and then apply for accession afresh?” that Mr. Prodi gave when he was head of the European Commission. Official Journal of the European Union, C84E/422, 1/03/2004. [online].

⁵⁰ Barroso, José Manuel, *Letter to Lord Tugendhat*, SC/12-13/EA68, 10/12/2012, Brussels. [online].

Therefore, although the Treaties are silent regarding the issue and its modalities, in case any of the European regions aspiring to independence from their MS managed to reach such goal, they would correspondingly have to deal with another equal – if not more intricate– situation. In this specific case, Catalonia would thus have to go through the provisions listed in articles 49 and 49A of the TEU, which correspond to the clauses of accession and withdrawal from the Union. To uphold the narrative, it is preferable to begin with the analysis of withdrawal. After stating that any MS who decides to withdraw from the Union may do so according to its constitutional requirements, – and this fits the hypothetical filter applied – the TEU reads:

“A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union...”⁵¹

There stands an actual ambiguity when applying this clause to the Catalan situation. Specifically, this refers to the fact that if Catalonia managed to secede from Spain, it would automatically be excluded from the EU. Therefore, the latter provision would not be fulfilled in that no notification would be deemed necessary to complete the formula. Although silent regarding this contingency, surely the Union would still have to negotiate several terms of withdrawal with the state, particularly regarding ‘the framework for its future relationship’ with the latter. However, notwithstanding the procedural times that this step may take, the true issue at stake remains contained in the following paragraph of article 49A⁵², which regulates the termination of the Treaties’ validity since the withdrawal agreement’s entry into force. The latter event entails harsh consequences, especially for nations which’s final aim is to re-access the Union. As a matter of fact, the people of Catalonia possess EU citizenship, which establishes their rights through the European territories. Since all of those derived rights are contained and guaranteed within the Treaties, Catalonia’s people, like any other experimenting the same path, would cease to be protected by them until a possible re-admission treaty is accepted (Connolly, 2013⁵³; Closa, 2017⁵⁴). Thus, provisions such as the free movement of persons and goods, the protection granted by

⁵¹ TEU, article 49A.2 (ex-article 50.1; 50.2, Treaty of Maastricht).

⁵²“The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.” (Treaty of Lisbon, art. 49A.3).

⁵³Connolly, 2013, at 91.

⁵⁴Closa, 2016, at 524.

the vast array of EU rights and, moreover, the possibility of access to the European markets would lose their validity upon withdrawal from the Union.

This leads us to the consideration of how European law can actually transform secession desires into long and painful processes. Since their hypothetical departure from the parent state and the automatic exclusion from the Union deriving by it, the fate of these newly created states would lastly depend on the process initialised throughout article 49 TEU⁵⁵. The function of the latter, even though containing one of the integrative elements of the EU, or else the possibility of its enlargement and empowerment, represents a direct threat to separatist ambitions. The first part of the article reads:

“Any European State which respects the values referred to in Article 1a and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.”⁵⁶

First of all, – and again, given the hypothesis of a region managing to secede from its MS through a legal process – the new state must, as a premise, comply and promote the values referred to by article 1a TEU. Given that the state would be created by the separation of a former EU territory, one could assume that it already upholds those principles as it did previously to its division. However, this is not the case: since the separated territory would be considered as a third-party, all of the provisions listed by the Union must be reasserted for the state to become a possible candidate on the list. Successively, in case of positive judgement concerning the fulfillment of values, the state’s demand would be processed by European institutions to decide upon validity. In this phase, the possibility of a first veto power is admitted by the condition of unanimity set on the Council’s decision to consider the state’s eligibility to the Union. Moreover, this is supplemented by another condition of unanimity worded in the second part of article 49 as follows:

“the conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the

⁵⁵ In fact, the last provision worded in article 49A refers to the fact that “if a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49” (Treaty of Lisbon, art. 49A.5).

⁵⁶ European Union, 2007. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, article 49.

Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.”⁵⁷

As it can be understood by this provision, the Union’s MS must all ratify the agreement concerning the accession of states. This provides another clause of conditionality to the process, which also permits the EU to regulate its self-preservation.⁵⁸ As mentioned in the previous section, this provides member states with an additional informal veto power that can be used as a deterrent for secessionist claims. Therefore, even though a possible agreement may have been stipulated between the MS and the newly created state following secession – which is rather improbable if it was to consider Spain’s reaction to the Catalan process – the veto power conferred by the Treaty would allow MS to contest the possible acceptance of such state’s entry. Thus, whether the parent state is in favor or goes against the inclusion of a new state in the EU hardly matters, as any other MS can halt the process. This leads back to the implications regarding Kosovo’s case and its hold on accession. Interestingly, during an interview with El País in 2018, Kosovan prime minister Ramush Hardinaj stressed that if Kosovo entered the EU, it would never recognize the independence and legitimacy of Catalonia, as the process undergone by the two nations has nothing in common.⁵⁹ Therefore, the Catalan desire to enter the Union as an independent state could truly be transformed into a dead end by any of the MS of the Union, as avoiding any prospect of dismemberment must be a key priority for them.

The laws governing membership to the European Union are thus definitely in line with the assumption that if states themselves are the ones who created the Treaties, it would be against any of their interests to deal with such clauses that would call into question their very existence. This may explain why they do not even imply the eventuality of these situations⁶⁰, also considering that internal separations stand completely at opposite sides to the ambition of creating an “ever closer union among the peoples of Europe.”⁶¹ The relevance of articles 49 and 49A and the hypotheses that derive from them concerning Catalonia’s case, together with the implications discussed in the previous sections, clearly show that the region is placed in an

⁵⁷*Ibid.*

⁵⁸*See supra* note 9. Closa states that “given that simultaneous secession and accession will add also a transformative effect, linking secession to automatic accession would create an unjustified bypass of Eu instruments serving its own goals” (p. 524).

⁵⁹ Reported by María Antonia Sánchez-Vallejo for El País, “*No hay ninguna analogía posible entre Kosovo y Cataluña, establecerla es un sinsentido*”, (There’s no possible comparison between Kosovo and Catalonia and to draw one makes no sense). 30/04/2018. [online] Accessed: 19/04/2019.

⁶⁰Closa, 2017, at 526.

⁶¹ European Union, 1992. Treaty on European Union (Consolidated Version), Treaty of Maastricht, *Preamble*.

unfavorable position to receive help from European institutions. Then, why is the hope of secession still so vivid within the Catalan people? Probably, although the answers to this question may be numerous and can touch different topics, there are some that can be traced back to the EU's regulations concerning regional powers.

3. In-between Separation and Integration: The Enhancement of Regional Capacities Within the EU

As it has previously been discussed, the provisions enshrined within the TEU seem to strongly oppose the Catalan – and any other sub-national entity’s – cause aiming at independence from a current Member State. The interests upheld by these regional factions have been at the same time promoted and limited through a long-lasting process that was initiated by the MS and the EU themselves in what was configured as the enhancement of regional power and representation within the European institutions. As stated by Eichert, “European integration has inadvertently produced a novel opportunity for these ethno-regionalist political parties to strengthen their causes”⁶², as the costs of independence appear to be much lower when put into relation with the possible benefits arising from being a sovereign state in an integrated Europe. European integration has thus diminished the risks and costs that secession might have entailed in the past decades, spurring sub-national campaigns throughout the continent. This is especially true if one looks at the historical claims deriving from the Spanish Autonomous Communities which, until the recent happenings, had never thought of outright secession from their MS. The process initiated by the EU in conjunction with its member states has therefore revitalized the search for autonomy that has been continuously attributed and subsequently stripped off from those regions with particular characteristics such as Catalonia or Scotland. It is in this specific framework of integration that the nation-state is stretched in opposite directions by the twin forces deriving from a centripetal pull towards the EU’s supra-national institution and from the centrifugal push exercised by regionalist demands.⁶³ Yet the same forces that appeared to be downsizing the role of the nation-state in favour of a multilevel governance within the EU are now quietly disappearing beneath the MS’ will to retain their original power. In order to understand why such regions are constantly demanding independence and greater autonomy in spite of having a legally valid argument to support them, it is useful to comment on the various ways the Union has enlarged the scope of their actions and their importance throughout the development

⁶² Eichert, David, 2016. Separation amidst Integration: The Redefining Influence of the European Union on Secessionist Party Policy. *Journal of International Organisations Studies*, vol. 7 (2), pp. 63-77).

⁶³ Although this has been stated at the dawn of the 21st century, the arguments proposed by the author can be well adapted to the current European panorama as the same characteristics seem to be manifesting in a seemingly fashion. (See Downs, William M., 2002. *Regionalism in the European Union: Key Concepts and Project Overview*. *Journal of European Integration*, vol. 24 (3), pp. 171-177).

and further realisation of what now constitutes the modern Europe. The latter can be traced back to the implementation of provisions concerning regional powers, such as the principle of subsidiarity, which forms one of the pillars of the EU, and which finally bolstered the creation of the Committee of Regions (hereinafter referred to as ‘CoR’ or the ‘Committee’), an advisory body of the institution which should have increased the importance and presence of regional action within the European policy-making and which, on the contrary, is now being criticised for its subtle outcome and scope.

To capture the meaning of modern nationalist claims within the framework of the integration attempt provided by the EU, the objects of analysis will thus shift the focus on the introduction of the principle of subsidiarity and its interesting relation with secession, together with the creation of the CoR, as both have constantly given the regions an illusory belief of power gains which could have possibly developed into greater autonomy. Successively, the attention will be posed onto the possibility of an alternative channel of representation within the European institutions, that is the European Free Alliance. The latter sets itself as a group within the European Parliament that gives voice to the several regions affected by their position in this kind of limbo between their parent state and the supra-national format of the Union.

3.1 Secession as a Form of Subsidiarity?

The attempt of redistributing power among its components to maximise efficacy has always been one of the prerogatives of the European Union, as this has been consistent with the idea of taking decisions in the closest and most transparent way to citizens. The whole process of devolution of power was introduced within the European framework in the 1992 Treaty of Maastricht and has since then been subject to various interpretations by the EU. The latter has been identified with the principle of subsidiarity as reformed after Lisbon and is contained in article 3b TEU⁶⁴. According to this provision, which has been actually configured as a founding pillar of the institution, “in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of scale or effects of the proposed action, be better

⁶⁴ Article 3b of the TEU does not only focus on the principle of subsidiarity, but it also provides the framework in which it operates, or else accordingly to the principle of proportionality (*See* Treaty of Lisbon, art. 3b.1) and the principle of conferral (*See* Treaty of Lisbon, art. 3b.2).

achieved at Union level.”⁶⁵ Therefore, deriving from this assumption, it is correct to state that if any action or function of the Union could be sufficiently or better performed by the lowest level of governance, it should be dealt by it in that manner. This is to say that actions should be taken at the closest level possible to the citizens decisional process. Hence, this provides regional and local actors with an increasing set of instruments aimed at governance.

Subsidiarity is thus a principle “concerned with finding the right level for decision-making and public authority”⁶⁶ and has been used – in the specific context of the EU – to distribute operational power between the Union, its MS and regions. Taking on a peculiar view offered by Timothy William Waters in “A World Elsewhere: Secession, Subsidiarity, and Self-Determination as European Values”⁶⁷, a parallelism is made between the concept of secession and that of subsidiarity according to which independence could be seen as a manifestation of the latter. In the author’s view, if secession could be assumed as a form of subsidiarity and it being one of the central principles to the Union’s governance system, it would possibly be consistent with the legal framework of the EU and the values enshrined in it. Although comparing the two concepts might be viewed as a paradox in that secession creates distances rather than unifies decision-making, it is by no means an ambiguous reference. In fact, like subsidiarity functions to devolve powers among different levels of governance, secession might be viewed as a redistribution of power within the actors of the EU. Adapting this formulation to the process undergone by Catalonia would thus entail a redefinition of competences at the Union’s level rather than a complete rupture within it and could thus entail many of the characteristics common to the bespoke project of integration which is being fostered. The hypothesis which could be carried out may reflect also a broader significance within the relation of power occurring between Member States and within the European institutions. In fact, as highlighted by Waters, “what secession does change is the status of the sub-state region in relation to the other units and to the regional body”⁶⁸, while the rights and obligations deriving from the Treaties would be identical to those expected by states. Applying a broad perspective, Catalonia could be a perfect example of an extensive application of subsidiarity, as its desires to reach separation and live autonomously are demarked by several limitations

⁶⁵ TEU, article 3b.3 (ex-article 5.3, Treaty of Maastricht).

⁶⁶ See *infra* note 67, at 25.

⁶⁷ Waters, Timothy W., 2016. *A World Elsewhere: Secession, Subsidiarity, and Self-Determination as European Values*. Articles by Maurer Faculty, Indiana University, pp. 11-45.

⁶⁸ *Ibid.* at 27.

to act in a more efficient manner by Spain itself⁶⁹. Therefore, the principle of subsidiarity would require that the decision-making power shifted from the hands of the Spanish state into Catalonia's ones, possibly changing its connotation from a regional entity to an effective state in order for it to administer its future in a more adequate measure. Although it might resound as a hard claim, this is not totally utopian. Indeed, Catalonia has mostly felt itself as an autonomous part of Spain and behaved correspondingly, just as Scotland in the UK or Flanders in Belgium. Without doubt, it has been permitted to do so in the last decades thanks to the compromise⁷⁰ reached by the Statute of Autonomy in 1979 and has been encouraged by the EU's expansive approach regarding the amplification of regional powers that will be discussed in the next section on the CoR.

European integration has also offered “the prospect of weaker state systems of governance, which many secessionist parties view as an opportunity to circumvent allegedly oppressive national systems”⁷¹, trying to affect European power structures rather than the narrower political agendas provided by the nation-state. Metaphorically – and perhaps also ironically – speaking, we could assume that an adult human being, or else Catalonia, once it has received all the directives and instruments to develop its life autonomously, was isolated in its home and decided for by its parents, Spain and the EU. Clearly, both ‘parents’ do not view secession as a possible outcome of subsidiarity but have truly provided Catalonia with a vast array of mechanisms such that its capacities are overflowing the sheer regional meaning and the duties deriving by it. In fact, Catalonia has successfully assimilated a kind of double effect of subsidiarity: the first one deriving by the central government in Madrid; the second one promoted by the EU's initiatives to enhance regional powers⁷². It is specifically in this context that regions increasingly find themselves “competing with each other for investment, technology, and markets, within European and global space.”⁷³ Aiming to

⁶⁹ As pointed out by many authors, one of the main issues consists in the central government's decisions regarding the control of the taxation systems in Catalonia and other regions, eventually eroding their economic potential. One of the results of this process has been defined as vertical fiscal imbalance (*For further information see* Boylan, Brandon M., 2015, *In pursuit of Independence: the political economy of Catalonia's secessionist movement*. Nations and Nationalism, vol. 21 (4), pp. 761-785).

⁷⁰ Encarnación, 2004, at 65.

⁷¹ Waters, 2016. The author defines this new power relation by referring to Dardanelli's ‘systemic shift’. (*For further information see* Dardanelli, Paolo, 2006. *Between Two Unions: Europeanisation and Scottish Devolution*. Manchester University Press, UK).

⁷² This would actually facilitate Catalonia also in a practical manner: given its organization as a small state thanks to the symmetric devolution system – also known as *café para todos* (Guibernau, 2013, at 375) – granted by the 1979 Statute of Autonomy, infrastructures and services have already experienced a considerable degree of autonomy, thus they could be ready to allow for a smooth transition in case the Catalan independence became true.

⁷³ Keating, Michael, 2004. *European Integration and the Nationalities Question*. Politics & Society, vol. 31 (1), pp. 1-21.

satisfy the latter needs might be regarded as unreachable if one thinks of Catalonia's actual status as a region and all the constraints that are applied to it by the Spanish state, especially for what concerns participation at the supra-national level of decision-making. Therefore, there has always been the "tendency of both the EU and regions to try to by-pass the central state, often in the name of subsidiarity."⁷⁴ Looking back at Maastricht, this has been evidently attempted through the creation of the Committee of the Regions, which against the initial prospect of reducing the nation-states' powers and eventually help the regions climb towards integration, has been constantly considered unsatisfying in its premises and has been mostly set aside rather than included in the European political agenda.

3.2 The Committee of the Regions

In the last two decades, considerable attention has been placed on the creation and development of the Committee of the Regions, both in a positive and in a negative trend. This has been so especially regarding literature, as on one side rested the promoters of regional powers and authority, while on the other stood firmly the defenders of the unitary state primacy⁷⁵ over decision-making which contested the changes brought by the EU in the 1990s as those would have undermined the centralized power of the MS. In fact, the establishment of the CoR "represents a significant theoretical shift of power within the EU because it gives subnational authorities within member states a direct link to EU decision making and policy formulation"⁷⁶; or at least it should have been so. We have intended to include this section regarding the CoR specifically because, according to the initial prospects, it should have materialized as the institution within the EU that could have possibly lowered the demands of Catalonia and alike regional actors soliciting independence. Therefore, it is useful to explore how such Committee was constituted and developed,

⁷⁴ Downs, 2002, at 172.

⁷⁵ As stated by Tony Cole, during the creation of the CoR, "the EU Commission and sub-national authorities faced a substantial obstacle in the Member States, who were predictably concerned that giving subnational authorities a direct voice in EU affairs would undercut their own power." (Cole, Tony, 2005. *The Committee of the Regions and Subnational Representation to the European Union*. Maastricht Journal of European and Comparative Law, Vol. 12 (49), p. 54, Maastricht, Netherlands).

⁷⁶ Giordano, Benito and Roller, Elsa, 2002. *Catalonia and the 'Idea of Europe'. Competing Strategies and Discourses within Catalan Party Politics*. European Urban and Regional Studies, vol. 9 (2), p. 100. University of Manchester, UK.

so as to derive explanations concerning its limited – and rather disappointing – utilization and further assess its worthless scope within Catalonia’s and likewise cases.

A first parallelism can be drawn with what has previously been stated concerning the continued primacy of MS when it comes to the creation of institutions⁷⁷, or else, that “given the political reality that Member State approval was necessary for the CoR’s creation it would be surprising if the CoR was not in some way significantly constrained by Member State interests.”⁷⁸ In fact, although clearly stated that the Committee works as an independent body⁷⁹, its membership procedures are listed in the TFEU as follows: “the Council shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State.”⁸⁰ Then, it is utterly evident that the members of the CoR can be chosen by the MS according to its preferences in terms of representation. To put it in another way, given the limited number of participants within the Committee⁸¹, not all the sub-national components can be included and thus states can foster their endorsement on those regions that show a fair degree of support towards them. This is by no chance a subtle requirement, given that regions within the European MS vary greatly, both in terms of their essential characteristics and, consequently, of their ideological affinity to the parent state. Accordingly, the participation of sub-national authorities in the EU decision-making has been varied mainly because their involvement “has largely depended upon the internal constitutional arrangements of the Member States and the competences given to regions through internal public law.”⁸² Departing from this first outlook on the limitations that bind the CoR, we can focus on the second and actually most immediate feature that prevents an effective action from the institution, that is its restrained – and almost absent – capacity in decision-making. This issue derives from the fact that the Committee of the Regions works exclusively as an advisory body. This is specified in article 9 of the Treaty of Lisbon, which reads:

⁷⁷ See *supra* paragraph 2.3, at note 60.

⁷⁸ Cole, 2005, at 59. Cole adds that at the time, the CoR could have been viewed as “merely an alternative forum for the expression of Member State views, even if from a distinctively subnational focus” (*Ibid.*).

⁷⁹ “The members of the Economic and Social Committee and of the Committee of the Regions shall not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the Union's general interest.” (Treaty on the Functioning of the European Union, article 256a.4).

⁸⁰ TEU, article 305 (3).

⁸¹ See *Ibid.* (1). This specifically amounts to 350.

⁸² Cygan, Adam, 2014. *The Regions within Multi-level Governance: Enhanced Opportunities for Increased Accountability?* Maastricht Journal of European and Comparative Law, vol. 21 (2), p. 265, Maastricht, Netherlands).

“The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.”⁸³

Therefore, here stands another criticism of the CoR which, although it was created to permit regional ministers to co-attend the European Council’s meetings with its member states delegations, thus enlarging transparency and the citizen participation process, has always been attributed a secondary role within the EU institutions. The non-binding character of the consultations delivered by it thus view the CoR as a form of auxiliary body, which nevertheless leaves it open for the MS and the main EU institutions to decide on its utility on certain policy areas.

The entry in force of the Lisbon Treaty in 2009 has “provided notable, though modest, expansions of formal regional power”⁸⁴ in that the Commission, Council and Parliament are now required to consult the CoR on issues regarding local or regional government. Unfortunately, however, this does not exclude the purely advisory function exhibited by the Committee, thus still considering its consultations dependent on the will of those institutions to listen⁸⁵. Notwithstanding this minimal change, the Treaty of Lisbon has contributed with another amendment to the functions of the CoR, this time actually opening up an interesting opportunity for it to demonstrate its powers. This amounts to the possibility of the Committee to challenge before the European Court of Justice EU norms which fail to respect the principle of subsidiarity, thus permitting an ex-post review of legislation. Although limited by the scope and field of subsidiarity, this entails by no means a subtle denotation, as it grants the Committee a particular connotation as guardian of that principle. The latter is specifically stated in article 8 of Protocol n. 2 on the application of the principles of subsidiarity and proportionality, which states that “the Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act”, and that “the Committee of the Regions may (also) bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.”⁸⁶ Here, we can

⁸³ TEU, article 9.4. This exact statement is repeated in the TFEU in article 236a, included in the section of the Union’s Advisory Bodies.

⁸⁴ Connolly, 2013, at 80.

⁸⁵ In a research study developed by Hönnige & Panke it is actually shown how a small percentage of Members of the European Parliament are updated and aware of the consultations delivered by the CoR, therefore diminishing its scope and the *effet utile* of the body for what concerns the Union’s values. (*For further information see Hönnige, Cristoph and Panke, Diana, 2016. Is anybody listening? The Committee of the Regions and the European Economic and Social Committee and their quest for awareness. Journal of European Public Policy, vol. 23 (4), pp. 624-642).*

⁸⁶ TEU, Protocol n.2 on the application of the principles of subsidiarity and proportionality, article 8.

observe once again how the Union has taken precautions in the enlargement of the CoR's powers, limiting it to challenge acts predetermined in the TFEU and can allow for the annulment of such acts on the basis of a simple majority vote of its participants⁸⁷. Regarding this concern Cygan expresses his disbelief on the practical use of the said function, stating that “politically, the CoR is caught between a rock and hard place with regard to subsidiarity monitoring because it will not want to be perceived as obstructive to the integrationist objectives it generally shares with other institutions...”⁸⁸ and it is thus unlikely to be used extensively.

This said, one can conclude that although a minimal appreciation of the CoR in terms of authority has been provided after Lisbon, its functions and participation in the EU legislative process are still mostly limited and dependent on the MS's arrangements. Unfortunately, the Spanish government, unlike the British one with regards to Scotland for example, has always demonstrated itself reluctant to allow Catalonia's participation in the EU's formal processes⁸⁹, thereby impeding the correct functioning of the region within the Committee. Hence, if the Committee's establishment had any chance of loosening sub-national demands, this can be set aside and one can reassert the Eurosceptic arguments of regional blindness and democratic deficit⁹⁰ for which the EU has been repeatedly criticised. This has greatly discouraged regions such as Catalonia, who saw in the CoR a last glimmer of hope in advancing their independentism issues and are thus increasingly prone to participate in alternative channels of representation that might eventually provide some positive achievements in the field of autonomy within the European Union.

3.3 Alternative Channels for Regional Representation

As it has been stressed throughout the previous sections, in addition to identity and economic issues, what is fuelling the claims of independentism for stateless nations such as Catalonia is the limited and rather insufficient level of representation

⁸⁷ As speculated by Cygan, the possibility of obtaining such consensus can be undermined by several factors such as the actions of strong regions like the German *Länder* (Cygan, 2014, at 278).

⁸⁸ *Ibid.* at 279.

⁸⁹ Connolly, 2013, at 81. For further information on the relationship between Spain and Catalonia see Bel, Germá, 2015. *Disdain, distrust and dissolution: the surge of support for independence in Catalonia*. Sussex Academic Press, UK.

⁹⁰ To eventually dismiss these beliefs, several authors have suggested that a possible solution would be – even though hardly feasible due to the regions' variety – elevating the CoR into a fourth branch of the Union's formal institutions, thus acquiring the same degree of importance as the Council, Commission and Parliament.

which is granted within the European institutions. While the project of regional integration posited by the Union had a prominent place within securing its objectives, so as to effectively achieve prosperity, peace and security⁹¹, the latter process has brought disappointment to the many enthusiasts who sought the possibility of creating a ‘Europe of the Regions’, unveiling itself instead as an incoherent⁹² and rather misused route. Therefore, given the limited capabilities of sub-national units within such European framework, the latter have been constantly searching for new and alternative methods in order to reach the EU’s institutional and legislative decision-making level. Concerning this, the European Free Alliance has always demonstrated itself as a prominent actor in advancing regional interests and highlighting their importance in the current political and social panorama. The latter is defined as an umbrella organization and a European political party recognized since 2004 “that gathers 46 nationalist, regionalist and autonomist parties throughout the European Union, representing stateless nations, emerging new States, regions and traditional minorities in Europe.”⁹³ Considering the CoR as a failure in representative – and not only – means, as it has been unable to speak as a unique voice in the EU, the option of a political group precisely composed by those abovementioned units seems to be a valid way of advancing claims and policy interests to the Union.

In its presidents’ words, the EFA is “the voice for those peoples that are struggling with central governments to secure recognition of their rights,” the most important of which “is the right to decide (their) own political destiny – the right of self-determination.”⁹⁴ Interestingly, this is the exact way in which Guibernau presents the theme of emancipatory nationalism associating it with the Catalan type of nationalism, which we have personally embraced when examining the topic. In advancing this issue, it is specified how this consists in a democratic type of nationalism belonging to stateless nations which do not feel represented by their own states, as they claim to be both culturally and politically detached from it⁹⁵. Taking into consideration this statement, it is worth to note how this typology of nationalism emerges and develops thanks to the very existence of the democratic framework

⁹¹ See European Commission, International Cooperation and Development, *Regional Integration*. [online] Accessed: 20/05/2019.

⁹²Cygan, 2014, at 280. Cygan justifies this by stating that although the Lisbon Treaty managed to acknowledge the criticism of regional blindness, the governance of the latter has remained on the periphery of the constitutional and institutional architecture of the EU.

⁹³European Free Alliance. *Who we are*. [online] Accessed: 20/05/2019.

⁹⁴European Free Alliance. *2019 Manifesto of European Elections*. Introduction by EFA President Lorena Lopez De Lacalle. [online] Accessed: 21/05/2019.

⁹⁵For further information on how the author views the topic see Guibernau, Montserrat, 2007. *The Identity of Nations*. Cambridge Polity Press, UK.

created by the European Union and furthermore, represents it in a more inclusive insight by accepting the principle of consent and in that it “defends the nation’s right to decide upon its political future by democratic means and it includes the right to secession.”⁹⁶ In fact, the argument that actually supports these stateless nations within this framework is their characteristic of being mostly pro-European and thus their will of upholding the Union’s values throughout their actions and claims. This has also been stated by Roccu Garoby, Corsican⁹⁷ politician from *Régions et Peuples Solidaires* (Regional alliance in France) and member of the EFA/Greens⁹⁸ group, who highlighted that stateless nations and minorities very often assume a pro-European nature, as for them, the EU is seen as a means to protect themselves⁹⁹. He also pointed out that the “European Commission needs to be a partner in that” and it “cannot stand behind the European Council, saying that the issue of independence or autonomy is an internal matter¹⁰⁰ of the Member State.”¹⁰¹ Therefore, the EFA and its members, which now amount to 47 political parties around Europe, are constantly advocating for the reinforcement of European integration through the recognition of this type of nationalism which they call ‘progressive’, and which is now spreading throughout the continent.

As the State does not seem to suffice anymore in the absorption of increasingly globalised issues, the EU appears to be the right level to address them together with the regions’ capacity of representing more restricted problematics within the local dimension. Hence, the aims and objectives proposed by the EFA group truly do embody the Catalan cause, and any other nationalist, autonomist or independentist one. Just to mention some, the group advocates for the “promotion of the right of self-determination and support for the aspirations which the EFA members have for their countries, including independence, greater autonomy and linguistic/cultural recognition”¹⁰² and furthermore, they claim the will to establish “European unity in diversity”¹⁰³ by creating a Union of free peoples based on the principle of subsidiarity

⁹⁶Guibernau, 2013, at 372.

⁹⁷ Corsica is fomented by the same independentist desire as Catalonia. However, the difference with the Spanish region rests in the fact that Corsica has by now been guided for three years by the nationalist majority, comprising two thirds autonomists and one third secessionists.

⁹⁸ The Greens are the European political party which entered as a coalition with EFA in the Parliament since 1999. (*For further information see The Greens/EFA: About the Group.* [online] Accessed: 22/05/2019.

⁹⁹ Green European Journal, 2016. *Perfect Complements: Is Regionalism the Way Forward for Europe?* Interview with Nicola McEwen and Roccu Garoby. Green European Journal, vol. 13 (Tremors in Europe: Mapping the Fault lines), pp. 86-92.

¹⁰⁰ European Commission, 2017. *Statement 17/3626*, Brussels.

¹⁰¹ *Ibid.* note 99.

¹⁰² European Free Alliance, 2019. *Consolidated Version of the Articles of Association, article 3.* Approved in Brussels on 08/03/2019. [online] Accessed: 22/05/2019.

¹⁰³ *Ibid.*

which has been analysed in the previous sections. Moreover, the EFA wants to promote the process of internal enlargement within the European institutions “as the mechanism by which nations who gain the statute of a State remain as an EU Member State.”¹⁰⁴ This last statement is particularly engaging for what concerns our analysis, as it allows for the formulation of our hypotheses on withdrawal and (re-) accession¹⁰⁵ formerly carried out, and would thus eliminate or at least highly reduce many of the legal barriers which constrain stateless nations from pointing to outright independence.

The EFA Manifesto for the most recent European elections (2019) stressed one more argument that perfectly fits Catalonia’s case, or else the fact that some regions and stateless nations in the European community stand in the shadow of centralised states, which have “used their labour and developed predatory economic models aimed at disadvantaging local minority populations.”¹⁰⁶ Although it could not be analysed in extensive form throughout this work, this is closely related to the political economy implications of the Catalan secessionist movement, which have by far been the most discussed throughout the issue’s literature. In fact, according to this viewpoint, economically advanced regions strive for secessionism when the fiscal arrangements imposed by the central government are such that these must subsidize disadvantaged regions throughout the state instead of unleashing their true economic potential¹⁰⁷. Is it true then, that Catalonia does not possess any right to claim its self-determination?

¹⁰⁴ *Ibid.*

¹⁰⁵ *See supra* section 2.3.

¹⁰⁶ European Free Alliance. *2019 Manifesto of European Elections*. Introduction by EFA President Lorena Lopez De Lacalle.

¹⁰⁷ Boylan, 2015, at 762.

Concluding Remarks

The topic of Catalonia's struggle for independence presented throughout the text clearly involves the vaster argument of the European Union's conservatism with regards to such situations. As a matter of fact, the work the author has exposed can be divided into two major parts: the first one regarding how the EU regulates secession from a current member state, while the second one covers the motives for which the Catalonian population is still so motivated in remaining in the Union in spite of its desire to gain full independence from the Spanish state. While many authors¹⁰⁸ have stressed the importance of self-determination as a fundamental right for stateless nations in order to affirm their identities, this work has been set to focus mainly on the arguments for which such territories are unable to do so in the EU's framework, and further remarking the possibility of consulting alternative channels of representation, as the existent ones appear far from efficient.

As it has been analyzed throughout the first section, there are several ways in which the EU has preemptively interrupted any of the efforts made by Catalonia and alike regions. In the first place, highlighting the values entailed in article 1a of the TEU, there is evidence of a kind of primacy of the rule of law¹⁰⁹ with regards to the remaining principles listed which is closely linked to article 149 (1.32) of the Spanish constitution. The latter impedes any of the 17 Spanish AACC's (Autonomous Communities) from organizing popular referendums without the consent of the central government, thus overshadowing the democratic character that a referendum should embody. Instead of endorsing such democratic nature, the Union has always reiterated through its institutions – mainly Commission and Parliament – the hierarchy of the rule of law¹¹⁰, as it represents the backbone of any modern constitutional democracy.

Since its creation, the EU has been farseeing in maintaining its conformation and structure, rarely opening up possibilities for change without negative implications. This has been evident within TEU's articles 3a.2 and 3a.3, which render outright separation almost impossible, as threatening the integrity of the EU's territories activates the

¹⁰⁸ See *supra* section 1 (Guibernau, Connolly).

¹⁰⁹ For further information see Closa and Kochenov, 2016. *Reinforcing rule of law oversight in the European Union*. Cambridge University Press, UK.

¹¹⁰ See *supra* section 2.1.

sincere cooperation clause contained in the latter articles. This provision obliges Member States to serve each other as defenders of their unity, thus creating a sort of ‘us against them’ cleavage with regards to separatist regions. This has brought us to consider the hypothetical case in which a region like Catalonia managed to gain independence. This has provided us with counterproductive results, as the said region would find itself in an ambiguous and mostly unfavorable position, given that its renewed entry in the EU would ultimately depend on the consent of the MS which had opposed to independence in the first instance¹¹¹.

Therefore, as the hopes of a possible secession seem further reduced – or better, almost annihilated – the analysis was shifted on the causes of such a sentiment within the EU’s framework. We found that the Union has constantly provided its regions with more and better developed instruments to exercise autonomous functions, thereby limiting the scope of the MS’s actions in certain fields. Having identified the latter process with the introduction of the principle of subsidiarity, and considering this as broader element of secession¹¹², the research has highlighted fallacies within the Committee of the Regions¹¹³ as a grantor of such principle.

Alternative channels of representation were thus figured as an escape route for subnational claims in the EU. We have decided to conclude the work by developing this topic to create a further belief regarding change for the future of stateless nations. The considerations made throughout the text have led to identify the European Free Alliance group in the EU Parliament as the most viable, and at the same time valuable, opportunity for Catalonia and alike regions to point out their conditions. In fact, the EFA group has represented the values and claims of separatist regions since its creation, stressing within the European Parliament the need for a radical adjustment of its provisions in this concern. This group, together with the Greens, has managed to establish itself as the fourth biggest coalition within the Parliament in the most recent European elections (May 2019), counting 74 MEP¹¹⁴. Until the next mandate in 2024, this group will be able to directly raise awareness in the Parliament and Commission through its communications, trying to establish the incipit for change for what concerns

¹¹¹ More specifically, as provided by the example of Kosovo’s declaration of independence (*see supra* section 2.2 and 2.3), states which contain similar examples of independence claims will never allow a precedent for their own dismemberment.

¹¹² *See supra* section 3.1.

¹¹³ For further information on the Committee of the Regions see Piattoni and Schönlau, 2015. *Shaping EU Policy from Below: EU Democracy and the Committee of the Regions*. Edward Elgar Publishing, UK.

¹¹⁴ European Parliament, 2019. *European Parliament elections: results 2019*. Last update: 6/06/2019. [online] Accessed: 24/05/2019.

stateless nations and highlighting the importance of regionalism in such a globalized world. Surely this will enlarge the space for further research on the subject.

The primacy of the Member States' position within the EU's institutions seems anachronistic and almost reminiscent of the well-known period previous to its establishment. Although individual efforts should not affect the entire composition of the EU and its members, the topic is not centered on Catalonia alone, but includes several other regions which are limited by their parent state and thus may not express their full potential, not only economically speaking, but also with regards to their identity. Therefore, it is once again fundamental to stress the importance of such a progressive institution that is the EU, as the circumstances experienced throughout the Catalan case should not be taken as standardized and Europe should thus be ready to accept innovations and developments.

Bibliography

Monographs

Bel, Germá, 2015. *Disdain, distrust and dissolution: the surge of support for independence in Catalonia*. Sussex Academic Press, UK

Closa, Carlos and Kochenov, Dimitry, 2016. *Reinforcing rule of law oversight in the European Union*. Cambridge University Press, UK.

Cuadras-Morató, Xavier *et al.*, 2016. *Catalonia: A New Independent State in Europe? A Debate on Secession Within the European Union*. Routledge, London.

Guibernau, Montserrat, 2007. *The Identity of Nations*. Cambridge Polity Press, UK.

Llobera, Josep R., 2004. *Foundations of National Identity: From Catalonia to Europe*. Berghahn Books, Oxford, New York.

Piattoni, Simona and Schönlau, Justus, 2015. *Shaping EU Policy from Below: EU Democracy and the Committee of the Regions*. Edward Elgar Publishing, UK.

Review Articles

Boylan, Brandon M., 2015. *In pursuit of Independence: the political economy of Catalonia's secessionist movement*. Nations and Nationalism, vol. 21 (4), pp. 761-785.

Carbonell, Josep-Maria, 2018. *The Two Main Challenges to Catalan Identity*. American Behavioural Scientist, pp 1-18.

Closa, Carlos, 2016. *Secession from a Member State and EU Membership: the view from the Union*. European Constitutional Law Review, vol. 12, pp. 240–264.

Closa, Carlos, 2017. *Changing the EU Internal Borders through Democratic Means*. Journal of European Integration, vol. 39 (5), pp. 515-528.

Cole, Tony, 2005. *The Committee of the Regions and Subnational Representation to the European Union*. Maastricht Journal of European and Comparative Law, Vol. 12 (49), p. 54, Maastricht, Netherlands.

Colomer, Josep M., 2017. *The Venturous Bid for the Independence of Catalonia*. Nationalities Papers, vol. 45 (5).

Connolly, Christopher K., 2013. *Independence in Europe: Secession, Sovereignty, And the European Union*. Duke Journal of Comparative & International Law, vol. 24 (51), pp. 51-104.

- Cygan, Adam, 2014. *The Regions within Multi-level Governance: Enhanced Opportunities for Increased Accountability?* Maastricht Journal of European and Comparative Law, vol. 21 (2), pp. 265-280. Maastricht, Netherlands.
- Downs, William M., 2002. *Regionalism in the European Union: Key Concepts and Project Overview*. Journal of European Integration, vol. 24 (3), pp. 171-177.
- Eichert, David, 2016. *Separation amidst Integration: The Redefining Influence of the European Union on Secessionist Party Policy*. Journal of International Organisations Studies, vol. 7 (2), pp. 63-77.
- Encarnación, Omar Guillermo, 2004. *Democracy and Federalism in Spain*. Mediterranean Quarterly, vol. 15 (1), pp. 58-74. Duke University Press, Durham, North Carolina.
- European Commission, 2014. *Communication from the Commission to the European Parliament and the Council: A new Framework to strengthen the Rule of Law*. Date of delivery: 11/03/2014, COM (2014) 158 Final, Brussels.
- European Commission, 2017. *Statement 17/3626*, Brussels.
- Giordano, Benito and Roller, Elsa, 2002. *Catalonia and the 'Idea of Europe'. Competing Strategies and Discourses within Catalan Party Politics*. European Urban and Regional Studies, vol. 9 (2), pp. 100-113. University of Manchester, UK.
- Green European Journal, 2016. *Perfect Complements: Is Regionalism the Way Forward for Europe?* Interview with Nicola McEwen and Roccu Garoby. Green European Journal, vol. 13 (Tremors in Europe: Mapping the Fault lines), pp. 86-92.
- Guibernau, Montserrat, 2006. *National Identity, Devolution and Secession in Canada, Britain and Spain*. Nations and Nationalism, vol. 12 (1), pp. 51-76.
- Guibernau, Montserrat, 2013. *Secessionism in Catalonia: After Democracy*. Ethnopolitics, vol. 12 (4), p. 368-393.
- Hönnige, Cristoph and Panke, Diana, 2016. *Is anybody listening? The Committee of the Regions and the European Economic and Social Committee and their quest for awareness*. Journal of European Public Policy, vol. 23 (4), pp. 624-642.
- Keating, Michael, 2004. *European Integration and the Nationalities Question*. Politics & Society, vol. 31 (1), pp. 1-21.
- Ridao Martín, Joan, and González Bondía, Alfonso, 2014. *La Unión Europea ante la eventual creación de nuevos Estados surgidos de la secesión de Estados miembros*. (The European Union and the eventual establishment of new States emerging from the secession of member States). Revista de Derecho de la Unión Europea 27/28, pp. 363-389.
- Vice-President of the European Commission Frans Timmermans in a debate held in the EU Parliament regarding constitution, rule of law and fundamental rights in Spain in light of the events in Catalonia, 4/10/2017, 2017/2888 (RSP), Strasbourg.
- Waters, Timothy W., 2016. *A World Elsewhere: Secession, Subsidiarity, and Self-Determination as European Values*. Articles by Maurer Faculty, Indiana University, pp. 11-45.
- Whitfield, Teresa, 2015. United States Institute of Peace special report 384. *The Basque conflict and ETA: The Difficulties of an Ending*. Washington DC.

Online Sources

Barroso, José Manuel, *Letter to Lord Tugendhat*, SC/12-13/EA68, 10/12/2012, Brussels. Available at: <<https://www.parliament.uk/documents/lords-committees/economic-affairs/ScottishIndependence/EA68_Scotland_and_the_EU_Barroso's_reply_to_Lord_Tugendhat_101212.pdf>>.

BBC News, *Catalonia vote: 80% back independence – officials*, 10/09/2014. Available at: <<<https://www.bbc.com/news/world-europe-29982960>>>. Accessed: 18/04/2019.

El País, “*No hay ninguna analogía posible entre Kosovo y Cataluña, establecerla es un sinsentido*”, (There’s no possible comparison between Kosovo and Catalonia and to draw one makes no sense). 30/04/2018. Available at: <<https://elpais.com/internacional/2018/04/29/actualidad/1525015344_341405.html>>. Accessed: 19/04/2019.

European Commission, *Enlargement, Candidate countries and potential countries*. Last updated: 22/02/2019. Available at: <<<http://ec.europa.eu/environment/enlarg/candidates.htm>>>. Accessed: 18/05/2019.

European Commission, *International Cooperation and Development, Regional Integration*. Available at: <<https://ec.europa.eu/europeaid/sectors/economic-growth/regional-integration_en>>. Accessed: 20/05/2019.

European Free Alliance, 2019. *Consolidated Version of the Articles of Association, article 3*. Approved in Brussels on 08/03/2019. Available at: <<<https://www.e-f-a.org/wp-content/uploads/2019/04/AOA-EFA-2019.pdf>>>. Accessed: 22/05/2019.

European Free Alliance. *2019 Manifesto of European Elections*. Introduction by EFA President Lorena Lopez De Lacalle. Available at: <<https://www.youdecidenow.eu/wpcontent/themes/youdecidenow/img/manifesto/EFA_manifesto_2019_EN.pdf>>. Accessed: 21/05/2019.

European Free Alliance. *Who we are*. Available at: <<<https://www.e-f-a.org/who-we-are/>>>. Accessed: 20/05/2019.

European Parliament, 2019. *European Parliament elections: results 2019*. Last update 6/06/2019. Available at: <<<https://elections-results.eu>>>. Accessed: 24/05/2019.

Official Journal of the European Union, C84E/422, 1/03/2004. Available at: <<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:084E:0422:0423:EN:PDF>>>.

Theparliamentmagazine.eu. *Jordi Solé slams EU Commission over handling of Catalonia crisis*, 9/9/2017. Available at : <<<https://www.theparliamentmagazine.eu/articles/news/jordi-sol%C3%A9-slams-eu-commission-over-handling-catalonia-crisis>>>. Accessed: 17/03/2019.

The Greens/EFA: *About the Group*. Available at: <<<https://www.greens-efa.eu/en/our-group/about-greens-efa/>>>. Accessed: 22/05/2019.

TheGuardian.com. *The EU has tied its own hands. It cannot intervene in Catalonia*, 3/10/2017. Available at: << <https://www.theguardian.com/commentisfree/2017/oct/03/eu-catalonia-brussels-spain> >>. Accessed: 19/03/2019.

Table of Authorities

European Union, 1992. Treaty on European Union (Consolidated Version), Treaty of Maastricht, *Preamble*.

European Union, 2007. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, *articles: 1a; 3a.2; 3a.3; 3b.1; 3b.2; 3b.3; 9.4; 49; 49A.2; 49A.3; 49A.5; 305 (1); 305 (3)*.

European Union, 2007. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, *Protocol n.2 on the application of the principles of subsidiarity and proportionality, article 8*.

European Union, 2007. Treaty of Lisbon Amending the Treaty on the Functioning of the European Union and the Treaty Establishing the European Community, *articles: 236a; 256a.4*.

Spanish Constitution, 1978, *articles: 149, 1.32; 155, 1*.

Riassunto in Italiano

Nel corso degli ultimi anni, il discorso riguardante la Catalogna si è trovato al centro di molti dibattiti, poichè rappresenta solo una porzione di un macro-problema che si sta espandendo all'interno della natura sovraistituzionale dell'Unione Europea. Quest'ultimo consiste nel lento e graduale smembramento dell'istituzione causato da un incrementale sentimento di separatismo in alcune "nazioni senza stato", le quali costantemente creano pressione e cercano di avanzare le loro richieste sia nei confronti del loro stato madre, sia verso l'Unione Europea. La questione che viene posta sotto analisi è l'esistenza di queste nazioni senza stato come unità singole, separate dal loro stato originale in quanto posseggono vari tratti storici caratteristici e anche in base a elementi più recenti e riguardanti la globalizzazione. In modo da includere il caso specifico dello sforzo catalano per raggiungere l'indipendenza nel contesto dell'integrazione Europea, è necessario anzitutto considerare come questo processo si sia sviluppato in un lasso di tempo più recente rispetto all'effettivo *incipit* delle richieste di indipendenza da parte della Catalogna. Questo periodo è stato individuato da vari storici nella fine del 1800, quasi due secoli dopo la presa di Barcellona dalle forze gemellate di Francia e Spagna sotto la guida di Filippo V con l'intento di unificare la nazione spagnola. Questo periodo effettivamente non va a coincidere nemmeno con l'idea embrionale dell'Unione Europea e dunque sarà tralasciato e non discusso. Invece, ciò che verrà analizzato è la relazione che intercorre tra la speranza Catalana di raggiungere l'indipendenza e la posizione dell'Unione Europea nei suoi confronti considerando il suo ruolo di promotrice di poteri regionali e diritti all'interno della comunità.

Ciò che verrà evidenziato nel corso della tesi è, prima di tutto, la situazione che concerne le nazioni senza stato come la Catalogna in base alle disposizioni che presenterà l'autore, in quanto esse possono essere applicate a molti di questi territori che aspirano alla secessione dal proprio stato di appartenenza. Nello specifico, verranno esposte, tramite il punto di vista dell'Unione Europea e le sue leggi contenute nel Trattato di Lisbona, le varie ragioni che impossibilitano un'eventuale separazione dal territorio spagnolo. Queste riguarderanno in particolare i principi contenuti nel Trattato, ossia l'articolo 1a del TUE, con uno sguardo peculiare riguardo la supremazia dello stato di diritto nell'ambito dell'UE. Per approfondire le implicazioni contenute nel caso della Catalogna e in particolare la relazione che esiste tra gli stati membri e l'UE, verrà considerato con attenzione l'effetto degli articoli 3a.2 e 3a.3, i quali

incarnano rispettivamente i principi di integrità territoriale e cooperazione leale. Questi ultimi andranno effettivamente a rafforzare gli argomenti per i quali l'UE non può fornire aiuto in queste occasioni. In modo da concludere le considerazioni riguardanti i limiti posti dall'Unione, verranno presentate le disposizioni contenute negli articoli 49 e 49A del TUE, i quali probabilmente rappresentano il limite più marcato in queste situazioni. Applicando uno spettro ipotetico all'intera questione, le possibilità di indipendenza per i catalani saranno ristrette ulteriormente.

Ciò ha portato alla considerazione dei motivi per i quali le speranze di secessione sono ancora così accese all'interno della popolazione catalana, e in particolare le ragioni dell'incremento e dello sviluppo di questo sentimento separatista. Le risposte a questo dubbio sono inserite ancora una volta nel contesto dell'Unione Europea. Dunque, è stato analizzato in maniera specifica il principio di sussidiarietà attraverso il quale le regioni e la stessa Unione Europea hanno guadagnato potere nel corso degli anni, spogliando gli stati membri di alcune delle loro funzioni e aprendo gradualmente possibilità di autonomia e desideri rimnescenti di indipendenza. Al tempo stesso, le richieste di partecipazione e ampliamento delle capacità regionali sono state confinate alla supervisione di un alquanto inefficiente e poco considerato ente dell'UE, il Comitato delle Regioni. Data l'inadeguatezza di tale comitato, la parte finale dell'analisi verterà sulla possibilità che si presenta alla Catalogna di considerare canali alternativi per il raggiungimento dei livelli decisionali dell'UE. Quest'ultima possibilità sarà identificata con l'Alleanza Libera Europea, gruppo del Parlamento Europeo che si è da sempre proposto come forte promotore del regionalismo e sembra quindi essere l'opzione più produttiva per le nazioni senza stato di avanzare le loro richieste all'interno dell'istituzione sovranazionale dell'UE.

Nel corso del testo si può evincere una sorta di criticismo nei confronti del comportamento europeo in tali circostanze. In effetti, a detta dell'autore, un'istituzione talmente progressiva come l'UE dovrebbe rivestire un ruolo fondamentale nella gestione di eventi possibilmente disgreganti e che comprendono e coinvolgono molti tra i suoi componenti. Dunque, l'intento reale di esporre questa tesi è di creare uno stimolo nel nome del cambiamento, da una parte per ciò che riguarda il comportamento specifico dello stato spagnolo nei confronti del caso della Catalogna, mentre dall'altra in maniera più generale appellandosi all'Unione Europea affinché consideri più attentamente questo tipo di problemi, chiarendo tramite i suoi Trattati il futuro di queste nazioni senza stato.

Per condurre questa ricerca sono stati consultati testi di molti autori ed esperti, sia dell'Unione Europea che della specifica questione catalana. In particolare, si evidenziano le opinioni e gli studi della professoressa Montserrat Guibernau per quanto riguarda la Catalogna, di Connolly in un quadro più generale e di Closa per ciò che concerne l'UE nello specifico. Nel corso degli anni è stato fornito molto materiale riguardo la questione catalana. Nonostante ciò, per un motivo di coerenza nel campo dell'analisi, si è cercato di attenersi ai testi riguardanti i periodi più recenti degli sviluppi sul caso, in modo da presentare una ricerca aggiornata e contestualizzata adeguatamente.

L'analisi trova il suo inizio con i principi dell'Unione Europea contenuti nell'articolo 1a del TUE, i quali citano i valori di dignità umana, libertà e democrazia, l'importanza dello stato di diritto e dei diritti umani. Sebbene sia stata confermata una chiara violazione dei diritti umani in seguito alle manifestazioni tenutesi a Barcellona nel periodo dei referendum, l'attenzione dell'UE si è rivolta in maniera sproporzionata sul contesto dello stato di diritto. Questo è testimoniato da varie consultazioni con la Commissione Europea nei dibattiti aperti nel corso delle sessioni del Parlamento. Nella specificità del caso, il vice presidente della Commissione, Frans Timmermans, ha tenuto a ribadire il valore fondamentale che assume lo stato di diritto nel contesto costituzionale moderno. Difatti, egli ha spiegato come in assenza di quest'ultimo non si possa garantire il funzionamento dei diritti umani e l'efficacia del sistema democratico. Avendo violato l'articolo 149 (1.32) della costituzione spagnola (il quale indica la competenza esclusiva del governo centrale di istituire referendum popolari), la Catalogna avrebbe dunque contrastato i valori dell'UE, tra i quali viene evidenziato il rispetto per lo stato di diritto.

La seconda normativa analizzata pone le sue radici negli articoli 3a.2 e 3a.3 del TUE. In sostanza, il primo si riferisce al rispetto per l'integrità territoriale degli stati membri, mentre il secondo ne funge da supplemento, in quanto attiva la clausola di cooperazione leale tra essi in modo da garantirne e assicurarne le loro funzioni principali. Il primo di questi articoli specifica dunque la competenza esclusiva degli stati membri dell'UE di decidere riguardo le proprie disposizioni politiche e costituzionali, includendo le normative rivolte all'autonomia regionale e locale. La Catalogna, volendo istituire un processo di separazione unilaterale, metterebbe a rischio l'intera composizione dell'Unione Europea, precisamente andando a intaccare l'integrità del territorio spagnolo. Sarebbe dunque questo il motivo per il quale la situazione catalana viene definita dall'UE come puramente interna alla Spagna. Per

quanto riguarda la cooperazione leale, si sottolinea l'esito della dichiarazione di indipendenza del Kosovo nel 2008, a seguito della quale cinque stati membri europei (Spagna, Romania, Cipro, Slovacchia e Grecia) hanno dichiarato di non riconoscere il territorio come stato indipendente. Questo è avvenuto specificatamente perchè questi cinque stati posseggono al loro interno casi simili di disgregazione e desideri di secessione. Dunque, con il loro consenso, questi ultimi avrebbero creato precedenti per la propria disintegrazione.

Ciò si relaziona all'ultima delle disposizioni europee prese in considerazione nella tesi: l'uscita e l'eventuale riammissione nell'Unione. Questo argomento viene trattato negli articoli 49 e 49 A del TUE. Tenendo in conto il fatto che per entrare nella UE come stato indipendente la Catalogna dovrebbe prima portare a compimento la separazione dalla Spagna, la questione viene affrontata in maniera ipotetica. La scelta di includere questo scenario deriva dal fatto che la maggior parte delle regioni che aspirano a diventare indipendenti avanzano le loro richieste con la sicurezza di rimanere parte dell'Unione. In contrapposizione a questa convinzione, l'Unione Europea ha invece ribadito attraverso la "Dottrina Prodi" che un nuovo stato formatosi dalla disgregazione di precedente stato membro dell'UE dovrà riqualificarsi per l'accesso all'Unione seguendo l'*iter* regolare predisposto dall'articolo 49 TUE. Dunque, la formazione di un nuovo stato in seguito a una secessione implicherebbe la perdita di tutti i diritti derivati dalla cittadinanza europea e dall'ulteriore interruzione dei trattati che ne regolavano l'esistenza. Riguardo la rinnovata ammissione nell'istituzione, bisogna ricordare la dipendenza dal consenso di tutti gli stati membri dell'UE; in parole povere, il potere di veto che ogni stato possiede nel regolare queste questioni.

Una volta attestate le svariate limitazioni che si oppongono al desiderio catalano di indipendenza, rimane il dubbio sul perchè tale regione sia così motivata nell'ottenere la separazione dal territorio spagnolo. È stato dunque analizzato il percorso di sviluppo dei poteri regionali nel contesto europeo, evidenziando il particolare esito a cui ha portato il principio di sussidiarietà istituito nel 1992 con il Trattato di Maastricht. In particolare, è stata presa in considerazione una teoria secondo la quale la secessione potrebbe apparire come una forma di sussidiarietà, in quanto tale principio si proponga di stabilire la corretta dimensione decisionale all'interno dell'UE, cercando di delegare al minor livello possibile (ovvero al livello locale e regionale) le varie funzioni degli stati e della comunità europea.

Inoltre, avendo analizzato il principio di sussidiarietà, è sembrato opportuno soffermarsi sull'ente che ne dovrebbe garantire l'efficacia: il Comitato delle Regioni. Tale ente, a detta di molti studiosi e dei membri del Parlamento Europeo stesso, risulta essere inadeguato a svolgere tali funzioni, e da alcune ricerche in particolare (Hönnige & Panke, 2016) si può estrapolare un totale disinteresse nei suoi riguardi, in quanto le prerogative emanate da esso sono limitate da un carattere puramente consultivo. In aggiunta a queste dichiarazioni, si denota il fatto che i membri che compongono tale comitato siano scelti dai governi centrali di ogni stato membro dell'Unione Europea, e che quindi comporta un deficit a livello democratico nella sfera decisionale.

In seguito a tali conclusioni, è sorta spontanea la necessità di ricercare una via di fuga per questi 'stati regionali', ovvero un'alternativa più efficace rispetto al CdR per quanto riguarda i diritti di questi ultimi. La soluzione più interessante è stata individuata nell'Alleanza Libera Europea, la quale si raffigura come la voce di quelle popolazioni che 'combattono' contro i loro governi centrali al fine di ottenere il diritto di decidere riguardo il proprio destino politico: il diritto di auto-determinazione. Essendo composta da partiti provenienti da regioni indipendentiste, l'ALE promuove all'interno del Parlamento Europeo il sostegno per le aspirazioni che i suoi membri vorrebbero avanzare nel proprio stato, includendo l'indipendenza, una maggiore autonomia e il riconoscimento linguistico-culturale che forma l'identità di una nazione.

L'argomento riguardante il tentativo di indipendenza da parte della Catalonia chiaramente include la trattazione più vasta sul conservatismo dell'Unione Europea in tali questioni. Questa tesi è dunque scindibile in due sezioni di rilievo, la prima delle quali è stata rivolta al tema della secessione all'interno dell'Unione, mentre la seconda ha cercato di identificare i fattori che hanno contribuito all'escalation del sentimento separatista nel corso degli anni. Avendo individuato le varie limitazioni imposte sugli stati-regionali tramite l'esempio del caso catalano, le conclusioni vertono nella direzione del loro attuale e futuro insuccesso nell'ottenere l'indipendenza. Si è dunque cercato di fornire un'alternativa ai vari strumenti forniti dall'UE, terminando con l'identificazione dell'ALE come mezzo più praticabile in tale circostanza. Difatti, quest'ultimo è riuscito a formare il quarto gruppo più ampio all'interno del Parlamento Europeo, contando 74 membri in seguito alle elezioni del maggio 2019. Sino al termine del prossimo mandato, ovvero il 2024, l'ALE avrà dunque la possibilità di aumentare la consapevolezza riguardo le nazioni senza stato nel Parlamento e nella Commissione,

cercando di evidenziare l'importanza del concetto di regionalismo in un mondo che è preda della globalizzazione.

La posizione di supremazia degli stati membri all'interno dell'UE sembra ormai anacronistica e apparentemente reminescente di un periodo antecedente alla sua istituzione. Sebbene desideri e sforzi individuali non debbano inficiare l'intera composizione dell'Unione e i suoi membri, l'argomento non si basa sul caso isolato della Catalogna, ma presenta rilievi maggiori nella considerazione di altre regioni come la Scozia e le Fiandre che, limitati dal loro stato centrale, non riescono a sviluppare il loro vero potenziale. È dunque fondamentale denotare l'importanza del progressivismo apportato dall'Unione Europea durante il corso della sua esistenza, poichè gli eventi avvenuti nel caso della Catalogna non dovrebbero essere considerati uno standard e dovrebbero invece creare stimoli per l'accettazione di cambiamenti e sviluppi.