



20 Questions and Answers
on the Secession of Catalonia



20

Questions and Answers

on the Secession of Catalonia

© 2014. *FAES Foundation for Social Studies and Analysis*

ISBN: 978-84-92561-32-2

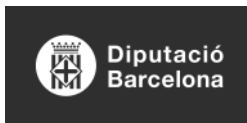
Legal deposit: M-4316-2014

Cover design and layout by: Paloma Cuesta

Translated by: Estefanía Pipino

fundacion@fundacionfaes.org

www.fundacionfaes.org



Generalitat de Catalunya
gencat.cat



This activity has been subsidised by the Ministry of Education,
Culture and Sport of Spain

Contents

| | |
|--|----|
| Prologue by Javier Zarzalejos , Secretary-General of FAES Foundation..... | 5 |
| Why? The Reasons for Secession | 11 |
| 1. Can we rightly speak of a history of ‘Spain against Catalonia’? | 13 |
| 2. Did the Catalans want the Transition? | 15 |
| 3. Did the Catalans want the Constitution and the Statute of Autonomy of 1979?. .. | 17 |
| 4. Does the 2006 ruling of the Constitutional Court on the 2006 Statute prevent the Catalans from having a satisfactory status in the Spanish constitutional framework?..... | 20 |
| 5. Can we speak in any sense of lack of representation of the Catalans in the constituent process or in the State institutions? | 23 |
| Conclusion: A process without reasons, an invented grievance | 25 |
| How? The Path of Secession | 27 |
| 6. Is there a right to decide outside the Constitution and the law? | 33 |
| 7. Is the so-called right to self-determination applicable to Catalonia? | 36 |
| 8. Is holding a consultation with some questions such as those announced in Catalonia for November 9, 2014 legal?..... | 38 |
| 9. Can the State convene a consultation or delegate it to the <i>Generalitat</i> , as agreed by the Parliament of Catalonia? | 41 |
| 10. Is there any other legal channel for a consultation on secession in Catalonia without amending the Constitution? | 47 |
| Conclusion: A process that, consciously and wilfully, is being developed outside the Rule of Law | 49 |

Contents · 20 Questions and Answers on the Secession of Catalonia

| | |
|---|----|
| At What Price? The Cost of Secession | 53 |
| 11. Has Spain ‘plundered’ Catalonia in the past? | 54 |
| 12. Is Spain stealing from Catalonia now? | 56 |
| 13. What would be the currency of a seceded Catalonia? | 59 |
| 14. Would a Catalonia outside Spain be wealthier? | 62 |
| 15. What would the economic data of a seceded Catalonia be? | 65 |
| Conclusion: A process for economic and social default | 67 |
| What For? The Result of Secession | 71 |
| 16. Would Catalonia continue being in the European Union? | 72 |
| 17. Would Catalonia continue being in NATO? | 75 |
| 18. Would Catalonia continue being in the UN? | 75 |
| 19. Which international treaties would Catalonia need to negotiate if secession did take place? | 76 |
| 20. All in all, what would be the result of secession be for Catalonia? | 77 |
| Conclusion: A process for an impoverished, torn and isolated Catalonia | 78 |



Prologue

Among the many contradictions surrounding the secessionist process which nationalism is seeking to launch in Catalonia, there is one that particularly stands out. The process that claims to be the genuine expression of democracy fails all criteria defining what democracy means in an advanced society: Rule of Law, representative institutions and plurality.

This matter is posed by nationalism—with its usual agonising tone—as an existential issue for Catalonia, hiding from public opinion the core elements for a truly democratic and pluralistic debate. Nationalism puts forward a political proposal for Catalonia which combines contempt for legality, the hollownest voluntarism and the deliberate concealment of anything that contradicts their secessionist expressions.

They talk of an alleged ‘right to decide’ without specifying that such a thing simply does not exist, and if it did it would only offer self-determination as the enabling instrument for the unilateral rupture of the integrity and sovereignty of the nation and the State.

Prologue · 20 Questions and Answers on the Secession of Catalonia

Nevertheless, the argument that confronts popular will to the law is undoubtedly the most pernicious one as it seeks to delegitimise a fully democratic system. It represents the denial of civility and of the rules of the political game in a system of liberties in which the law precisely stands for empowerment and guarantee. This statement is doubly true in Spain because the constitutional order sheds its protection on the rights of citizens and on the sphere of autonomy of nationalities and regions. And while a distant memory of grievances and plundering is fabricated, something that is much closer and authentic is forgotten: that freedoms and self-government are possible because of the Constitution, not in spite of it.

The secessionist process wants to offer a friendly face open to dialogue, but it starts off with ‘Spain robs us’. It claims to seek a future of harmony, but portrays with the blackest of strokes a false history of Spain's continued aggression to Catalonia. It boasts of Europeanism, but hides the fact that the Catalonia they have sold as a welfare utopia would be excluded from the European Union and this would hopelessly affect generations of Catalans, starting with present and future pensioners. It claims democratic quality, but distorts the meaning of representative institutions through the plebiscitary tampering of their procedures.

The situation in Catalonia shows, once again, how nationalisms, while claiming the authentic and timeless representation of the people, end up being the agents that most profoundly divide societies while asserting to embody them. Unable to accept anything that lies beyond their dogmatic view, they refuse to assume the plurality that is intrinsic to societies which share large historical paths, with complex identities adjusted during centuries of togetherness and interaction, togetherness and interaction that has been human and emotional, cultural and linguistic, economic and political.

When these extreme views are set in motion while believing themselves to be exempt from the rules of the democratic game, the inevitable result is social fracture. Therefore, both in Catalonia and the Basque Country, nationalist secessionism –against what it proclaims as the alleged interpreter of the will of the people– has led and is leading the most traumatic processes of political and social division of the democratic period that opens with the covenant of the Transition and the Constitution.

The following pages seek to provide a strong and synthetic line of argument of all the historical, legal, political, social and cultural factors that are present in the secessionist process opened by the nationalist forces in Catalonia.

Each assertion is supported with solvency by a previous work of reflection and debate which, inside and outside Catalonia, has gathered many voices belonging to the spheres of academia, politics, business and civil society to say the things that matter to the Catalans and all the Spanish people. Voices which have also expressed themselves at other public forums and media and which we have also gathered in these pages. Voices and also feelings expressed with a productive plurality points of view, from the rational and emotional conviction that the secession of Catalonia, if it ever were to occur, far from being the ultimate expression of Catalan identity, would only be the result of the mutilation and breaking of that same identity. That of the Catalans and of all the Spanish people.

JAVIER ZARZALEJOS

Secretary-General of FAES Foundation



20 Questions and Answers on the Secession of Catalonia

The secessionist process has advanced in Catalonia in a way surprisingly estranged from the legal, economic, social and international reality. This political movement is currently the precise opposite of the institutions, regulations and practises which, for decades, have allowed Spain and all of Europe to thrive economically and consolidate the Rule of Law and the freedom of people, the citizens. The citizens of Catalonia have known how to contribute with other Spaniards, clearly and usefully, to this progress, of which it is hardly possible to find a precedent that matches it and which has therefore been an inspiration to many around the world.

The Spanish history of the last decades is a great account of perseverance and self-improvement. An account that secessionism cannot hide because the Spaniards have lived it, we know how it really happened. But this account can go awry and slow down, as indeed it is already happening. And that is why we must remember it.

It is necessary that the Spanish society—and particularly the Catalan society—reacts against those who wish to impose on it a project of involution, of regression,

20 Questions and Answers on the Secession of Catalonia

which can only benefit a few and harm the majority. And in the first place, it is necessary that this reaction appeals to reason, to the truth and to the virtues of civility that are features of the Spanish society.

The Foundation for Analysis and Social Studies seeks to contribute to this citizen task with this publication. In it, twenty questions are posed and answered, essential questions about the future of Catalonia to which secessionism is either unresponsive or to which it responds by hiding the truth. Twenty questions about why, how, the cost and the expected outcome of secession. Twenty essential questions on the project of those who are promoting a Catalonia against Europe and against Spain, which is poor and isolated, the project of those who promote rupture.



Why?

The Reasons for Secession

However intense be the tampering of Spanish history and the role of the Catalan people in it, there never was a confrontation as serious—and this one was indeed real—as the one involving the Germans and the French during the Second World War in the 1940s. Neither can it be said that the gap in language, culture or history is as large as the one between those two countries. But these countries, along with others similarly affected by the war, with the history of destruction not in their memory but still in their retinas, created the first European Community in 1951. It was an exemplary effort of concord and reconciliation.

Also exemplary was the harmony and reconciliation shown by Spaniards during our political transition and which was expressed in the Constitution of 1978, in which the Catalans were central players, both in the streets and at the negotiating table. In a few years Spain achieved its full incorporation into the world to which it wanted to belong: it ratified the international covenants of civil and political rights, and of economic, social and cultural rights of the UN; it joined the Council of Europe, ratified the European Convention on Human Rights and joined NATO. The stage in history that had divided

Why? • 20 Questions and Answers on the Secession of Catalonia

the Spaniards, families, neighbours, inside and outside Catalonia, was thus left behind.

That is why the Constitution of all the Spanish people, the Constitution of the Catalans, was Spain's gateway to Europe, and that is why a rupture with the Spanish Constitution would mean a rupture with the true history of the Catalans, a rupture which would mean their exit from Europe. **Secessionism not only does not fit in the European Union for legal reasons, but because it goes against the spirit and meaning of the whole European process.** Having a common history, culture and language—something that those who founded the Communities did not have—and having accomplished together the building of a full Member State in the European institutions, no one in Europe would understand that actions in Catalonia should be driven by the will to be separated, against all that shared heritage and claiming a remote and so-called historical or cultural difference between Spaniards that are so by factual and legal reasons. And for that reason, and that one alone, they are also European citizens.

To believe in Europe and to be in Europe you have to be willing to reconcile and unite, not separate. As Joseph H. H. Weiler, President of the European University Institute (EUI) and former Professor of Law and Jean Monnet Chair at Harvard Law School, explains:

'It would be hugely ironic if the prospect of membership in the Union ended up providing an incentive for an ethos of political disintegration. There really is a fundamental difference in the welcoming into the Union of a Spain or a Portugal or a Greece emerging from ugly and repressive dictatorships and a Catalonia, part of a functioning democracy which at this very moment is in need of the deepest expression of internal and external solidarity. In seeking separation, Catalonia would be betraying the very ideals of solidarity and human integration for which Europe stands.'

<http://hemeroteca.abc.es/nav/Navigate.exe/hemeroteca/madrid/abc/2012/11/03/003.html>

Secessionism threatens to spread among all Catalans a rupturing reputation contrary to constitutionalism, understood as the values and principles typical of any constitutional order: fundamental rights, separation of powers, Rule of Law, parliamentary and representative democracy, respect for justice, limited and controlled powers. And contrary also to the history of Spain. A reputation that Catalans do not deserve, which is refuted by the facts and which must be actively denied to stop the two social fractures that are already taking place: one internal in Catalonia and one with the rest of Spain.



Can we rightly speak of a history of ‘Spain against Catalonia’?

Not at all. Neither in 1714 nor in the following three hundred years. The War of the Spanish Succession (1701-1715, with the capitulation of Majorca, although the Treaty of Utrecht dates of 1713) was a war of international scope caused by the childless death of the last king of the House of Habsburg, Charles II. It confronted the supporters of the Austrian candidate to the Spanish throne, the Archduke Charles of Austria and the testamentary heir of Charles II, Philip of Anjou, a Bourbon. The Principality of Catalonia, initially favourable to the Bourbon cause, turned to support the Austrian candidate since 1705. It is true that traditional Catalan institutions were removed as a result of this dynastic war, but this also happened in many other places in Spain. Moreover, the outcome of the war meant that traditional institutions would still be preserved in other areas, as was the case of the Basque Country, Navarre and also the Aran Valley. The war was not a Catalan event, but instead Spanish and European.

Why? • 20 Questions and Answers on the Secession of Catalonia

What has happened since then has nothing to do with an internal confrontation, but with the continuity of a long common path beginning at least in the twelfth century, a shared history between Catalonia and the rest of Spain. **There were Catalans in the trade liberalisation in Spain's overseas dominions in the eighteenth century. Also fighting for the independence of Spain and in the Cortes of Cadiz. There were also in the Carlist wars, on both sides. There have been in all the episodes that make up the Spanish history.** It has been a journey that has had good and bad things for everyone, but it has been the same journey.

The building of a modern State in Spain has not been an easy or tension-free task, but it has not differed much from the cases of our European neighbours. Regardless of the many mutual grievances we may summon the outcome is still very favourable for the freedom and equality of those who, a century later, in 1812, declared themselves to be Spanish in the modern sense of the word.

On the occasion of the symposium sponsored by the *Generalitat* precisely entitled 'Spain against Catalonia', the Oxford University historian, Sir John H. Elliott, one of the best scholars in modern history of the Iberian Peninsula, said: 'It's not even worth talking about. With that title I already know I'm not interested. It is nonsense.'

http://politica.elpais.com/politica/2013/06/06/actualidad/1370550548_683518.html

And lecturer Felix Ovejero summed up one of the central issues of the whole affair: 'The idea of an essential being impervious to the passage of time and in permanent conflict with another being who has no other interest than putting an end to the first is pure delusion.'

<http://www.elmundo.es/cataluna/2013/12/12/52a8f31f63fd3d5f2b8b4583.html>

Many of the most renowned historians have expressed themselves in similar terms. Because what secessionism seeks is not a discussion on a complex history,

always full of contrasts and nuances, but rather it pursues to use the past as a weapon and distort history to fuel the ideological victimhood, something which should never be done in the framework of a pluralistic democracy.

If democratic politics consisted in wielding historical grievances, the European peoples, and with them the Spanish, would probably never have been able to overcome our differences peacefully.



Did the Catalans want the Transition?

Yes, without doubt. The Spanish Transition was also a very Catalan transition. The Political Reform Act, which gave rise to the Transition, was approved in a referendum in December 1976 massively attended by the population of the four Catalan provinces: 74.09% of their electoral roll. Furthermore, 93.36% of the Catalans who went to the polls voted 'yes' to the question 'Do you approve the bill for Political Reform?'

http://www.congreso.es/consti/elecciones/referendos/ref_r_p.htm

The demonstrations that were taking place in the streets of Barcelona demanding freedom did not differ from those that were taking place in Madrid and other Spanish cities. And **the result of the 1977 constituent elections showed the tremendous pluralism of Catalan society, spanning from the extreme left to a conservative right.**

The opinion of Catalan politicians, including communists and nationalists, was very influential in the long and sensitive discussion leading, inside and outside the

Why? · 20 Questions and Answers on the Secession of Catalonia

Cortes, to the constituent consensus boosted by the Crown. The Prime Minister, Adolfo Suárez, relied on a Catalan figure as symbolic as Josep Tarradellas to consolidate the reconciliation between the Spanish people and include the autonomy of Catalonia to the covenant of the Transition. Much of the Catalan political elite was aware that the victimisation and insurrectional path, that of the 1934 Revolution, experienced first-hand by Tarradellas, should be rejected. **The Catalans had a clear awareness that there had not been a civil war of Catalonia against Spain, but a civil war of all Spaniards, also of some Catalans against other Catalans.** That is why they supported the Transition, peaceful, without violence. And that is also the reason for the surprise shown by some illustrious Catalans like writer Laura Freixas when she saw how easily ‘so blatant a falsification of history’ was permeating society.

‘Now let us try to understand all this in light of the official history. A history consisting only of two poles: on the one hand "Catalunya", unanimous, resistant, nobly defeated, always the victim; on the other, a "Spain" committed, as one, to subduing the Catalans. This is the account distilled in the tercentenary celebrations of 1714, in the recent conference entitled *Spain against Catalunya*, in the Museu d'Historia de Catalunya or the declaration of sovereignty adopted by the Catalan Parliament (01.23.13), the preamble of which reads without batting an eyelid "Franco's dictatorship experienced an active resistance from the people of Catalunya". If this is the case, where shall we place Estelrich? And Cambó, D'Ors, Dalí, Pla...? What about the parents of Esther Tusquets? And my grandparents...? Must I think that my maternal grandmother, Castilian, who was a seamstress and lived on a fifth floor with no lift and who, being a woman, had no rights whatsoever, was the oppressor, and my paternal grandfather, Catalan, who had two maids, a factory, a large apartment in Barcelona and three houses in Lloret de Mar, was the oppressed?’
http://elpais.com/elpais/2014/01/09/opinion/1389266138_094028.html



Did the Catalans want the Constitution and the Statute of Autonomy of 1979?

Absolutely. The Spanish Constitution is also the Constitution of the Catalans, who massively celebrated it. It is their Constitution regardless of their residence, the same as it is of the people of Madrid, the Basque Country or Andalusia who live and work in Catalonia. Two of the seven fathers of the Constitution were Catalan and many Catalan MPs and senators made significant contributions to the Constitution. The national turnout in the constitutional referendum held on December 6, 1978 was of 67.11%, in Catalonia it was of 67.90%. The new Constitution was supported by 90.46% of Catalan voters, almost three points above the percentage obtained by the 'yes' in the whole of Spain (87.87%).

http://www.congreso.es/consti/elecciones/referendos/ref_consti.htm

Logically, many Spaniards born after that time could not vote the Constitution, but that happens, by definition, with any Constitution that lasts in time. This also happens in all European countries, many of which have barely any citizens left who are still alive and who approved the Constitution. The French Constitution was adopted in 1958, the German is of 1949, the Italian, 1947, the American, still in force, 1787, and so forth. This objection makes no legal or historical sense; it is claimed and accepted by no one in the West. **The more stable the Constitutions, the higher the prosperity they provide, their reform procedures and**

Why? • 20 Questions and Answers on the Secession of Catalonia

interpretation are used to update them, not to overthrow their fundamental pillars, which remain.

The legislative, executive and legal branches stem from them and are subject to them, they are constituted powers. In our case, they stem from the constituent pact of Spaniards, from the constituent will of the Catalans. This is what is violated when the Constitution is violated and it is what is defended when the Constitution is defended.

The Catalan Statute of Autonomy of 1979 was received by the Catalans with an enthusiasm and support not received by its 2006 successor. In the referendum on the Statute of Autonomy held on October 25, 1979 the turnout was 59.70% and the favourable votes were 88.14%. The preamble of the text states that ‘Catalonia, exercising the right to autonomy recognised in the Constitution and guaranteed to the nationalities and regions making up Spain, declares its wish to be constituted as an autonomous community.’

The turnout to the statutory referendum held on June 18, 2006 was below 50% (48.85%) and the favourable votes reached 73.23%.

http://www.congreso.es/consti/elecciones/referendos/ref_cata_2006.htm

This should not be regarded as a so-called ‘real’ political will of the Catalans expressed in the 2006 Statute versus an alleged ‘fake’ political will expressed in the 1979 Statute and in the 1978 Constitution. This is a fallacy that the facts belie. **Since 1978 any statute of autonomy for Catalonia finds its origin, its limit and its guarantee in the Constitution, which belongs to all Spaniards without exception, interpreted by the Constitutional Court.** Thus the constituent pact is safeguarded. Trying to confront a Catalan autonomic will to a foreign constituent will,

non-Catalan, when the Catalans were decisively involved in the covenant, would be the same as depriving the Catalans of the ultimate expression of their political will, which lies in the 1978 Constitution.

It is sometimes argued by secessionism that Catalan autonomy has suffered some degree of depletion over the years. But this is not true. **Catalonia has enjoyed over thirty years of uninterrupted self-government (in Northern Ireland autonomy has sometimes been suspended) and of a really political nature, not just administrative, with legislative powers on such important subjects as: language, civil law, health, education, radio and television, culture, universities, territorial organisation, security, and so forth.** It has established its own budgets, its own public sector and its own civil service. These have been genuine political decisions unique to the Catalan institutions, initially restored in 1977 with the restitution of Premier Tarradellas at the head of the Catalan government, as the president of all the citizens of Catalonia, like he liked to define himself.

The fact that the Spanish Constitution is fully applicable in Catalonia and that its interpretation is assigned to the Constitutional Court cannot be presented as any sort of depletion or voiding, but as a guarantee. And **to mark the new Statute of 2006, inasmuch as it has been declared constitutional, not only nothing has been hollowed, but the Constitution has been interpreted in such a way as to favour the powers of the *Generalitat*, the regional Government of Catalonia.**



Does the 2006 judgement of the Constitutional Court on the 2006 Statute prevent the Catalans from having a satisfactory status in the Spanish constitutional framework?

Obviously not. That is certainly repeated every day in statements and documents, to the extent that this is the general belief of many Catalan citizens, but it is not true. It is a sad excuse, because the Statute was unconstitutional on many important aspects and the Constitutional Court had no choice but to declare it so. The Constitutional Court, nevertheless, chose to minimise the impact of its judgement by replacing declarations of unconstitutionality with interpretive reasoning (in other words, an article is constitutional only if it is interpreted as the Court does), drafting a much more benevolent general interpretive judgement, despite the potential impact it could have on the constitutional system as a whole.

The Constitutional Court faced an extremely hard case: nothing short of deciding whether it would accept Catalonia's new Statute of Autonomy altering the constitutional State model in dozens of ways, ignoring and against the provisions of the Constitution. The legal uncertainty and complexity generated by having made the Statute an unconstitutional bid thus joined the political conflict. These effects are especially attributable to those responsible for the adoption of this statutory text.

None of this has served to satisfy anyone, especially those who today deplore that frustration, although they already announced in 2006 that the text fell short by not recognising what is now claimed again under the euphemism of ‘a new political future for Catalonia.’ Then, like today, it was already argued that the Constitution could not hinder the ‘democratic wishes of the people’ and that it was necessary to turn a blind eye to the many unconstitutional provisions proposed, thus putting much political will.

These untenable arguments (and the extremely harsh delegitimisation and disqualification of the Constitutional Court prompted by this, including demonstrations), tend to come with other reasons which would also serve to justify the ‘collective rebellion of Catalonia’ before the lack of understanding and disregard from the rest of Spaniards.

Thus, secessionism also finds that the ruling of the Constitutional Court of 2010 on the new Statute of 2006 is a reduction of autonomy and even arbitrariness, since other Statutes of equivalent content have not been denounced as unconstitutional. The first is simply untrue: **the vast majority of the Statute's content is in effect and it largely exceeds not just the Statute of 1979, but also the 1932 one and even the 1931 Nùria draft, both under the II Republic.**

As for the similarity to other Statutes' provisions, it is important to make two points clear. In the first place, although such similarities exist in some specific areas, the intent and extent of the transformation of the State sought by the Statute of 2006 bears no comparison to the effect that the remaining Statutes would have on the territorial State organisation. In the second place, **if a provision is constitutional only if it is interpreted in the sense that the Court says, that goes for the Catalan Statute, but it also applies to any other Statute if it says the same thing as the Catalan Statute.**

Why? • 20 Questions and Answers on the Secession of Catalonia

The fact is, however, that they do not always say the same, despite appearances, as it happens for instance with regard to holding referendums: where the Andalusian Statute explicitly excludes the possibility of holding them, the Catalan Statute refers to Article 149.1.32 of the Constitution in a way that raises constitutionality questions, as explained in the Judgement of the Constitutional Court of 2010.

Finally, a truly extraordinary complaint is also repeated: that the Constitutional Court has disallowed a law that had previously been ratified by the people in a referendum. That is true, the same as it is true that for the rest of the laws declared unconstitutional, the Court also ‘disallows’ the institutions representative of the people, such as Parliaments. This is what happens then Constitutional Courts act retrospectively (review), unlike those which, like the French Constitutional Council, rule before the Act comes into force.

But it must be remembered that precisely those who again and again reiterate the same complaint could have prevented this situation from taking place, and they chose not to. This is the case of those who voted against the reform of the Organic Law of the Constitutional Court to reinstate the possibility of lodging a constitutional challenge prior to the approval of the Statutes of autonomy on the grounds of unconstitutionality, as proposed by the Spanish Popular Party in Congress and the Senate. This proposal was submitted to Parliament at the same time as the Statute and it included an explicit reference to the constitutional review of the Statute of Catalonia by the High Court prior to the referendum and its entry into force. To paraphrase the old Latin adage, you cannot claim in your own benefit your own faults.



Can we speak in any sense of lack of representation of the Catalans in the constituent process or in the State institutions?

No, that statement has no basis. We have already mentioned the presence of two constitutional fathers and their contribution to the 1978 Constitution, Jordi Solé Tura (PSUC) and Miquel Roca (CiU). Moreover, 50 representatives were elected in Catalonia for the Congress that drafted the Constitution. For instance, for that same constituent Congress the number of representatives elected in Madrid was 33. In total, **from 1977 until today the number of MPs in Congress elected in Catalonia has been 579. MPs elected in Madrid have been 429. Something similar can be said of the Senate. From this point of view, the Constitution and the laws made in the House of Representatives for the whole of Spain have been, if one may say so, mostly catalan.**

In addition to this, Catalonia's participation in many of the decisions that have marked Spanish politics has been decisive. One should only need to recall the work of Josep María Ainaud Lasarte entitled *Catalan Ministers in Madrid* or the list of judges of the Constitutional Court and of other institutions to realise this. The president of the National Transition Advisory Council, Carles Viver Pi-Sunyer, has also been Vice-President of the Constitutional Court.

Why? · 20 Questions and Answers on the Secession of Catalonia

CiU has given its parliamentary confidence to the first four Prime Ministers of Spain since 1978: Adolfo Suárez (1980), Leopoldo Calvo-Sotelo (1981), Felipe González (1993) and José María Aznar (1996 and 2000), and in the last two cases, decisively. It also voted affirmatively to the constitutional reform of 1992 and to the Organic Law which developed the constitutional reform of 2010. The same can be said of the main international treaties.

The Ainaud list mentions 66 Catalan ministers from 1818 to 2000. In virtually all governments, there has been at least one Catalan minister, reaching two very often, three several times and even four a few times. In other words, in all types of government and of all kinds of ideology: members of the Lliga, of Esquerra Republicana, Republicans in the First Republic, Anarchists during the Civil War, members of the PSOE, UCD, PP, traditionalists, and so forth. Figures as important as Figuerola, Prim, Figueras, Pi i Margall, Durán y Bas, Cambó, Ventosa Calvell, Marcelino Domingo, Jaume Carner, Nicolau D'Olwer, Companys, García Oliver, Bau, López Rodó, Oliart, Narcís Serra and Josep Piqué.

But most importantly, the Catalans not only actively participated in the drafting of a Constitution of all and for all, but they have also been central figures in the development of the constitutional Spain, in the common government and legal bodies, in all key institutions. They have played a very important role, sometimes decisive, in the country's governance, crucially conditioning several terms of office. How can it be held, then, that there has been no understanding, that Catalonia has had no say or influence on the fate of the rest of Spain?

CONCLUSION

A process without reasons, an invented grievance

The secessionist process can claim intentions and alibis, but it is a process without reasons, if by reason one understands a type of argument that responds to reality and that is expressed by formulas commonly accepted in the political community that they address. **Before Europe, before the West, before the world, secessionism lacks reasons. What it says about Catalonia disowns the Catalans of one of their most important contributions to European political culture, such as their participation in modern and contemporary history and the Spanish constituent process and, through it, in the process of European integration.** A process that conveys a will for harmony and integration, working for constitutionalism and for the social and democratic Rule of Law as a form of political and social organisation, and citizenship as a personal status that makes us equal before the law and guarantees our freedom.

One of its first modern expressions and a model for many countries, the Spanish Constitution of 1812, was also made with the outstanding participation of Catalan MPs, like Antonio de Capmany or the first president of the *Cortes* of Cadiz, Ramon Llätzer de Dou. Evidence of the deceiving efforts of the independent leaders is the fact that the second centenary of Capmany's decease, which took place in 2013, has passed unnoticed in Catalonia devoted as it was to commemorate the tercentenary of 1714. Eminent representative of the Catalan Enlightenment, Capmany was decisive in shaping the nineteenth-century Spanish national identity, that is, post French Revolution and, therefore, based “inter alia” on the consecration of the Spanish language as the common language of all the Spanish people.

Why? • 20 Questions and Answers on the Secession of Catalonia

It was Capmany who proposed the name 'Constitution Square' for the main squares of Spanish cities. Capmany is an uncomfortable character for nationalist Catalonia, as is general Prim, whose birth bicentenary is commemorated in 2014. To be sure, this event will also be buried by the tercentenary of the fall of Barcelona in the War of the Spanish Succession in a battle, incidentally, in which the locals fought exhorted by the Catalan authorities to 'gloriously shed their blood and their lives for the King, for their honour, for their homeland and for freedom in Spain' (released by the side of the Three Commons in Barcelona on September 11, 1714).

Secession is a process without reasons based on the invention of a non-existent grievance.



How?

The Path of Secession

Although it lacks reasons, the fact is that secessionism exists. The desire to stop Catalonia being a part of Spain and stop sharing its history has supporters. They act against known truths, they break with the history of Catalan society—of the Catalans and of political Catalanism, alien to secessionism—they force it to reject some of its greatest contributions to Spanish and European progress, and hopelessly separate it from the continental integration project. It is a radical and populist ideological project, and we know from the experience of the twentieth century, what that may come to mean. But even knowing all of this, they act to achieve secession.

To this end, they have developed a discourse that, under the appearance of legality, asserts the possibility of holding a referendum to decide ‘the independence of Catalonia’ and its rupture with the rest of Spain. This discourse can be summarised as follows:

- a)** The people of Catalonia, sovereign according to the recent proclamation of its Parliament, have the right to decide their fate.

How? · 20 Questions and Answers on the Secession of Catalonia

- b) By democratic principle, no Constitution and no law can prevent Catalonia from deciding.
- c) To exercise the democratic right of the people and make them pronounce themselves, you have to make a consultation.
- d) To hold the consultation, up to five different procedures have been developed in several reports of official institutions:
 - Through the Catalan Consultation Act via referendum passed in 2010 by the catalan Parliament, challenged before the Constitutional Court whose ruling is still pending.
 - Through the holding of a consultative referendum by the Government of Spain under Article 92 of the Constitution and the Organic Law on Referenda of 1980.
 - By the State delegating (“devolving”) to the *Generalitat* the constitutional power to hold a referendum, under Article 150.2 of the Constitution.
 - Through a constitutional reform.
 - Through a new Catalan Popular Consultation Act termed as non-referendary, to avoid the need for State authorisation, currently submitted to the *Parlament*.
- e) Of the listed possibilities, the secessionists have finally decided to request from the Spanish Parliament to grant the power to call a consultation to the *Generalitat*, under the abovementioned article 150.2.
- f) However, **before legally attempting to obtain the power to summon anything, they have already announced the date of the consultation (November 9) and the two questions they intend to ask.**

- g) In parallel, they warn that if the State should prevent the consultation, elections could be called in Catalonia to turn them into a plebiscite on secession that would be followed by a unilateral declaration of independence by the elected Catalan parliament.

For the overwhelming amount of reasons that will be highlighted below, the consultation raised by the Catalan secessionism is unconstitutional and illegal. Since its content is unconstitutional, because the Constitutional Charter does not recognise the right of secession, it makes up a foundation outside the Constitution, such as the so-called “the right to decide”. As the procedure is also unconstitutional, because **a referendum with an unconstitutional question would be in breach of the Constitution and the Catalan Autonomous Community would not have the capacity to hold it either**, the procedures are violated (up to five!, as we have seen) to pretend a legal appearance even though the whole plan is known to be contrary to the Constitution.

Basically, all the reasoning boils down to appealing to democracy, to placing political will before the laws and to delegitimising an impeccably democratic Constitution as an unpleasant obstacle to the freedom of the people.

Only one of the possibilities of the alleged legal constructions abovementioned follows the law: the one which states that in order to hold a secession consultation like the one they seek to do, a constitutional amendment must be decided by the holder of national sovereignty, the Spanish people as a whole.

The applicable principle is simple: **only by the will of all can you change what was built by the will of all. This is a guiding principle of all constitutional systems. Otherwise no country, regardless of its history and the importance of its traditions, would be able to provide their citizens with the legal certainty they need to be free.**

How? • 20 Questions and Answers on the Secession of Catalonia

With the sole exception of the 1994 Ethiopian Constitution, no Constitution in the world envisages a process of secession of a part of its territory. What can be done is to assume that aspiration as a result of a process of constitutional reform, that is all. But even Article 39.4 of the Ethiopian Constitution states that the consultation terms would be set by the federal government, not the territory promoting secession, and that it will be the former and not the latter who will develop the process under ‘the terms established by law’. In other words, respecting the legal procedures is necessary even for a process of this type, simply because no process is democratic if it occurs against the law. Catalan secessionism ignores this, and its way to proceed would even be contrary to the only Constitution in the world that regulates the right of secession.

Arguing before this that the Constitution cannot be an obstacle to democracy is simply a serious fraud on democracy itself. **The final argument of Catalan secessionism that it seeks to exercise democracy without the barriers of the Constitution and the law is oblivious to the fact that democracy does not exist without the law.** In fact, modern democracy was born when the first Constitutions were approved. In Spain, the Cadiz Constitution, which was born to destroy the medieval particularisms and provide all citizens with freedom and equality. **The Constitution is not an obstacle or a legal wall but the guarantee of togetherness, freedom and peace. It is only an obstacle for those who pursue a particular project, destroying the project of common co-existence.**

Paragraphs 77 and 78 of the opinion of the Supreme Court of Canada of 1998 on the unilateral secession of Quebec, as well as the conclusions of this paper are extremely explicit about this:

20 Questions and Answers on the Secession of Catalonia · How?

'In this way, our belief in democracy may be harmonised with our belief in constitutionalism. Constitutional amendment often requires some form of substantial consensus precisely because the content of the underlying principles of our Constitution demand it. By requiring broad support in the form of an "enhanced majority" to achieve constitutional change, the Constitution ensures that minority interests must be addressed before proposed changes which would affect them may be enacted.'

And adds:

'It might be objected, then, that constitutionalism is therefore incompatible with democratic government. This would be an erroneous view. Constitutionalism facilitates—indeed, makes possible—a democratic political system by creating an orderly framework within which people may make political decisions. Viewed correctly, constitutionalism and the rule of law are not in conflict with democracy; rather, they are essential to it. Without that relationship, the political will upon which democratic decisions are taken would itself be undermined.'

For this reason, in paragraph 103 of the opinion, **the Supreme Court of Canada concludes that:**

'The secession of Quebec from Canada cannot be accomplished by the National Assembly, the legislature or government of Quebec unilaterally, that is to say, without principled negotiations, and be considered a lawful act. **Any attempt to effect the secession of a province from Canada must be undertaken pursuant to the Constitution of Canada, or else violate the Canadian legal order.**

That is, repeating that 'democracy requires being able to vote' is deceitful as it ignores that **voting is an act contrary to democracy when not done in accordance with the Constitution and the laws that are in force.** And that which is contrary to democracy and the law, cannot be done. And also deceiving is to appeal to envy other voting processes such as the one in Canada, with Quebec; or the United Kingdom, with Scotland; while being fully aware that, in addition to being very different cases due to their respective histories, the basis of both processes is not a democratic princi-

How? • 20 Questions and Answers on the Secession of Catalonia

ple operating above the law, but the strict compliance of their various constitutional provisions.

Moreover, in both cases the capacity to hold a hypothetical process of secession remains with the Parliament of Canada, not Quebec's, and with Westminster Parliament in the British case, not Scotland's, a capacity statutorily held by London. They are the ones who can set the conditions –if, when and how– under which secession could eventually take place.

The same has happened on the occasion of a citizen petition for the secession of the State of Texas. The federal government of the United States—the Obama Administration—reiterated the Supreme Court doctrine contrary to secession, denying that it were possible, and the government's response is as important as the process that has led to it, always within the envisaged procedures (<http://petitions.whitehouse.gov/petition/peacefully-grant-state-texas-withdraw-united-states-america-and-create-its-own-new-government/BmdWCP8B>). And the same could be said of France, where the Constitutional Council pronounced itself in a similar way with regard to the 'Corsican people'.

In contrast, Catalan secessionism aims to change the status of Catalonia unilaterally and against the legal principles, and refuses to acknowledge that the only permissible road for its claims lies in the Constitution and the laws. It's only logical that the road should be this one since to all effects—legal, political, economic, cultural, social, and international—changing the status of Catalonia means changing the status of the whole of Spain and of the Catalans who live outside Catalonia. Again, in the words of the Supreme Court of Canada (paragraph 149):

'The people of the provinces and territories (of Canada) have created close ties of interdependence (economically, socially, politically and culturally) based on shared values. The Cons-

stitution vouchsafes order and stability, and accordingly secession of a province “under the Constitution” could not be achieved unilaterally.’

The Catalan Parliament or a legally established number of MPs or Senators could legally propose a reform of the Constitution, but they have not done so. Meanwhile, the roads proposed and even demanded by secessionism to circumvent the Constitution clearly violate the regulations of the Rule of Law and are therefore totally and completely unviable.

Bearing in mind all of the above, it is possible to clearly answer some questions.



Is there a right to decide outside the Constitution and the law?

No. Not in Spain or in any other democracy. The Constitution and the laws are precisely the ones that guarantee the right to decide on political issues that affect us, as is being done with complete transparency and normality in the local, regional, European and general elections among other procedures, including the referendum on the terms set out in the Constitution. And it does not exist for a reason that should be obvious to all democrats: if we had an unlimited right to decide on any matter at any time, life in common and everyone's compliance with the same laws would be impossible.

How? • 20 Questions and Answers on the Secession of Catalonia

As explained by the writer Javier Cercas, ‘In democracy there is no right to decide what one wants, indiscriminately. I do not have the right to decide whether to stop at a red light or not: I have to stop. I do not have the right to decide whether to pay taxes or not: I have to pay. Does this mean that one cannot decide in a democracy? No: it means that although we often decide (at local, regional and general elections), democracy is to decide within the law, a concept that, in a democracy, is no joke, but the only defence of the weak against the powerful and the only guarantee that a minority will not impose itself over a majority.’

(http://elpais.com/elpais/2013/09/13/eps/1379095000_774993.html)

Since there is no right to decide in a general sense outside the Constitution and the laws, there is no right either to decide on secession in a particular case. What would happen if every so often a region exercised a hypothetical right to decide and declared itself autonomous and therefore free to respect the laws and the national or regional taxes?

The claim to have a right to decide against existing laws has absolutely no recognition anywhere. That claim deserves rejection by all constitutional systems of the world, whether federal, as the United States (so the Supreme Court of the United States has asserted since 1869), or unitary, as France (the French Constitutional Council declared this in 1991). In addition, as we have seen, neither the UK nor Canada recognise this right.

In addition, **international treaties explicitly protect the territorial integrity of democracies. For example, Resolution 2625 of the General Assembly of the United Nations** explicitly rejects any action which would dismember or impair, totally or in part, the territorial integrity of sovereign and independent States that are ‘pos-

essed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.’

(<http://www.un-documents.net/a25r2625.htm>)

Of course, this is the case of any State of the European Union. Similarly, the Conference on Security and Cooperation in Europe held in Vienna in 1989 stated that the participating the participating States would act in conformity with the purposes and principles of the Charter of the United Nations with regard to the preservation of the territorial integrity of the States, according to the Helsinki Final Act.

The so-called ‘right to decide’ does not exist and is, ultimately, a nationalist expression used a few years ago by the Basque regional Premier Juan José Ibarreche for his failed sovereign process now somehow replayed in Catalonia. An expression concealing, with a seemingly friendly slogan, the impossibility of applying the right of peoples to self-determination to Spain and the inconvenience of using the most dramatic terms that really apply to the situation, such as secession or breakup of the country and of its Constitution.



Is the so-called right to self-determination applicable to Catalonia?

No, it is not. This is a right limited to decolonisation processes and undemocratic regimes that do not respect the Rule of Law, subject to conditions established by the UN that have nothing to do with what is happening in Catalonia or in any other part of Spain. Catalonia has never been a colony of Spain, but the acting part of an ancient imperial monarchy and later of a modern constitutional State.

That is why self-determination is not mentioned in processes such as the one in Quebec or Scotland either. The Canadian Supreme Court further considered in 1998, as a fundamental fact about it, that Quebecers were actively present in Canadian institutions. Just as the Catalans obviously are in Spanish institutions.

Secessionism knows perfectly well that speaking of self-determination is pointless, and for that reason it has had to invent a so-called right to decide that finds no precedent in any legal system, whether national or international. The right to self-determination exists, albeit it has nothing to do with Catalonia; the right to decide does not even exist, no one recognises it and it cannot be claimed in any instance.

It is also necessary to remember that **during the Spanish constituent process the right to self-determination was discussed and rejected by 24 votes to 1, with no abstentions, in the Congress' Committee on Institutional Affairs and Civil Liberties.** It was in session on Friday, June 16, 1978, when an amendment in defence of that principle was discussed—and it was not prompted by any Catalan MP but by a Basque one.

http://www.congreso.es/public_oficiales/L0/CONG/DS/C_1978_091.PDF

Against it, the Catalan Jordi Solé Tura said that it was an amendment contrary to the desire to make ‘a Constitution that reflects the aspirations of the vast majority of the Spanish population, and to this end this Constitution must put in common what effectively is common, and leave aside those things that are either not shared by the majority, or which can cause tremendous divisions and lacerations.’

Also Miquel Roca, who could not be present at the time of the vote, later said: ‘Just to dispel any doubts. I would not have voted for the amendment of Mr. Letamendía. That's all.’ Rodolf Guerra i Fontana, from the Socialists of Catalonia, said that he could ‘more or less precisely repeat the exact words of the Catalan Minority in the sense that if we had voted, we would not have voted yes.’



Is holding a consultation with some questions such as those announced in Catalonia for November 9, 2014 legal?

Absolutely not. Neither Catalonia's *Generalitat* nor any other Spanish institution may hold a referendum with such content.

The questions announced by regional Premier Mas on December 12, 2013, for the consultation of November 9, are, as is well known, two: a) 'Do you want Catalonia to become a State?' b) 'If you do, do you want that State to be independent?'

A large number of arguments can be drawn to show that this consultation cannot legally take place, but suffice it to say that this issue has already been decided by the Constitutional Court. And in a very clear and conclusive manner too.

The Basque Parliament Act 9/2008 of 27 June, regulating and convening a popular consultation in order to gather citizen opinion in the Basque Country on the opening of a negotiation process to achieve peace and political normalisation, envisaged the holding of a non-binding consultation to the Basque citizens on October 25, 2008. It was approved by the Basque Parliament and immediately declared unconstitutional by the Constitutional Court. The consultation posed two questions:

- ‘Would you be willing to support a negotiated end to the violence, if previously ETA unambiguously expressed its will to put an end to it once and for all?’.
- ‘Do you agree that Basque parties, without exception, should initiate a process of negotiation to reach a Democratic Agreement on the exercise of the right to decide of the Basque people, and that this Agreement be submitted to a referendum before the end of year 2010?’.

On September 11, 2008, the Constitutional Court unanimously declared the law unconstitutional, basing its decision on three reasons, of which the first two are of interest here (the third was on the parliamentary procedure for adoption at single reading):

- The incapability of the Basque Parliament to pass a law of this nature, by infringement of Article 149.1.32 of the Constitution, which grants the State the exclusive power to authorise the calling of popular consultations via referendum.
- The content of the law, which breaches Articles 1 and 2 of the Constitution, because a consultation of this type affects its very foundations, because it affects the identity and unity of the sovereign, or at the very least, the relationship that the latter can only establish between the State and the Autonomous Communities. This would require a constitutional amendment, the High Court added.

Several names could be given of authors who have defended and continue to defend even today that a referendum may pose an unconstitutional question. Ho-

How? · 20 Questions and Answers on the Secession of Catalonia

wever, that would be an idle discussion as the supreme interpreter of the Constitution has already settled that this is not feasible, at least when, as in this case, the identity and unity of the sovereign subject, which is the Spanish people, is affected.

When appealing to the right to decide, as in the Act of the Basque Parliament and now in Catalonia, the Court notes that this right would entail the existence of a subject (the Basque people, the Catalan people) equivalent to the holder of sovereignty, that is, the Spanish people. But just as there cannot be another sovereign, the right to decide does not cease to affect all citizens. All this in a context in which, as is also stated in the judgement of the Constitutional Court on the right to decide, our Constitution guarantees ‘one of the fullest democratic systems that can be found in Comparative Constitutional Law’.

Thus, when announcing this consultation, with these specific questions for November 9, 2014, Premier **Mas has made an announcement that places him, his government and the groups who have supported him outside the Constitution and the law**, whatever the procedure he now intends to follow, among all those that have been mentioned.



**Can the State convene a consultation
or delegate it to the *Generalitat*, as agreed by the
Parliament of Catalonia?**

As we have already said, it is not possible for any institution, not even the State Government, to call a secession referendum. Neither is it possible for the government to delegate on the *Generalitat* the capacity to convene a consultation of this nature, let alone to call a referendum with some questions announced by the interested parties themselves which are already known to be unequivocally unconstitutional.

A consultation (via referendum) can only be called by the State in accordance with Article 92 EC. And an Organic State Law (LO 2/1980) now regulates the conditions and procedures for the different kinds of referendum envisaged by the Constitution. Among which there is obviously not a territorial secession referendum, neither summoned by a territory nor by the state.

There is no shortage of proposals made by politicians and Professors who believe the government may convene such a referendum if the Organic Law is amended. But the truth is it could never have the content announced by the regional Government of Mas (or any other that questions Articles 1 and 2 of the Constitution and the subject of sovereignty) and moreover, it should obviate most, if not all,

How? · 20 Questions and Answers on the Secession of Catalonia

of the requirements of Article 92 of the Constitution, thereby resulting in an extreme, almost insurmountable constitutional fragility.

Note that, in conformance with Article 92 of the Constitution:

- a)** There can be no referendum on pieces of legislation.
- b)** It is consultative and not binding.
- c)** All citizens should decide. It cannot be limited to the citizens of a part of the territory (except where the Constitution has expressly envisaged it, according to the logic of other constitutional provisions, such as those relating, for example, to the adoption or amendment of the Statutes of Autonomy).
- d)** Given their importance, all basic institutions of State are involved: the Prime Minister of the Government proposes, the Congress authorises and the King formally convenes.
- e)** Given its importance, only assumptions, conditions, and procedures of a specific Organic State Law on the modalities of a referendum can be regulated (not of any Organic Law, so it is not interchangeable, for example, with the Organic Laws on transfer or delegation under Article 150.2 of the EC, or with the statutes of autonomy, according to the Constitutional Court).
- f)** Meanwhile, the Organic Law on referenda cannot alter powers between the State and the Autonomous Communities.
- g)** And if all this were not enough, a referendum of this sort would alter the logic of the whole constitutional system.

Thus, **neither can the questions be put to a referendum by the Government as the secessionists seek, nor does it seem constitutionally feasible to dispense with most of the requirements of Article 92 to amend the Organic Law to allow the Government to make a consultation on independence and secession.**

It should be added that not even this demand has been the one formulated by Catalonia, because neither a proposal to amend the Organic Law 2/1980 has been submitted, nor has the Government been requested to be the one holding the referendum.

The procedure which has finally been followed is requesting the delegation of the power to convene the consultation to the *Generalitat*, by an Organic Act passed via Article 150.2 of the Constitution.

But the State cannot delegate a capacity that it does not have, as we have already seen. And we should also add that even if had such a power, it would not be possible to delegate it to the *Generalitat*.

This paragraph of Article 150 establishes that ‘the State may transfer or delegate to the Autonomous Communities, through an organic act, powers allocated to the State which, by their very nature, may be transferred or delegated.’

Therefore, not every State capacity may be delegated. It is true that the realisation of those that are not is not obvious, because the reference to ‘powers allocated to the State which, by their very nature, may be transferred or delegated’ is a vague legal concept, which accepts various interpretations.

How? · 20 Questions and Answers on the Secession of Catalonia

But any jurist knows that the interpretation of an indeterminate concept is not left at the unfettered discretion of any political will, differing with time, due to purely opportunistic reasons. Indeterminate concepts can be identified at each particular time, according to the criteria of logic and social reality of the time in which they are interpreted. **And it seems quite clear that delegating the power to call a referendum so that a part of the country can convene a referendum on independence and secession is not exactly the interpretation that the constituent—and today any interpreter—must have had in mind when thinking of a ‘State power that may be delegated.’**

Such an interpretation of article 150.2 would simply be an extravagance, the more so when, in practise, it would result in an actual transfer of the sovereignty of the entire Spanish people to a part of it, thus **it would also seem that those matters affecting sovereignty should be the most unequivocally regarded as not capable of being delegated or devolved.**

Clearly linked to this is a detail not exempt of importance, and that is the fact that, formally, the calling for a referendum rests on the King, as part of the Decalogue of powers of the Monarch enshrined in Article 62 of the Constitution and subsequently ratified in Article 92. Just reading article 62 should be enough to realise that none of the royal powers contained therein fall within the section of capacities which may be delegated to an Autonomous Community, because they belong to the hardest core of State capacities (as, incidentally, other obvious tasks of the King, such as appointing the members of the General Council of the Judiciary or the judges of the Constitutional Court).

To overcome such serious objections some arguments are being used that should be clarified. It is said that, as consultative and not binding, the referendum

and its delegation are constitutional. Obviously, that is just being simplistic: Article 92 EC itself states that all referenda on ‘political decisions of special importance’ are merely consultative and that does not mean you are free to consult anything at all, as unconstitutional or aberrant as it may be. **The fact of it being consultative and non-binding does not turn an impossible consultation into possible.**

Some scholars, aware of how complicated, to say the least, it is to find a legal resource in which to fit this consultation, have argued that it would only serve to launch a constitutional reform. But it has not been raised for that (remember the two questions they seek to make) and the Constitution already establishes reform procedures in Title X, and no other requirements may be added, such as a consultation to the Catalan people before the Parliament exercises the reform initiative. Article 166 relative to Article 87.2 of the Constitution already allocates the initiative for a constitutional reform to the autonomous parliaments, without envisaging a prior intervention of the people. The Constitutional Court Judgement 76/1994 (whose Judge-rapporteur was Carles Viver) already rejected the possibility of using the popular initiative to promote the launching of the initiative for a constitutional reform by the Basque Parliament.

It is also repeated that the State had already used article 150.2 of the Constitution to delegate the authority on traffic to Catalonia in 1997, so if it does not do the same now with the power to call referendums it is because it has no ‘political will,’ totemic expression in the Catalan public debate. But it also answers itself that **to transfer traffic powers has nothing to do with transferring sovereignty, which clashes upfront with key articles of the Constitution as 1.2 and 2, the reform of which would entail the complex procedure of constitutional reform.**

How? · 20 Questions and Answers on the Secession of Catalonia

It has been said, in short, that delegating the power to call a consultation would be a formal act for the transfer of powers which does not prejudge the contents of the consultation. And it is not that this argument is weak or strong, it is simply sarcasm. **Saying that you do not know what you are going to delegate the consultation for, and that it is just about allowing citizens to decide, is a childish argument which speaks by itself about the solvency of what it claims. The accumulation of facts that comprise the context of such delegation is overwhelming, not least because the secessionists are making statements about it every day.** Or is it that the daily explanations, the creation and the work of the Advisory Council for the National Transition and the prior announcement of the questions to be asked are not enough to convey a clear idea on what the consultation is going to be about? It is clear, and for that reason also, delegating the power to call a consultation is not possible.

And if the context were not enough, available for anyone who wants to read is the long Explanatory Memorandum of the bill that the regional Parliament of Catalonia has sent to Parliament to request the delegation: the Statute is no longer valid, the Constitutional Court has made it impossible to continue this way, the will to decide of the Catalan people is 'unequivocal', there is a 'majority that favours the right to decide,' democracy must be exercised as in Quebec or Scotland... In short, the sole thing that does not offer any doubts is that the consultation, the delegation of which is requested *ad casum*, that is, to call this consultation and only this consultation, is to ask about secession. And this is so crystal clear that the aforementioned Explanatory Memorandum **even prejudices that the answer is going to be 'yes' and therefore, the 'consultative' referendum should not be regarded as so consultative indeed, but would actually force 'a particular political behaviour by the State and the *Generalitat*, namely, to negotiate, fairly and without delay, the road map to turn such a will into a legal reality.'**

http://www.parlament.cat/actualitat/Resolucio479_10_es.pdf



Is there any other legal channel for a consultation on secession in Catalonia without amending the Constitution?

No. There is no other legal channel to hold a consultation on secession in Catalonia but amending the Constitution.

The remaining possibilities comprised in reports commissioned to Catalan institutions, revolving around the Catalan Consultations Act, currently in force, via a referendum or around the Catalan bill for non-referendary consultations have been disallowed, not only by the abovementioned arguments and by the common law of the Constitutional Court (Catalonia's lack of power to call referenda and the impossibility of a secession referendum), but now also by the own acts of the Parliament of Catalonia.

In legal terms, **when claiming that the State transfers to the *Generalitat* a power which is considered to belong to the State and the formal delegation of which is requested, one is clearly recognising that such a power belongs to the State and cannot be allocated to Catalonia by any regional Act on Consultations issued or to be issued in the future.** Even if the Constitutional Court had not already said—as it has done—that the Autonomous Communities did not have the power to call referenda, it would not need to devote that much time now to write such a doctrine—virtually upon request of the party concerned. In addition, this consultation is contrary to Article 122 of the Catalan Statute which circumscribes these powers to the area of responsibility of the *Generalitat*, and asking for secession is not one of them.

How? · 20 Questions and Answers on the Secession of Catalonia

Thus, the only alternative is put forward a proposal for constitutional reform.

Since the secession would affect the national sovereignty and many key articles of the Constitution, the process would also be particularly complicated. The procedures for amending the Constitution were designed and agreed upon to protect the minorities who took part in the constituent process—for example, Catalan nationalism—and thus prevent a transient majority—for instance, the PP or the PSOE—from changing the consensus reached among all.

If the Constitution cannot be easily reformed it is because that guarantees that the agreement reached by all will not be changed by a few, and this is something that benefits small parties, not the reverse, as is sometimes claimed. Therefore the Constitution, as the expression of a deep and broad consensus, has not a momentary or transitory nature, but a lasting one. This is what happens in constitutional democracies: if they reach comprehensive agreements, they reform, otherwise they don't.

In the case of Catalonia's purported secession, following the procedure laid down in Article 168 would be necessary, which reads:

- '1. Should a total revision of the Constitution or a partial one affecting the Preliminary Title, the Second Chapter, first section of Title I, or Title II be requested, its approval shall have to be obtained by the principle of a two-thirds majority in each House, and the immediate dissolution of Parliament.
2. The elected Houses shall have to ratify the decision and proceed to examine the new constitutional text, which shall have to be approved by a two-thirds majority in both Houses.
3. Once Parliament has approved the reform, it will be put to a referendum for its ratification.'

Given the nature of the constitutional reform needed to allow the secession of Catalonia, the process would require many political and also technical precautions. **A Catalonia out of Spain would be an unprecedented event in history and would have irreversible consequences.** Once started, this process would take years and it could happen that the Spanish society's confidence in the values of the constitutional union with the territory of Catalonia were certified as dead; in other words, it could happen that a majority of Spaniards would decide, in accordance with the constitutional procedure, there was no going back.

CONCLUSION

**A process that, consciously and wilfully,
is being developed outside the Rule of Law**

The right to decide outside the Constitution and the law does not exist. And this is not a statement of internal political order, but an assertion of an international and compared generic and legal nature. That non existing right cannot be claimed in any institution, and no one may rely on it anywhere to break the constitutional order in force. Secessionism finds in the elementary principles of constitutionalism, the Rule of Law and democracy an obstacle to their claims. For this reason it has developed a clearly illegal idea regarding an alleged right to decide, of which there is no trace in any constitutional system or in any international legal system. **The democratic principle ceases to be so if it lacks limits, such as freedom ceases to exist when it lacks limits.** The right to decide is a way to hide secessionism's incapability to democratically and sufficiently convince the citizens of Catalonia—and of the rest of Spain—that it is better to be outside than inside the Constitution.

How? · 20 Questions and Answers on the Secession of Catalonia

The consultation raised by Catalan secessionism is unconstitutional and illegal. Its core, the right to decide, is so. And so are all the procedures studied, with which they have tried—and largely succeeded—to spread among the Catalan people the false impression that the consultation is possible, legal and inevitable.

Only through a constitutional reform which involved all Spaniards would the consultation be possible. You can always adapt, improve and amend a Constitution, but it is everyone's task, of the mightiest power, which is the constituent power, that is, the Spanish people. And respecting the Constitution is just as important as the procedure to allow the constituent power to act. If a constituted power wishes to substitute it, it is because it is seeking rupture, the breaking of coexistence and peace.

With the final paradox that, even if we were to admit for purely dialectical reasons that, as the secessionists say, the consultation should be held because it only involves listening to the people in a consultative manner and does not entail secession in itself, we would be before a future possibility impossible to achieve without the will of the rest of Spain and the extremely complex channel of constitutional reform. Because the next step would ultimately entail holding a vote for the Spanish people to decide whether they wish to reform the Constitution, to enable the secessionist desire or for any other reason.

Not forgetting that should we enter the territory of pure convenience, a consultation for secession is, by definition, traumatic, because however much you sweeten it, **the 'low cost' consultation simply does not exist and the message on the explosive future happiness that awaits the seceded population cannot hide the enormous uncertainties on the day after the breakup of two populations which have been united for centuries.**

Social strife and the lack of respected and viable institutions would shape the scenario of the day immediately after the secession. Security Forces, Administration of Justice, Finance, foreign affairs, a complete constitutional and legal framework are not things that can be improvised.

Once the right to make a consultation is acknowledged, there can be no limiting whoever wants to do it with their respective claims, not even in the number of times you can hold the consultation until you obtain the final yes to secession or to any other thing, which would only involve an instrumental use of democracy.

Those who are pressing forward this process are perfectly aware of all this. It is thoroughly known and done. And they do not care if they must resort to fictions or illegalities. Claiming on every turn of the road the political will, recovering the dangerous and old theory that public authorities may be exempted from observing the law for political reasons.

The process is therefore conceived as a process of confrontation. Certain channels which have no possible way out are started with full determination, in full awareness that this is so, but advancing the conviction that the destiny of this community is its secession, and that by progressing toward this goal, social support for the establishment of their own State will gradually grow. Even at the cost of a double disloyalty: toward the Catalans, who receive the message that they will hold an impossible consultation, and toward the remaining Spaniards, who are accused of refusing dialogue in equally unviable terms.

With the aggravating circumstances of the rupture of Catalan society, inwardly, and the hostility and disrespect of many of their arguments with regard to all the Spaniards, while at the same time inviting them to benevolence.

How? · 20 Questions and Answers on the Secession of Catalonia

Therefore, **the legal disadvantages of this process are extremely serious, but this is not only or mainly about a legal debate.** As demonstrated in this document, it is a socially harmful endeavour, unhistorical and severely detrimental economically speaking for Spain and Catalonia, but it also undermines democracy in the name of democracy itself and calls into question the Rule of Law and the values of peace and harmony pursued by the basic rules of our coexistence.



At What Price? The Cost of Secession

Those promoting the secession of Catalonia usually refer to the economic benefits it would entail for the Catalan people. A recent nationalist paper entitled 'What do I gain from having my own State' (<http://www.queganoyoconelestadopropio.cat/>) argues that pensions, investments, social policies or funding would be far better in Catalonia after secession than they are now. There is nothing to support these claims, neither in the referred document nor elsewhere. In fact, all the available data points to the exact contrary: from an economic point of view, secession would have extremely negative consequences for Catalonia. It would probably push Catalonia to default while its welfare policies and essential services would become unsustainable.

For all Spaniards, but especially for Catalans, seeing how separatists conceal and falsify the economic consequences of their project of secession should be a cause of serious alarm. Especially given the extent to which they are imposing their own political interests over the personal, family and business interests of Catalans.

Economic relations between Catalonia and the rest of Spain, a member of the European Union and the euro, goes very far into explaining the levels of prosperity acquired and enjoyed by Catalans in recent decades. The rupture deliberately sought by secessionism would mean the end of Catalonia's progress because the conditions

that have made it possible would disappear: a large domestic Spanish market, a strong and stable currency, access to funding and to European funds, to name just a few.

Accusing the rest of Spain of ‘plunder’ and ‘theft’, as separatists have done and insist on doing, shows not just a deep ignorance on economic matters, but also irresponsibility and disregard for the fate of the Catalans, whose life would change dramatically—becoming much worse—if secession were to take place. It is necessary to address some essential questions to clarify these issues. One of the reasons of the secessionist tensions suffered in Spain is the adoption by the Catalan nationalists of this type of reductionist and populist discourse centred on accusing the rest of Spain of the plundering the Catalan economy and its resources. This, coupled with the economic crisis, has helped people who were traditionally distanced from secessionism to approach it, believing—in good faith surely—that their economic situation would improve with secession. But their expectations are based on false grounds.



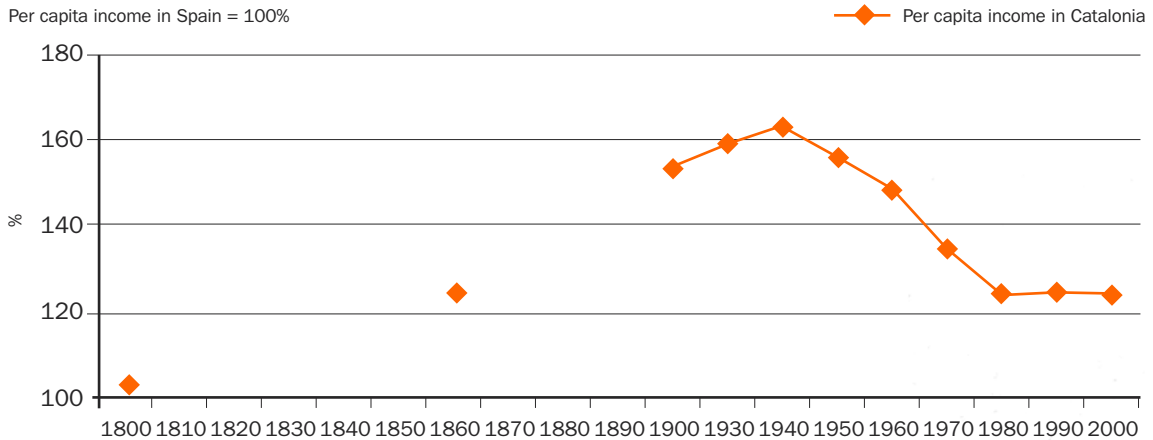
Has Spain ‘plundered’ Catalonia in the past?

No. An intense process of modernisation of Catalan society, one of the most obvious indicators of which is an increase of its population, has been observed since the eighteenth century. From the late eighteenth century to the mid-nineteenth century, Catalan population has grown from 7.8% to 10.7% of the total Spanish population. Historians explain this increase in population as the natural consequence of a conti-

nuous process of economic boom, which in turn is closely related to the high degree of protection enjoyed by Catalan industry within the Spanish market. This protection allowed, for example, a remarkable growth of the cotton industry during the nineteenth century. At that time, **thanks to these protectionist rather than free competition policies, Barcelona was able to become a major commercial and industrial city and the core of a thriving Catalonia.** Catalonia benefited significantly—and sometimes exclusively—from the advantages of protectionism in the Spanish colonial market, to the point that the Spanish business in Cuba was largely a Catalan business.

The overall effect of these policies aimed at the protection of the Catalan economy was a significant increase in Catalonia's per capita income; to the extent that the average per capita income of Catalonia largely exceeds that of Spain as a whole. Catalonia has done very well economically speaking as a part of Spain (see figure 1).

FIGURE 1.
Per capita income in Catalonia



Carreras, A. and Tafunell, X. (Coord., 2005), *Estadísticas históricas de España. Siglos XIX-XX.* 3 vols. Bilbao, Fundación BBVA. Prepared using table 17.27

12?

Is Spain stealing from Catalonia now?

Of course not. Secessionists claim that the current model of State in Spain exerts a so-called tax mistreatment on Catalan citizens and that the system by which Catalonia is financed must be changed urgently as a first step towards a final breakup from the rest of Spain. But the claims of fiscal plundering are a myth, something that by means of repetition might seem true, but it is not. The propaganda which Catalan nationalists have fuelled, activating one of the most dangerous elements of populism: the feeling of belonging to a community that is being attacked from the outside and of owning an identity that is being threatened.

The first thing which should be remembered is that **all regional funding models approved in Spain since the 1978 Constitution, except the one promoted by the socialist government in 2009, have had the explicit support and even the enthusiastic endorsement of Convergència i Unió in the Spanish Parliament.** But on top of this, what is really happening is that Spain has a welfare State that works because people with higher incomes transfer a part of it to those with lower incomes. Since many people in Catalonia have a higher income than the average in Spain, it is only logical that they be the ones—the people, not the territory—that transfer part of their income to sustain social cohesion and welfare policies. The same applies to other Spanish regions, notably Madrid, and the same is also true for all modern States and, of course, for all States of the European Union: the people with higher incomes transfer a part of that income to those with lower incomes, and since

these people tend to concentrate in specific geographical areas it may seem that it is territories and not people who do so. But they are not. It is only that the collection is higher among those who have more, and more is spent among those who need it more.

Should the arguments now brandished by Catalan secessionist have been applied in the European Union, Spain would never have benefited from European funds, nor would it now have the funding facilities it has. Does anyone actually believe that a hypothetical Catalonia seceded from Spain would be able to defend these reasons to oppose cohesion policies within the European Union?

In any case, the international comparison with other Western countries with a decentralisation level similar to the one in Spain shows that Catalonia not only receives a tax treatment that is at least equivalent to any region with a similar relative per capita income, but also, depending on the methodology used for the calculation, this result can even be significantly better in the Catalan case than in those regions, even yielding a fiscal surplus in some years (see table 1).



TABLE 1.

Income, expenditure and balance of the General Administration of the State in Catalonia 2006-2009. Methods: cash flow and profit flow

(millions of €)

| | 2006 | 2007 | 2008 | 2009 |
|----------------------------|------------------|------------------|------------------|-----------------|
| Income Cash Flow | 52,271 € | 57,072 € | 51,778 € | 46,195 € |
| Income Profit Flow | 51,439 € | 56,063 € | 50,783 € | 45,184 € |
| Expenditure Cash Flow | 33,293 € | 35,910 € | 40,203 € | 45,403 € |
| Expenditure Profit Flow | 36,705 € | 39,771 € | 44,440 € | 49,199 € |
| Balance Cash Flow | -18,978 € | -21,162 € | -11,575 € | -792 € |
| Balance Profit Flow | -14,734 € | -16,292 € | -6,343 € | -4,015 € |

Source: Generalitat de Catalunya. Departament d'Economia i Coneixement (2012), taken from *El mito fiscal. Razones para un debate*. FAES Foundation, 2013, page 86.

At What Price? · 20 Questions and Answers on the Secession of Catalonia

Professor Pascual Fernández, a fiscal expert, explains that ‘Catalonia’s deficit, when we apply the cash flow calculating method, which is wrong (and which the *Generalitat* uses) yields a result of 792 million euros. And for every euro that the General Administration of the State collects in Catalonia, 98 cents are spent in the territory of Catalonia.’ On the other hand, when the ‘profit flow method is used, Catalonia’s fiscal balance in 2009 had a surplus with the General Administration of the State, as a difference between non-financial flows of incomes and payments, of 4,015 million euros, equivalent to 2.07% of Catalonia’s GDP.’

El mito fiscal. Razones para un debate. FAES Foundation, 2013. pp. 90-91.

http://www.fundacionfaes.org/file_upload/publication/pdf/20130425105153el-mito-fiscal-razones-para-un-debate.pdf

It can indeed be argued –and an object of negotiation– whether it would be a good idea to reform the funding system or not, and in what ways. It is a common and instructive debate that takes place in all States with a high level of decentralisation. In Spain, that debate takes place by law every five years. But that does not justify the irresponsible economic management of the governments of the *Generalitat*. Their incurrence in very high levels of debt and deficit are the result of systematically ignoring a fundamental lesson: one must spend depending on how much one has, and not according to what one believes one deserves. And also of having set spending priorities that were probably mistaken. In any case, if something within the funding system is not working correctly–something that the *Generalitat* is also responsible for–it could very well promote a reform, which the rest of the Spanish administrations, central and regional, could debate, as they have always done so. What this does not justify is secession.

13

What would be the currency of a seceded Catalonia?

A Catalonia seceded from Spain would be outside the European Union and outside the Economic and Monetary Union. That is, it would be out of the euro. In

a new exercise of manipulation, secessionism is trying to convince Catalans that, to all intents and purposes, Catalonia would continue using the euro as its currency after breaking off from the rest of Spain. No one would be able to force the Catalans to dispose of their assets in euros and, of course, they would find it very difficult, when not impossible, to get rid of their debts denominated in the common currency. But if they should keep the single currency, Catalonia would join the group, along with Andorra, Liechtenstein and Montenegro, of European countries that use the euro without actually being part of the euro.

The seceded Catalonia could try to follow from outside the reference of the euro, but nothing more. The ‘Catalan euro’ would not be defended by the monetary policy of the European Central Bank. To put it graphically, Catalonia could use the ‘euro club’ t-shirt as a fan and spectator, but it would not be part of the team and would watch the match from the stands and not from the playing field. It would not have its support, or funding, or be present in its governing bodies or influence their decisions. This means it would lose all the financial and commercial advantages of the common currency.

This possibility is not very attractive. **Abandoning the idea of creating their own currency entails renouncing to implement their own monetary and exchange policies, which would leave the Catalan economy exposed to the decisions of others and**

would submit Catalan companies and households to serious levels of instability and uncertainty.

Catalonia's exclusion from the Euro-system—formed by the European Central Bank and the National Central Banks, a system that has recently been reinforced with regard to its stability by the creation of the Banking Union—would have an immediate effect on the financial institutions that should decide to keep their headquarters in Catalonia. These would no longer be considered as counter-parties, thus losing the permanent funding facilities and access to the open market operations of the ECB.

As the Governor of the Bank of Spain recently stated:

'There is no possibility that the bank of a territory that is not a member of the EU is financed by the ECB through its subsidiaries in territories which are members.' The ECB 'only loans with collateral issued by a debtor residing in a member country of the European Economic Area.'
<http://www.lavanguardia.com/politica/20131125/54394844537/linde-independencia-mala-catalunya-espana.html>

This would generate a logical reaction across the financial institutions present today in Catalonia. In all likelihood, they would chose to move their headquarters to a country of the Euro-zone—probably Spain, due to its greater operational presence—with the subsequent effect on Catalan potential tax revenues. The consequences on the funding cost of the companies in Catalonia must also be taken into account. **Whether financial markets will accept debt issuance, both public and private, in 'Catalan euros' is a mystery, but this would probably generate a very high-risk premium and unbearable funding costs.** More so if we consider that the starting point would be a 'new State' which at present is unable to meet its current payments and lacks experience

and financial supervisory and collection structures, whose ‘sovereign debt’ is currently rated as junk bond, and which requires the assistance of Spain's Regional Liquidity Fund for basic funding.

The differences in funding costs would be an additional reason for Catalan non-financial firms to move their registered offices outside Catalonia.

Secessionism seeks to sidestep these issues by presenting a seceded Catalonia as a new country with no debt, which of course is false. The seceded Catalonia would have to meet its enormous current debt payments alone. And would lack essential aid: the funding from the European Central Bank, which even large European countries today cannot do without.

Advocates of secession should explain clearly how and who will decide the amount of debt which each Catalan would have to repay. Can anyone who does not intend to grossly manipulate public opinion safely say that this issue could be resolved without a bitter confrontation between the people of Spain and the new citizens of an independent Catalonia?

Off-shoring of financial institutions, higher financing costs, the fall in exports to Spain and the EU, and the relocation of non-financial companies are some of the effects that would naturally follow from having the ‘Catalan euro’ as the currency of a seceded Catalonia. If this is already bad enough, adopting their own currency, which would have the advantage of a greater independence of monetary and exchange action by the Catalan authorities, would have even deeper effects on essential economic variables due to the loss of credibility that would arise from leaving the discipline of the euro, as well as the more than likely significant devaluation of the new currency. This would generate a further impoverishment of the

Catalans with respect to their neighbours and the defaulting of many homes and businesses because they would be unable to meet the payment of their debts.

14

Would a Catalonia outside Spain be wealthier?

No, quite the opposite. The economic situation of Catalonia would change a lot and for worse. Besides losing the euro, if Catalonia were outside the European Union, it would be separated from its neighbours, Spain and France and the rest of the member-states, by the Union's External Tariff; the Union's law would cease to be applied in Catalonia and it would also be deprived of the funds of the Common Agricultural Policy and of other funds that Europe has created throughout its history to alleviate the effects of the crisis on countries that have been seriously affected by it or to favour the regional development of some of them.

It would also lose access to instruments like Spain's Regional Liquidity Fund and to other funds established by the Spanish State with the same purpose, from which Catalonia is receiving billions of euros, for example to pay suppliers of its Welfare State.

This would lead Catalonia to a situation of chronic weakness and even default in the short term. Its balance of payments would show a deficit because due to European tariffs, **Catalonia would have to drastically reorient its foreign trade, as its**

exports to the Union—including Spain—would decrease and it would have to find new markets further afield, where it would have to compete in difficult conditions. Furthermore, due to these problems and because of the uncertainty caused by the drastic change, capital imports would also be significantly reduced. In other words, Catalonia would lose investments and it would stop receiving investments. Not by anyone's policy decision, not by anyone's boycott, but because of the natural flow of trade relations, that not even the best political will could prevent without imposing strict controls typical of dubious democratic systems.

Catalonia would suffer a negative 'border effect', which would in turn benefit groups such as farmers in the rest of Spain or in France, who would occupy the market share now enjoyed by Catalan producers. All this would have a negative impact on employment levels in Catalonia and also in its public accounts. The *Generalitat* would probably face serious difficulties to meet its payment commitments. Even more serious than it faces now.

The aforementioned nationalist document, 'What do I gain from having my own State' claims that the decline in trade relations of a Catalonia seceded from the rest of the world is 'unthinkable.' It is a puzzling statement because what really is unthinkable is that these trade relations should continue as before. **High tariff barriers with the EU would automatically be generated by the secession, as Catalonia would exit the European Union. This would be extremely difficult to avoid, regardless of how much political willpower anyone should dedicate to the task. It suffices to remember that the negotiations for Spain's access to the EU, which eventually took place in 1986, lasted almost a decade. And that despite the goodwill with which the rest of the European member-states envisaged Spain's entry, something that cannot be taken for granted in the case of a seceded Catalonia. For a considerable number of European member-states, the threat of contagion would suffice to block**

or seriously delay and obstruct the negotiating processes with a territory that has broken away unilaterally from a member-state.

The negotiation for Spain's accession resulted in an Act of Accession with many dozens of articles regulating trade between Spain and the EU in all kinds of products. For a considerable period of transition, Spain could not fully enjoy the benefits of the internal market: movement of workers, automobile, footwear, textiles, wine, fruit, and so forth. All that would have to be renegotiated case by case by Catalonia with a European Union in which each Member State would have veto power. And Europe no longer has 9 or 10 members, as it had at the time of Spain's accession. It has now 28 and continues to grow. It would be a much more complex negotiation that would suffer from the absence of strong State institutions in Catalonia, that cannot be improvised and that are costly to create and maintain.

Some of the transitional periods set for Spain ranged between seven and ten years. During that time trade between Spain and the EU was restricted. This means that many years would go by, decades even, between the moment in which the EU accepted to negotiate Catalonia's application—if it accepted—and the moment in which Catalonia was finally able to join again the European market without restrictions.

Moreover, one could reasonably envisage that a significant number of Catalan families and companies would decide not to stay within the territory of the newly independent State. For many companies, losing the Spanish market would be a catastrophe and they would probably try to avoid it.

15

What would the economic data of a seceded Catalonia be?

Since the weight of trade with the rest of Spain is key in Catalonia's overall economic activity (about 10,000 million euros of exports from Catalonia to France, compared to 62,000 to the rest of Spain), secession would have devastating effects. On average, a third of Catalonia's employment is directly dependent on exports to the rest of Spain, and in sectors such as agriculture, livestock and fisheries, industry and construction that percentage reaches around 50%. Sectors such as tourism would also be seriously affected, and an intense process of financial, business and industrial relocation would probably occur.

Only for this reason, the resources of the *Generalitat* would fall dramatically since, in the unlikely event that trade with Spain would continue at the same level, they would no longer yield VAT, because in a seceded Catalonia these exchanges would become exports, which are not taxed with VAT. **The idea that the revenues of the *Generalitat* in a non-Spanish Catalonia would be equal to the present ones makes no sense. Catalonia's current revenues come from economic flows within Spain. For example, from assembly and distribution companies established in Catalonia because their products can be shipped from Catalonia to the rest of Spain.**

In addition, the OECD estimates that tariffs and other barriers would suffer an average increase of about 8% in the prices with which Catalan products would arrive to European markets, which would make them much less competitive. **Pro-**

bably, some of that lost competitiveness would cause layoffs and / or a decrease in the wages of workers in Catalonia in order to decrease the costs and continue selling, even if less quantity. Trade flows between Catalonia and abroad—not only with the rest of Spain—would decrease by approximately 50%. This occurs even in cases where the secession or separation has taken place in a ‘amicable’ manner and the same currency has been kept, which would not be the case in Catalonia.

Professor Clemente Polo (<http://clementepolo.wordpress.com/>) recently pointed out that all this would make the seceded Catalonia's GDP fall between 19% and 24% in the main sectors. That is a fall exceeding in more than four times the decrease suffered by the whole Spanish economy during the current economic crisis, the worst in many decades. Of course, the impact on employment would be dramatic, especially considering that the possibility of seeking work outside Catalonia would be limited, since the mobility of Catalan workers to the EU would have to be negotiated.

The aforementioned nationalist document states that ‘If Catalunya is a State within the framework of the European Union, it will continue being part of the Schengen Area and governed by the same laws and agreements as the other member countries. Otherwise, Catalunya will negotiate accession to the European Area for the Free Movement of people and goods.’ The case would certainly be the second: it would not be a State of the European Union and it would have to seek an agreement that would be achieved or not. That is, **the nationals of a seceded Catalonia would not have freedom of movement within the EU, unless by unanimous agreement of the Member States.** The Spanish nationality could be lost if the Catalan nationality was chosen and Spain did not establish the recognition of dual nationality. **EU law would not be applied at all to people with the Catalan nationality and companies based in Catalonia would not benefit from the single market.**

Article 3.2 of the EU Treaty states that ‘The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls’. Being inside the EU means enjoying that area of freedom, security and justice; being outside means having to submit to the control of external borders. Borders already left behind by the EU in Schengen would not only be restored in Catalonia with France but they would also be created in Aragon, Valencia, and so forth.

All this, which does not include other foreseeable adverse effects arising from these developments, would also cause serious harm to Catalan government spending and to the cohesion policies enjoyed today. It would probably lead to the practical dismantling of welfare and cohesion policies, which could hardly be addressed by the battered Catalan public purse.

CONCLUSION

A process for economic and social default

The economic viability of a seceded Catalonia cannot be addressed, as claimed by secessionism, as if it were a laboratory experiment isolating Catalonia and the Catalans from the effects that a hypothetical secession from Spain and the European Union would have. The fall of GDP by the drastic reduction in exports to Spain and the rest of the European Union, the fall in employment, the loss of tax revenues, the worsening of the fiscal deficit, the fall in money supply, the additional reduction in credit and overexposure to any external shock are just some of the effects that such a step would have and that should be added to the accelerated economic downturn that the Catalan economy has been undergoing in

At What Price? · 20 Questions and Answers on the Secession of Catalonia

the last decade, both due to the erratic decisions of its rulers and to the economic crisis we are still suffering.

Empirical evidence is stubborn in such situations. In an increasingly global context in which people, capital, goods and services move freely, a rational and remarkable flight of individuals, companies and financial institutions would be impossible to avoid. This would eventually end up generating a spiral that could only be mitigated by the imposition of controls on the freedom of Catalans, typical of undemocratic regimes and with obvious risks of social conflict and economic default. In short, **there is a clear disparity between the immense and certain costs which the Catalans would have to suffer and the alleged identity and intangible benefits claimed by separatists to defend their cause.**

Again, the nationalist document published to encourage secession is a good example. The document claims the following: 'In Spain and Catalonia, as in most countries, the money used to pay pensions comes out of deductions from workers' wages and salaries. Therefore, the payment of pensions does not depend on whether we are inside or outside Spain, but on the number of people who are currently working, and in the future, working in Catalonia.' ('What do I gain from having my own State': <http://www.queganoyoconelestadopropio.cat/>). As an economic statement this is only partially true, because with those contributions only the system is currently not sustainable. But even assuming it were true, what the document does not say is that the number of people working in Catalonia and the wages they earn depend on Catalonia being or not a part of Spain and on being or not a part of the European Union, and therefore the future of pensions also depend on this.

The impact on pensions brought on by secession would be the exact opposite to what nationalism seeks: employment and wages would be hard hit by secession.

The likely economic outcome of the secessionist adventure is clear. To put it shortly, we can speak of an economic and social default of Catalonia. Outside Spain, the euro and the European Union, its economy would be deprived of the main assets that have enabled its development and economic progress. Trade with the rest of Spain and Europe would significantly drop as a result of the Common External Tariff. That would place Catalonia approximately where Spain as a whole was almost thirty years ago, and in the best scenario, facing a long process of trade and economic negotiation—that is, if they can overcome the clear political obstacles to accession that the secession would generate. The level of income, employment, and so forth, would drop significantly, its debt would soar and Catalonia would become an impoverished territory and probably unviable, as it would lack the backing of the monetary institutions of the euro, which would no longer be its currency except as a distant reference.



What For? The Result of Secession

If, despite the absence of reasons and the economic cost, the long legal road that could lead to the secession of Catalonia were completed, the result would not be the one its proponents often mention, but a very different one. There is no doubt that a seceded Catalonia would cease to be part of the European Union, NATO and the United Nation, to name just a few examples of the hundreds of organizations that would force Catalonia to negotiate new treaties to return to the international institutions to which it currently belongs. That is what you choose when you choose secession.

The Catalan secessionist process has negative political impacts not only on the whole of Spain but on the other European countries, on the integration process as such—of which secessionism is its counter-model—and on the deep integration dynamics that take place around the world. **The isolation and institutional and economic weakness of a seceded Catalonia would very probably turn it into a vulnerable area from any point of view and, of course, internationally irrelevant.**

What For? · 20 Questions and Answers on the Secession of Catalonia

Just as Spain as a whole has found in the institutions to which it belongs a loudspeaker that has allowed it to have a voice in many of the major international decisions, Catalonia has gained the international visibility that it enjoys today due to it being a part of Spain, and not in spite of this. Because, despite what nationalists say, when Spain and its Government speak and participate in international institutions, so do the Catalans, just as much or even more, depending on the circumstances and the times, than Valencia, Madrid or Andalusia.

Secessionism argues in an implausible way when it holds that being smaller, more alone and poorer is better than the opposite to have a voice in the world. But this would be precisely the horizon of a seceded Catalonia: smaller, poorer, weaker and more isolated. Some questions will help understand the seriousness of the result of secession for Catalonia.



Would Catalonia continue being in the European Union?

No. It would neither continue being part of the EU nor would it probably enter the EU easily, since it requires the agreement of all its members and compliance with some requirements that secessionism rejects. The European institutions have said it repeatedly, and the president of the European Commission, in writing and in response to a specific question to the European Parliament, said:

'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 were 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.'

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-011023&language=ES>

This also applies to Catalonia and Scotland. The Committee of the Regions has ruled similarly in paragraph 64 of its opinion of April 12, 2013:

'64. If a region, having achieved independence, wanted to join the EU, it would be required to make a formal application to the Council and to follow the accession procedure under Article 49 TEU in the same way as any other country that wished to become an EU Member State.'

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:139:0039:0045:ES:PDF>

And the president of the European Council, who said:

'A new independent state would, by the fact of its independence, become a third country with respect to the Union and the treaties would, from the day of its independence, not apply anymore on its territory.'

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140072.pdf

Francesc Granell, Professor of International Economic Organisation at the University of Barcelona and Honorary Director-General of the European Commission, has insisted on the same thing:

'Any region that gets out will be outside the Union. It can then ask to be accepted again and they will consider whether to do so. But then we would be before an intergovernmental negotiation. And in that case unanimity is required. That's a major problem.'

http://ccaa.elpais.com/ccaa/2013/09/28/catalunya/1380391005_982094.html

It is also necessary to remember that the purpose of the EU is 'to continue the process of creating an ever closer union among the peoples of Europe,' according

What For? · 20 Questions and Answers on the Secession of Catalonia

to Article 1 of the Treaty on European Union, and that is clearly contrary to a secessionist aspiration. **It is unlikely that a Catalan who declares himself unable to live with the rest of Spain can convince a German that he will be able to live with him. Because coexisting is not merely ‘getting along’ in a generic sense, but respecting the agreed rules.** None of the rights and false reasons advanced by secessionism against Spain could be used in the European institutions.

The European Council would never accept a hypothetical Catalan representative claiming a differential fact, or a right to decide, or a right to statehood and asymmetry to oppose a European regulation.

The paradox, then, is that a seceded Catalonia, should it manage to overcome all the aforementioned economic, political and social barriers, would only be able to join the EU if it previously explicitly renounced everything it now claims and uses to argue the case for secession.

If, in addition to this, and against all odds, the secessionist economic fantasy should come true and the hypothetical State of Catalonia were above the average income of the countries of the European Union, it would be forced to give resources to benefit the European countries with a lower income. Precisely what they do not want to do from the inside, they would have to do from the outside.

17

Would Catalonia continue being in NATO?

No, it would not remain inside NATO, on grounds equivalent to the above. Its spokesman has recently stated that if one part of the national territory of a country becomes independent, it would have to renegotiate its entry: **'In general, for any nation to join the Alliance would need to obtain the consensus of all the NATO allies.'**

(<http://www.abc.es/espana/20131202/abci-otan-cataluna-escocia-independiente-201312021150.html>)

Catalonia, as a result of secession, would have to apply to join and obtain the consensus of the Member States and assume the economic and social cost of its own defence.

18

Would Catalonia continue being in the UN?

It would not continue being in the United Nations; it would have to apply to request its entry. The Sixth Committee, or Legal Committee of the General Assembly of the UN, has established the following:

What For? · 20 Questions and Answers on the Secession of Catalonia

'When a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter.'

http://legal.un.org/ilc/documentation/english/a_cn4_149_add1.pdf

The process of admission to the UN is very complex. It requires the recommendation of the Security Council and the approval of the General Assembly. Very important allies are needed to achieve this, and **it is unlikely that key countries like Russia, United States, France or China would agree to support secession against a democratic State, for reasons of principle and for reasons of domestic political order.**



Which international treaties would Catalonia need to negotiate if secession did take place?

Spain without Catalonia would continue to be part of all the institutions to which it now belongs—although not necessarily in the same conditions, for example, in the European Union, Spain would have to renegotiate its weight in the Council, the number of MEPs, and so forth—and **Catalonia would not be a member of any of them** until it managed to negotiate its admission as a new member. All treaties concerned would have to be renegotiated.

20?

All in all, what would the result of secession be for Catalonia?

The result of secession is clear from a legal, political, economic, social and international point of view: institutional weakness, severe impoverishment and international isolation. Although secessionism strives to hide this reality from Catalan society, the fact is that secessionist processes lead to these consequences, and there is no reason why Catalonia should be an exception.

What secessionism should explain is why the secession of Catalonia would produce diametrically opposed results to the ones already described. Why would breaking the bonds of the Catalans with the rest of Spaniards entail something good and not something bad? **Why would leaving the EU and the euro, losing the support of the European Central Bank and facing the Common External Tariff bring advantages and not disastrous consequences? With no markets and no credit, why would GDP grow instead of drop around 20%? In such conditions, why would employment increase and not decrease dramatically, as has always happened in similar cases? Why ignore the words of the European Commission, NATO, the UN and many other international institutions that certify without a shadow of a doubt that the horizon of a seceded Catalonia would be, from an international point of view, irrelevance?**

CONCLUSION

A process for an impoverished, torn and isolated Catalonia

According to a survey conducted by the Spanish Centre for Sociological Research (CIS) in February 2013, after the regional elections, 65.3% of Catalans feel Catalan and Spanish. Although both identity conditions are lived with different intensities, the majority—34.5%—report feeling as Catalan as they feel Spanish. Given these data, the same survey shows that 25.1% of Catalans feel only Catalan, 6% feel only Spanish and 3.5% do not know or do not answer.

http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/2960_2979/2970/Es2970Cat.pdf

This survey confirms a fact that is very consistently found in Catalan society: its uniqueness and the perception of this by the Catalans does not prevent, but indeed encourages, the integration of that which is felt as Catalan in a common Spanish cultural, political and identity sphere. **All sociological studies insist on the same thing: the Catalan society largely sees as complementary that which secessionism presents as incompatible.**

The gravest consequence of the secessionist process would be the internal fracture of Catalan society and, consequently, of Spanish society as a whole. This in turn would possibly lead to the internal territorial rupture of Catalonia if only by application of the same principles that secessionism now defends in the relationship between Catalonia and the rest of Spain. Coexistence can be demanding and even complex, but in Spain it has been deep and profound for centuries and has produced many more social, economic and civic advantages than any of its alternatives will ever produce.

When they state their feelings, the Catalans do not share the reductionist identitarian approach defended by nationalism. Identity is not defined by a single factor, be it language or any other, but by a multiplicity of subtle elements that Catalans share with the rest of Spaniards.

This is not about ignoring diversity, which democratic Spain has precisely recognised and guaranteed as never before in its history, but about asserting that this diversity does not—and cannot—exclude what Spaniards have in common.

The Catalan language does not prevent Catalans from also sharing with the rest of Spaniards the Spanish language. All Spanish people share Catalonia and that which is felt as Catalan, in the same way that the ‘singular characteristics’ of the rest of the Spaniards are shared by the Catalans. Cultural singularities do not close the door to feeling a common culture as if it were your own, also in Catalonia, a common culture arising from multiple influences and contributions, especially from writers, artists and intellectuals from Catalonia.

Catalan and Spanish have never been mutually exclusive terms; on the contrary. The intention of separating them can only be traumatic. It would not be a clean division, but the painful rupture of a complex and dense web of relations of all kinds, personal, family and social. It is one of the manifestations of what Stéphane Dion has called ‘the moral damage of secession’, the loss we would all suffer.

If the will of secessionism is to create a State and a national community, the result of its actions would be the institutional dismantling and social fracture of Catalonia. The result of secession would be an impoverished, internally fractured and internationally isolated Catalonia. There is no reasonable doubt about it: secession

What For? · 20 Questions and Answers on the Secession of Catalonia

is probably the most absurd and gratuitously destructive political, economic and social endeavour in the history of Catalonia. An act opposed to the Spanish and European political civilisation, a civilisation that the Catalans have helped make possible.

20 Questions and Answers on the Secession of Catalonia



www.fundacionfaes.org

FAES Foundation for Social Studies and Analysis
C/ María de Molina, 40. 6ª Planta. Madrid 28006
Tel: +34 91 576 68 57 Fax: +34 91 575 46 95
e-mail: fundacion@fundacionfaes.org