

**Secessionist Rise in Catalonia:
The Role of the Spanish Constitutional Court**

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Chapter 1

Introduction

It can be argued that Spain is a country in which there exists multiple nations (Payero-López, 2018, p. 113); this is not a new trend in Spanish politics, rather, the idea of a ‘plural state’ has been expressed in different moments throughout history. This means that in addition to the Spanish nation, there are also nationalities and regions in which minority nations exist. We also see cases of multinational countries in Belgium, Italy, the United Kingdom, Canada, within which minority nationalities exist. I am interested in discussing the case of Catalonia, one of the Autonomous Communities of Spain, and its progression towards its current secessionist bid. My research will focus on Catalonia as a community where two national identities coexist, Spanish and Catalan. The Catalan nationalist movement has long desired the political right of self-determination of their Community. Nationalist parties of the community, such as the *Esquerra Republicana de Catalunya* and the *Convergència i Unió* felt as though it has been stuck in a single Spanish indivisible nation, being unable to interact meaningfully with the European Union, suffering from fiscal centralization, and was incapable in engaging in meaningful dialogue with the Spanish government on matters relating to independence, as any desire to do so was repeatedly deemed as unconstitutional by the Spanish government (Lecours, 2020, p. 5). The most significant request made by Catalan elites is for the symbolic recognition of national specificity (Basta, 2018, p. 52).

Keating (1997) argues that the situation in Catalonia represents one of the most electorally successful nationalist movements in the Western world. Because of the international attention that this movement has received, it makes it interesting for not only scholars of nationalism and secessionism, but for regular citizens as well. Understanding nationalism and

how it affects politics and lives of the general population is important because nationalist movements have the ability to directly affect the state. A nationalist movement has the potential to change the political landscape of a country. Further, nationalism in minority nations, no matter its goals, may lead to new political arrangements, fiscal arrangements, new laws or policies, and constitutional change. It is important to understand why secessionism strengthens because it can have implications on territorial integrity and political stability.

Research Question

The focus of this research paper is to determine the factors for secessionism strengthening in Catalonia since 2010. The Catalan nationalist movement has not always had the goal of secession from Spain. Throughout this paper, different time periods of this movement will be discussed, with a particular focus on 2000 to the present. Each time period will serve to explain how the movement has developed from a desire for autonomy, to a push toward secession due to key factors that occurred since approximately 2010. My research question thus asks: *why has secessionism strengthened in Catalonia in the last decade?* In order to answer this question, it is necessary to determine key factors and events that have led to this recent push for secession.

Conceptual Framework

Nationalism and secessionism are the two main concepts that will be used as the basis for this research and they will be discussed in this section. The development of the tensions between Spanish elites and Catalan nationalists ultimately constitutes a matter of nationalism, which involve deeper rooted issues of identity and power, and this has caused a reconstruction of the entire Catalan political landscape. I will be arguing that the Spanish Constitutional Court (SCC) has served as a key player in the development of Catalan nationalists' secessionist bid

within the past decade due to its 2010 court decision in striking down provisions of the 2006 Catalan Statute of Autonomy.

Nationalism, despite being one of the most powerful political forces throughout history, has failed to be confined to a single disciplinary perspective. It had not been a subject of enquiry nor had been thoroughly studied until the early twentieth century, according to Hutchinson and Smith (1994, p. 1). As a now widely studied phenomenon, nationalism has proven to be intertwined within a multiplicity of broad features, which can include race, religion, ethnicity, and diaspora (p. 3). It has been described as having distinguishing features, i.e. cultural, political or ethnic. Nationalism has also been understood as a doctrine of freedom and sovereignty; the idea that individuals should be free from external constraints (p. 4). Furthermore, it was the idea that people of a certain culture must become united, sharing a territory and have a right to control its own resources (p. 4). According to Norman (2006), nationalism is a term that is conceptually ambiguous; it has been used to refer to “a process, a kind of sentiment or identity, a form of political rhetoric, an ideology, a principle or set of principles, and a kind of social-political movement” (p. 5).

Barrington (1997) views nationalism as a process –as the creation of the unifying features of the nation, sharing two common features: the definition of territorial boundaries that the nation has the right to control, and the defined membership boundaries of the population that make up the nation (p. 713). He differentiates this from the concept of a nation. According to Barrington a nation is a collection of people that are linked by unifying traits that have a common desire to control a territory that is thought of as their homeland (p. 713).

For Gellner (1983), nationalism holds that the political and the national unit should be congruent. A nationalist movement can be perceived as a strong sentiment or movement in

support of a nationalist identity (Gellner, 1983). National movements or mobilizations vary over time and involve stages of foundation, growth, development and decline (Lluch, 2010, p. 337). They are organized attempts to achieve the same attributes of a ‘fully-fledged nation’ (p. 337). In the case of Catalonia, an objective of Catalan nationalism was at one point, to achieve an autonomous nation, but the movement has experienced different stages of growth, and the goals have developed into a move toward secession.

For the purpose of my research, I will be referring to nationalism as a political force rather than an ideology. Nationalism is more than an ideology; rather it can be used as a political tool to push for a certain agenda. Béland and Lecours (2021) refer to this when they state that nationalism concerns political framing and reframing of collective interests (p. 44). They state that “in nationalist movements, political actors define these collective interests in territorial-national terms; they supersede cleavages (such as class, gender, or age) internal to the minority national community” showing that there is a widespread notion in communities such as Catalonia and Quebec have their own interests, but these interests also have primacy over the Spanish and Canadian interests, for example (p. 44).

Two terms that will be of importance in this paper are majority and minority nationalism. These types of nationalisms are present in a multinational state. In certain states, an important proportion of citizens identify with another nation, one that is different than the one that is embodied by the state, such as in the case of Catalonia, or in Quebec, for example (Basta, 2018, p. 67). Bilodeau and Turgeon (2021) state that “the politics of multinational states also examines which nation citizens identify with, and the extent to which different national identities are perceived as mutually exclusive or overlapping” (p. 531). Put more simply, a state is also multinational when its citizens feel they belong to different national groups (Costa, 2003, p. 67).

Further, it is also multinational when members of majority and minority nationalisms draw national boundaries (Bilodeau and Turgeon, 2021, p. 532). Regardless of their institutional structure, multinational states are typically “the *locus* where we can identify distinct and conflicting *nationalisms*” (Costa, 2003, p. 67). The governments of minority nations will typically have demands for greater authority and resources, and these demands are sometimes met or refused by the central government of the state. In most cases, these minority nations request to have more power, to be autonomous, or to be symbolically recognized as distinct (Basta, 2018). Basta (2018) argues that both the majority and minority nations can stimulate feelings of resentment toward one another and lead to secession (p. 67). When combining decentralization and symbolic recognition of minority nationhood, it can fuel resentment amongst the majority elites, who see it as a challenge to their own majority political community (p. 67). Resentment, on both sides, can be a cause for political mobilization, which can ultimately lead to support for secession of the minority community (p. 55). This is because giving into the minority’s demands, especially for symbolic recognition of national status, can threaten the majority’s image (p. 55). Minority nations in multinational states often seek to secede, therefore, in this sense, secession is closely linked to the multinational state (Costa, 2003, p. 63). Costa (2003) argues that theories of secession must provide an explicit account of the multinational state and they must also be able to respond to the issues raised by competing nationalist claims (p. 64). This means that equality and the recognition of different cultural and national groups should be considered. These issues raised by minority nationalisms should also be evaluated, being mindful that liberal states have been ‘nationalizing states’ –suggesting that states have continuously played a key role in the promotion of particular cultures (p. 70). They

do this by having official languages, public holidays, national anthems, educational curricula, etc. (p. 69).

Secessionism refers to “the desire of groups for an independent state” (Brancati, 2006, p. 654). Basta (2018) conceives of secessionist crises as “major increases in support for sovereignty that either approaches or surpasses the 50 percent mark in the minority territorial unit. This change in public sentiment must be accompanied by increased centrality of pro-sovereignty parties in the regional party system and their active pursuit of sovereignty” (p. 56). The concept of secession is far less theorized than that of nationalism –a term that has been widely researched in the last several decades.

In a multinational state, preventing secession is the central design challenge (Norman, 2006, p. 170). Secession, “for hard-core nationalists, almost by definition, it is the ultimate prize; just as surely as it is, for hard-core majority nationalists or federalists, the ultimate failure” thus preventing it, or even the desire for it, is a central challenge for any federation (p. 170). If a clear majority within a territory demands independence, it is difficult for the demand to be ignored by the majority government, which can give rise to high levels of uncertainty in terms of economic consequences and possible political violence (p. 174). To understand how secessionism gains or loses strength within a nationalist movement, we must consider the importance of autonomy. Lecours (2020) argues that the *degree* and the *design* of autonomy are less important than its *nature* (p. 4). Therefore, if autonomy is dynamic, meaning that it can change with time, secessionism is not as likely to strengthen than if the autonomy were static, thus concluding that the settlement is final and unchangeable (p. 4).

Literature Review: why is this happening now?

Many scholars are intrigued by the events in Catalan politics and what has led to the current secessionist bid. As important as it is to be aware of the current situation regarding this nationalism, it is just as important to turn to the different factors that played a role in forging the present state of the region.

Some scholars argue that Catalan nationalism has been evolving since 1976, after Spain's transition to democracy, which occurred once the dictatorship of General Francisco Franco ended, lasting from 1939 to 1975 (Lluch, 2010, p. 340). After this, Spain approved a Constitution in 1978, making the country a constitutional monarchy. It was then in 1979 that the Catalan Statute of Autonomy was approved, which birthed several independentist organizations, such as the *Terra Lliure* and *Comitès de Solidaritat amb bells Patriotes Catalans* (p. 344). From the early nineteenth century until approximately mid-1980s, Catalan nationalism was a movement of reform of the Spanish state, not of secession (p. 344). The Spanish Constitution and the Catalan Statute of Autonomy were opposed by some independentists who argued that these efforts were continuing the Francoist domination of the Spanish state (p. 346). In the words of Artur Mas, the Catalan Prime Minister, the Spanish Constitution has become "a wall against which the national aspirations of Catalonia smash themselves" (p. 355). This is important to discuss because secession was never a majority position within this nationalist movement. Autonomy was, for the most part, the dominant objective during *Convergència i Unió* (CiU) political dominance. Even the *Esquerra Republicana de Catalunya* (ERC), the CiU's nationalist competitor, did not have enough support prior to the 2010s (p. 4). This is because between 1996 and 2004, there was a very little chance of reforming the Catalan Statute of Autonomy as the Spanish government was formed by the *Partido Popular* (PP). This party was only inclined to 'support' increased

autonomy when it needed support from nationalist parties; otherwise it promoted the virtues of the 1978 Constitution (p. 5). The secessionist stance took over Catalan nationalism in the 2010s. Until 2003, the CiU governed Catalonia and avoided promoting any support in favour of independence. It was only ten years later that the party initiated a ‘declaration of sovereignty’ that pushed for Catalans’ ‘right to decide’ (Lecours, 2021, p. 1). This was a surprising development in the nationalist movement.

Several explanations can be put forth to discuss the strengthening of secessionism that is present in the literature. The explanations that will be discussed are: the economic explanation i.e. the financial crisis, the role of political parties, and the role of the Spanish Constitutional Court. Each of these actors and institutions did not act alone –they each had an important role in the push for secession.

2008 Financial Crisis / Economic Explanation

The timing of this court decision was a key circumstance in the push toward secession for nationalists, as it occurred around the time of the global financial crisis of 2008. It is not argued that the crisis was a direct factor, however, it is the *timing* of when Catalan citizens felt the fiscal injustice, along with elite corruption, that led to a mobilization toward the secessionist bid. To provide an explanation, the Catalan economy was declining, and with a mass-immigration from the mid-1990s, and Catalonia having the largest immigrant population in Spain, an updated Statute was seen as something that was urgently necessary by Catalan’s political class. For example, starting several decades prior to the renegotiation of the Statute – it was possible to detect a narrowing of the gap between Catalonia’s income per capita compared to other Spanish regions (Dowling, 2014, p. 228). Catalonia also, over time, began to receive less state public spending compared to other parts of Spain.

Spanish Prime Minister José Luis Rodríguez Zapatero, who served from in office from 2004-2011 denied the economic crisis that was occurring during this time; despite the severe recession, an increase in unemployment rates, chain bankruptcies and rise in rental evictions (Petithomme, 2017, p. 152). Zapatero promised that Spain would enter the “champions league of the world economy” in 2007, yet there was a move towards the privatization of airports, lottery, electricity and gas companies, as well as price increases on gas and tobacco, electricity, and train tickets (p. 143). The autonomous communities faced 18 billion euros in budget cuts, and after another recession in 2011, the poorest class of people saw a 42 percent decline in salaries, while the highest salaries continued to rise (p. 144). With these factors as well as 4.8 million people being unemployed in 2015, it created a radicalization of youth (p. 144). Politicians benefitted from immunity from these financial struggles, indicating that struggle was not the same for everyone. Catalonia felt the consequences of fiscal injustice. Catalans felt as though they gave more to the Spanish state than they had received from it. The economic crisis hit Spain during the four years the SCC took to decide on the renegotiated 2006 Statute of Autonomy of Catalonia. By 2010, it received only 66 percent of state funding and areas such as health and education were especially at a disadvantage (p. 228). During Spain’s decade of economic expansion (2000-2007) Catalonia, out of the other ACs, ranked the lowest in terms of economic growth and its GDP also fell by 4.5 percent within those years. By the late 2000s, the idea of fiscal sovereignty was something that was attracting wider support, reaching levels of almost 80 percent in support according to a survey in 2013 (p. 229). Further pushing this narrative was the rising unemployment rate throughout Catalonia; between 2006 and 2011, it rose from 7.5 percent to 23.6 percent (p. 230). According to Lecours (2020):

Catalan nationalists argued that Catalonia's powers were unduly curtailed by the Spanish government... the system suffered from excessive fiscal centralization... that Autonomous Communities were unable to interact meaningfully with the European Union; and that the Spanish state was stuck in a 'one and indivisible nation' mindset that prevented any recognition of a Catalan national reality (p. 51).

In this context, the new Statute came to symbolically represent a growing sense of grievance within Catalonia. The added economic stress led to further discontent with the Court decision due to the general timing *and* the amount of time it took to decide. Therefore, the decision of the Court was seen as a turning point by many and was deemed as a demonstration of the limits of symbolic recognition (Dowling, 2014, p. 226). The fiscal provisions of the reformed Statute that were struck down and could have been presented by political actors as a shield against some of the effects of the financial crisis were further cause for the secessionist crisis because Catalans felt as though they were suffering financially from being a part of Spain (Lecours, 2020, p. 57). In 2010, Catalonia ranked eleventh in post-equalization resources per capita out of fifteen ACs, but prior to equalization it sat in third place (p. 57). Thus, the timing of the decision really amplified the effect of the Court decision. This led to civil society organizations mobilizing Catalans to push for change.

Despite the importance of the timing of the economic crisis, I will not be arguing that it is the main component in the push toward secession. The economic argument plays a role alongside the actions of the Spanish Constitutional Court.

Political Parties: The role of the *Partido Popular* in the push toward secession

Political actors (in this case, parties and elected officials) such as the PP have pushed forward constitutional challenges against the ACs. They put forward motions where the SCC must find a discrepancy between the challenged law and the Constitution. Some of the regional governments have initiated most of the cases of constitutional review, however, other cases were initiated by the central government against regional laws that were allegedly exceeding the powers granted to the ACs by the Constitution (Garoupa, Gomez-Pomar and Grembi, 2013, p. 518).

In fact, after the victory of the conservative PP in 2000, sympathy towards Catalan demands for further autonomy and recognition were replaced with hostility (Guiberneau, 2013, p. 381). During this time, the PP became dismissive of claims for greater autonomy for the historical nationalities including Galicia and the Basque Country as well. In 2005 there was even a boycott of Catalan products that developed in Spain, particularly a Catalan sparkling wine (p. 381). A growing dissatisfaction with the PP in Catalonia led to a strong support for Zapatero, the leader of the PSOE (Spanish Socialist Workers Party), who became Prime Minister in 2004. Zapatero was known to be a supporter of a “plural” Spain. His support evidently declined during the financial crisis and when he was unable or unwilling to stand by his promise to support the new Statute of Autonomy to emerge from Catalan parliament (p. 381).

As will be explained further and throughout this paper, the PP made the move of challenging the constitutionality of the renegotiated Catalan Statute of Autonomy in 2006. The party has since continued an adversarial strategy towards regional nationalism and has supported a centralizing agenda (Dowling, 2014, p. 229). These moves have caused tension in the ACs, especially in Catalonia. These tensions have developed into a pro-independence mobilization,

disrupting the political relations between Catalonia and the central state over a sovereignty struggle.

I argue that the role of political parties is of significance to the overall move toward secession in the Community, however, this role is not strong enough to have had an effect in such a huge mobilization toward secession. Their actions most definitely played a major part, however, it is the next explanation that I would like to put forth: the role of the Spanish Constitutional Court, that I will argue is the main factor in the push toward secession.

Spanish Constitutional Court

Schertzer (2016) argues that in a federation, the courts should act as a facilitator in negotiations between conflicting parties, rather than impose its own vision of the federal system. In a Canadian Supreme Court example regarding the secessionist movement in Quebec, the Court reinforces a view of the federation as the process of negotiation – while being the facilitator of this negotiation (Schertzer, 2016, p. 163). The Court’s “adopted facilitator role is indicative of how the Court is following a broader approach to manage conflict back into the political realm (while facilitating the conditions for free and fair negotiations)” (Schertzer, 2016, p. 163). However, the Canadian case is complex because at the time of the Court decision, the entire legal and political system was in flux and in danger of dissolution. The Court battle also took place shortly after a referendum that was nearly won by the secessionist side. Therefore, the Court had to find an “innovative way to rescue the legitimacy of the entire political and legal system” (Schertzer, 2016, p. 165). In complex situations like these, it is important to recognize that “the tendency of judges may be to struggle to save the system from collapse. In a case like this, the judges are forced to deal with a direct challenge to the legitimacy of the constitutional

order and to their own place within the system” in other words, conflicts such as this demonstrate how courts are themselves part of the struggle (Schertzer, 2016, p. 165). This case is a classic example of strategic decision making. Judges are strategic actors making rational choices designed to increase their position in the political system and the institutional context structures their decision-making (p. 166). They are influenced by broad normative values and the nature of the constitutional and the wider political associations within their respective countries. As Schertzer reinforces, “the Court did not simply act as a restrained, neutral umpire; it also sought to actively identify and reinforce the dynamic elements of the federal system and the validity of the competing positions, with the explicit objective of facilitating negotiation to help manage ongoing conflict” (2016, p. 166).

The way this relates to the Spanish Constitutional Court is that courts, in any plurinational federation, are important because plurinational federations have “some measure of conflict over identities and the way those identities are recognized in the distribution of resources and power between different orders of government” (Schertzer, 2016, p. 296). Courts manage conflict over national identity and its link to the division of powers. There is a general acceptance that because of the way the decentralization of powers is set up in Spain after the 1978 Constitution, that it is considered a federal state in practice, rather than in name. This institutional structure is found in article 137 of the Constitution and allows for the creation of different levels of self-government, including that of the ACs (p. 296). The process of decentralization has driven competing perspectives on the national character of the country – as one Spanish indivisible nation or as a country with multiple minority nations. These competing perspectives have led to conflict between the central state and the ACs, both political and violent,

marked by mobilization in support of increased autonomy or independence for the minority nations. The SCC has been a key institution in the management of the conflict.

The SCC analyzes the sides of the state and the ACs in cases like this one. Its technical role is to invalidate the initiatives that do not comply with the Constitution. However, the SCC has also extended its role further than a simple veto. It has contributed its own doctrines and principles to the interpretation and development of the Constitution (p. 386). The Court thus contributes to decisions in a unique way. By validating or invalidating initiatives by either the state or the ACs, its interpretations can be taken very seriously (and maybe personally) by those it affects. When it deemed unconstitutional many provisions of the reformed Statute of Autonomy, it sent a message that it is against the most important demands made by Catalonia. As Adam (2017) states “for the supporters of the new statutes, in making these decisions, the Constitutional Court had bowed to the pressure of those opposing the reforms... adopting a much more restrictive interpretation of the role of the ACs and their statutes of autonomy within the system” (p. 388). The Court had been criticized within and outside Catalonia for the harshness of its decision, because the Court was considering a statute that had been negotiated by both orders of government and ratified by referendum (p. 396).

I will be arguing that the role of the Spanish Constitutional Court has had the strongest influence on the push toward secession in Catalonia. This will be thoroughly discussed in Chapter 2.

Theoretical Framework

The theoretical framework that I will be using to explain my argument is historical institutionalism. To do so, I will be referring to *The Oxford Handbook of Historical Institutionalism* (2016) edited by Orfeo Fioretos, Tulia G. Falleti and Adam Sheingate, as it offers an analysis of the historical institutionalism research approach in political science. Historical institutionalism is “a research tradition that examines how temporal processes and events influence the origin and transformation of institutions that govern political and economic relations” (Fioretos, Falleti and Sheingate, 2016, p. 1). All types of institutions are studied –big and small, at the local, national and international levels. Typically, in the area of European politics, the approach informs the “study of political parties, the power of organized interest groups, the attributes of welfare states, and the process of European integration” however, it is not exclusive to those (p. 2). Analytically, the approach aims to draw attention to the role of ‘temporal phenomena’ such as the timing and sequence of events, in influencing the origin and change in institutions –*formal and informal*, and how their emergence and change impact public policies and political authority (p. 2). By focusing on temporal phenomena, such as critical junctures and path-dependent trajectories, it helps scholars to uncover the extensive consequences that institutions may have for “the nature of political power and for the strategies, preferences and identities of actors over time” (p. 2). Historical institutional scholars argue that “temporal processes may generate and reinforce actor preferences, power relations, and patterns of resource allocation” bringing together the disciplines of history and politics (p. 5). Institutions are examined for their role in creating limitations or opportunities for political action, in the distribution of political power and in shaping political preferences over time (p. 5). Some work of early historical institutional scholars such as Peter Hall, Desmond King and Margaret Weir

explored the conditions under which specific political or economic ideas influenced policy and institutional choices (p. 5). Their work highlighted “the role of ideas in shaping the preferences and goals of political actors and organizations” –viewing institutions as carriers of ideas that guide action (p. 5).

‘Critical juncture’ is a temporal concept that contributes to historical institutionalism. Collier and Collier (1991) define critical juncture “as a period of significant change, which typically occurs in distinct ways in different countries (or in other units of analysis and which is hypothesized to produce distinct legacies” (p. 29). They argue that it is the *duration* and *timing* is important in critical junctures. How long they last and when they occur in relation to other events (i.e. order and sequence) are significant factors (Fioretos, Falleti and Sheingate, 2016, p. 8). Critical junctures are central to this approach because they may be initial markers in path-dependent processes, “after the critical juncture moment, which enables relatively free agency, a process or sequence of events ensues in which institutions exert their causal force” (p. 8).

Methodology

To answer the research question I have previously set out: why has secessionism strengthened in Catalonia in the last decade? This paper will use the method of process-tracing (see Beach and Pedersen, 2013). Beach and Pedersen (2013) in their book define the method of process-tracing and explain how to use it in social science research. Process-tracing aims to trace causal mechanisms, which can be defined as “a complex system, which produces an outcome by the interaction of a number of parts” (Beach and Pedersen, 2013, p. 1). Process-tracing involves “attempts to identify the intervening causal process –the causal chain and causal mechanism –between an independent variable (or variables) and the outcome of the dependent variable” (p. 1). By examining causal mechanisms with process-tracing, it allows

the researcher to make strong inferences about the causal process of how certain outcomes were produced. This, in turn, when applied in appropriate research situations, allows the researcher to be confident in the validity of their theorized causal mechanism, based on in-depth single-case studies (p. 2). Beach and Pederson explain that process-tracing can be differentiated into three variants within social science: 1) theory-testing, 2) theory-building, and 3) explaining-outcome (p. 3).

Theory-testing “deduces a theory from the existing literature and then tests whether evidence shows that each part of a hypothesized causal mechanism is present in a given case” (p. 3). Theory-building process-tracing seeks to “build a generalizable theoretical explanation from empirical evidence, inferring that a more general causal mechanism exists from the facts of a particular case” (p. 3). Lastly, explaining-outcome process-tracing attempts to “craft a minimally sufficient explanation of a puzzling outcome in a specific historical case. Here the outcome is not to build or test more general theories but to craft a (minimally) sufficient explanation of the outcome of the case” (p. 3).

Using process-tracing to explain the Catalan case will present several advantages. First, because this is a single-case study in social science research, it is fitting for the use of process-tracing. Second, tracing causal mechanisms, which is to look at the outcome of a situation based on the interaction of a number of parts, directly relates to how I will be conducting my research. I will be looking at different factors, over time, that were involved in the secessionist bid of Catalan nationalists. Specifically, the ‘explaining-outcome’ variant of process-tracing is especially relevant to my research because the goal of my research is to provide an explanation of a puzzling outcome (secession) in the specific historical case of Catalan. Although my research will not only focus on the history –the history will be an

important part in giving context to the current situation. I will be providing a brief historical section into my second chapter, in order to provide context and to frame the situation in the environment that it began in, before getting into what I argue are the main factors that led to secession.

I plan on ordering my paper chronologically, tracing the progress of the push toward secession. I aim to follow this timeline and discuss each in a different section of the next chapter:

1930 to 1970s: brief discussion of Franco dictatorship in Spain and how it impeded the development of nationalism in the soon to be Autonomous Communities.

1970s onwards: the establishment of democracy in Spain; establishment of the Constitution; establishment of the Autonomous Communities; rise and fall of certain political parties and changes to their ideologies.

2006 to 2010: reform of Catalan Statute of Autonomy put to Court decision; ruling of the Court; nationalist mobilization after the Court decision; global financial recession.

Post-2010 Court Decision: The Court judgement proves to reveal a deep cleavage between Catalonia and the rest of Spain on the nature of autonomy.

2012-2014: nationalist mobilization; political demonstrations in the streets; public opinion in favour of secession; 2013 Declaration of Sovereignty.

2014-2017: unconstitutional referenda.

2017 to present: suspension of Catalan autonomy in 2017; trials and convictions of politicians and civil society leaders; further political mobilization in favour of secession.

Outline of Future Chapters

The second chapter will discuss in further detail each timeline and explain how they have contributed towards Catalonia's nationalist elites' recent push for secession. It is important to note that the nationalist movement is not necessarily agreed upon amongst all Catalan citizens. This is a nationalist movement that is being pushed by those politically in charge and does not directly reflect the opinions and beliefs of Catalan citizens.

Thus far, this chapter has included a theoretical section, looking at the competing theoretical perspectives in the study of nationalism and secessionism. It has also included a research method and theoretical framework section, discussing why I chose historical institutionalism as a framework and why I will be using the process-tracing method.

The second chapter of this paper will discuss the progression of the Catalan nationalist movement. In this chapter, I will be discussing the Franco dictatorship and how it affected Catalan and Spanish national identities. After giving a historical analysis of this political period, I will discuss the birth of the autonomist movement that ties into the transition to a democracy after the Francoist era, in 1975.

The chapter will then outline the creation of the autonomous communities and their statutes of autonomy. It will also discuss the 2006 renegotiation of the Catalan Statute of Autonomy and what led to that point. The main argument presented will be that the Spanish Constitutional Court's 2010 decision – striking down the demands of the Catalan government and their desire for national recognition (among many other things) was the most significant factor in the push for secession in Catalonia. The SCC decision acts as a critical juncture that triggered the events that came after it.

Chapter 2

As discussed in Chapter 1 of this research paper, the focus is to determine why secessionism has strengthened in Catalonia since the early 2000s. This chapter will first provide a brief historical contextual section, outlining how the Spanish Constitution and the Statutes of Autonomy were created and adopted. The chapter will then outline several different features of the Catalan pro-independence movement. It will discuss what Catalan nationalist parties have always wanted from the Spanish state. Subsequently, it will discuss the 2006 Catalan Statute of Autonomy in further detail and why renegotiating the 1979 Statute of Autonomy was the next step in the future of Catalonia. The main focus of this chapter will be on the role that Spanish institutions played in the push for secession in this Autonomous Community (AC). The institution of discussion will be the Spanish Constitutional Court and the role it played with its decision in 2010 to strike down and narrowly interpret some of the provisions in the renegotiated Statute. This decision caused an intense national mobilization in Catalonia and it acted as a turning point in a series of events that were inching closer to the push for independence. Not only did this mobilization occur in the streets of Barcelona and was pushed by citizens – it was also the cause for the Catalan nationalist political class, most importantly, the *Convergència i Unió* to move away from its previous autonomist position to one that was geared toward secession.

Historical Background

1930 to 1970s

This section briefly explains how democracy was established in Spain and explains the adoption of the 1978 Constitution and of the Catalan Statute of Autonomy –a main focus of this chapter.

Right-wing Spanish military officers began the Spanish Civil War in 1936, and eventually overthrew the Republican regime. The victory of General Franco's forces in 1939 destroyed republican democracy (Moreno, Colino and Hombrado, 2019, p. 238). Under his dictatorship, Franco imposed a conception of national unity that denied Spain's plurality. This conception dominated the country until the end of the Franco regime in 1975. The regime's objective to eliminate Spain's internal ethno-territorial diversity failed; in fact, it achieved the opposite. As Conversi (2002) states "...behind its centralist façade, Francoist Spain had at the very end brought about substantial political disunity. Indeed, the result of years of Francoist repression was further disintegration" (p. 223). This impacted the democratic transition in the 1970s. During this time, anything 'Spanish' was regarded by the democratic forces as "synonymous with repression and cultural hegemony" (p. 239). Franco's victory was followed by a nearly forty-year dictatorship that advocated for an idea of Spain that focused on unitary centralism. Minority nationalities' cultures and languages were heavily repressed. These minorities experienced imprisonment, violence and oppression. When Franco passed away, the move towards democracy was almost immediate.

The Franco dictatorship's legacy for the transition meant that any concept of "Spanish" was deemed synonymously with repression and cultural hegemony in Catalonia and the Basque Country (p. 239). The transition to democracy can be regarded "as an attempt by the Francoist political class to adjust its institutions to the requirements of modern society" (Guiberneau, 2013, p. 374), as political parties in Catalonia and other historical nationalities developed a political discourse that ultimately denounced the absence of democracy and the attacks on their national identities and cultures.

Late 1970s onwards

The question of territory was strongly divisive among the parties during parliamentary debates surrounding the adoption of the 1978 Constitution. On June 5, 1977, general democratic elections were held. The election result produced a minority government in Spain, with the *Unión de Centro Democrático* (UCD) winning just ten seats short of a majority (Moreno, Colino and Hombrado, 2019, p. 243). The new minority government would then be preoccupied with the demands of the historic nationalities. The UCD commissioned a group of experts representing different parties, to be tasked with the drafting a constitutional proposal (p. 244). The commission met multiple times in the later months of 1977 and submitted its final proposed draft in March 1978. The document received parliamentary approval in October and was submitted to a popular referendum in December 1978 and was ratified by a vote of 88 percent (Moreno, Colino and Hombrado, 2019, p. 246; Guiberneau, 2013, p. 374).

Although there was a vote of 88 percent, with all provinces voting in favour, some members of the UCD strongly favoured a general decentralization throughout Spain, while others, supported some kind of institutional differentiation and special treatment for the historic nationalities (Moreno, Colino and Hombrado, 2019, p. 246). The Catalan nationalists sought a recognition of Catalonia's distinctiveness, as well as autonomy within a Spanish state (p. 246). The drafters of the Constitution tried to assert the identity of Spain as a nation while restructuring its territorial organization. The Constitution aimed to not only transform Spain into a democratic state, but to also recognize the existence of nationalities and regions within its territory (Guiberneau, 2013, p. 375). Guibernau addresses the controversy of the terms laid out in the Constitution, because it is "very controversial and legally ambiguous to emphasize the unity of a 'nation' while recognizing the existence of 'nationalities' within it" (2013, p. 375).

However, the historic nationalities (and other regions that would *later* become the Autonomous Communities) were not given greater legislative or administrative powers. It is important to note that:

The Constitution did not create the State of Autonomies; it did not constitute the ACs, delimit their territory, establish their organization, or determine their powers. It created principles, conditions, and procedures for these in which the protagonists were: (a) the regional representatives who must manifest their desire for autonomy; (b) the central institutions, and, in particular, the lower Chamber of the Spanish Parliament (*Congreso de los Diputados*); and (c) the Constitutional Court, in its role of supreme interpreter of the constitutional text (Moreno, Colino and Hombrado, 2019, p. 249)

Between 1979 and 1983, the seventeen ACs were fully implemented, one by one, with Catalonia being the second established in 1979, after the Basque Country. As one of the communities with the strongest national identities, Catalonia aimed at replicating the powers and symbols of the Spanish state by having its own police forces, public policies, flag, anthem, etc. (p. 249).

Although Catalonia, the Basque Country and Galicia enjoyed autonomous regimes starting in 1978 with their own Statutes of Autonomy, other communities had to wait a period of five years of ‘restricted autonomy’ before being able to do the same (Guibernau, 2013, p. 375). After several periods of centralization and decentralization, depending on the majority or minority government in central Spain, some of the ACs sought to renegotiate their Statutes of Autonomy to gain more autonomy. Moreno et al. (2019) argue that the most dramatic events of renegotiation have been in Catalonia (p. 250).

Case Study

This section will discuss the early 2000s and establish causation between the SCC and the strengthening of secession. The events that took place within this time frame were instrumental in the push for secession. Catalan nationalism is not a new phenomenon; it has existed since before the rule of Franco. However, the wide support for *secession* in Catalonia is fairly recent. Before 2010, secessionism was scarce in Catalonia, supported by approximately 20 percent of the population or less (Helmich, 2020, p. 262). Since then, according to Helmich (2020), popular support for independence has risen significantly, peaking at 48.5 percent in 2013 (p. 262).

The main explanation put forth in the remainder of this chapter is that the Spanish Constitutional Court played a significant part in triggering the move toward secessionism in Catalonia because of its ruling in 2010. The SCC decision turned previous dissatisfaction with the state of autonomies into a “full-blown crisis”, for at least Catalan nationalists –because this meant that change within the existing system was being successfully challenged and blocked (Lecours, 2021, p. 56). As has been discussed in chapter 1, there are various other explanations that have been put forth to determine the push toward secession, such as the influence of political parties and their attempts to either block or support the independentist agenda, as well as the role that the financial crisis of 2008 played. However, the actions by the SCC concerning the renegotiation of the 2006 Statute of Autonomy will be the primary focus in explaining the route to secession.

By the mid-2010s, independence for Catalonia had become the dominant political narrative. Since its emergence in the late 19th century, Catalan nationalism has seen its greatest transformation in the mid-2000s. (Dowling, 2014, p. 220). In the 1990s and until the early 2000s, before the renegotiation of the Catalan Statute of Autonomy, there was a consistent majority of

Catalan opposed to independence (p. 220). Yet, we see an increase in support for Catalan independence, from 13.6 percent in 2005 to 48.5 percent by 2013 (Dowling, 2014, p. 220; Helmich, 2020, p. 262). Because of the break in the prior longstanding commitment to autonomy within Spain, this move toward secession was somewhat unexpected, at least among scholars (Dowling, 2014, p. 220). The move towards secessionism has produced a rupture in the status quo in Catalonia and in its political relations with Spain, leading to a struggle for independence (p. 220). Independence in Catalonia was not pushed by party elites, it was rather, argues Dowling, “facilitated by pre-existing dissatisfaction with the political establishment and can be directly linked to the rising frustration at Catalonia’s then stalled Statute of Autonomy, which had been revised in 2005-06” (2014, p. 224).

The period between 2006 and 2010 –the conflict between secessionist challengers and political incumbents within the Catalan nationalist movement- is considered a ‘transformative political event’, according to Karlo Basta (2018, p. 1245). In 2006, the AC of Catalonia sought to renegotiate its statute in order to gain more autonomy and to receive formal recognition of national status. Four years later, after legal challenges from the *Partido Popular* (PP), the SCC overruled and struck down some of the provisions in their new proposed statute, despite having been passed by the legislature in Catalonia and supported in a referendum (Moreno, Colino, Hombrado, 2019, p. 250). The ruling was met with frustration among the Catalan population, with the idea that Catalonia should have the right to decide on their own matters. The Court ruled against prioritizing the Catalan language above Spanish. and it ruled that the formal acknowledgement of a national status had no legal effect (p. 251). In the years following the ruling, large demonstrations took place in Barcelona. This number reached a million people on July 10, 2010, in support of the Catalan Statute of Autonomy that had just received an

unfavourable ruling by the Court (Cramer, 2015, p. 104). In 2012, over 1.5 million people were drawn in to support independence for Catalonia on Catalonia's national day on September 11. A larger number of people came the following years, in 2013 and 2014, to mark the same day and gather for the same cause (Cramer, 2015, p. 105). The shift in support for secession in Catalonia went so far, to the point of being described as a 'secession crisis' according to Cramer, meaning that "support for secession is widespread enough to have forced the Spanish government to react to Catalan demands" (2015, p. 104).

Renegotiation of the Catalan Statute of Autonomy, 2006

Article 151 of the Constitution allowed for the creation of Statutes of Autonomy. The Statutes of Autonomy are "organic laws, which must be approved by the national Parliament" and they "represent a sort of regional constitutional laws" (Moreno, Colino, Hombrado, 2019, p. 248). The Catalan nationalists "sought autonomy within a Spanish state that acknowledged Catalonia's distinctiveness" (p. 246). As the ACs were established, each had the choice of its own powers within the framework of two constitutional lists of shared and exclusive competences (p. 248). The Statutes of Autonomy were approved by democratically elected regional assemblies and in the case of the Basque Country, Catalonia, Galicia and Andalusia, the statutes were further approved in popular referenda in 1979 and 1980, followed by final assent by the Spanish Parliament (Spanish Constitution, Section 151).

The 1979 Statute of Autonomy of Catalonia led to the re-establishment (i.e. pre-Franco) of its institutions of self-government and introduced a parliamentary system (Viver Pi-Sunyer and Grau Creus, 2016, p. 12). The Catalan Parliament possesses similar functions of a classic parliamentary system; it also has the power to elect some members of the central state institutions and it can contest Spanish legislation before the SCC (p. 13).

Some of the political community, such as the ERC in the early 1990s, began to advocate for independence early on. The party took a clear stance on independence but it was not met with much support. The secessionist position was in the process of development but it needed a push further to attract much more support. At that point in time, “autonomy was subject to change on the basis of political contingencies and competition” and this helped to slow down the progression of secessionism in Catalonia (Lecours, 2020, p. 52).

After over two decades of constitutional decentralization, some of the ACs decided to renegotiate their Statutes of Autonomy to gain more autonomy and resources. The renegotiation of the 2006 Statute is a reform of the previous 1979 Statute and determines the legal position of the AC of Catalonia under the Spanish Constitution. Drafted and passed in 2005 by the Catalan Parliament, also passed by the Spanish parliament and then in a referendum in Catalonia, the aim was to expand not only the symbolic but the legal and political autonomy of Catalonia (Moreno, Colino and Hombrado, 2019, p. 250). Included in this were specific sections on the Catalan language (Article 6.1) and independent tax-raising powers were given priority in Article 218.2 (Helmich, 2020, p. 262). Extensive negotiations in Spanish parliament took place, and an extended draft was passed and ratified through a referendum in Catalonia (78 percent voted in favour).

However, the PP, a Spanish conservative party, contested the 2006 Statute of Autonomy and challenged it before the SCC. It was when the PP challenged the constitutionality of the Statute that the SCC began to assume its role in the matter (Colino, 2009, p. 270). The SCC decision came out in 2010, striking down some provisions and limiting others (Moreno, Colino and Hombrado, 2019, p. 250). The SCC decision will be discussed in further detail in the following section.

The reformed Statute specified and increased the powers of the Catalan government; it first aimed to clarify and separate the capabilities of both the Spanish and Catalan governments and to limit the potential for the Spanish government to infringe upon the capabilities of the Catalan government (Lecours, 2020, p. 54). Second, it suggested the creation of formal institutions to manage bilateral relations between the two governments. Third, and arguably the most sensitive aspect –the issue of national identity, was addressed by referencing a statement that refers to Catalonia as a nation (p. 54). Lastly, it contained provisions to increase fiscal autonomy in Catalonia and to limit the influence of fiscal equalization in Spain (p. 54).

The Spanish Constitution uses the word ‘nation’ to describe Spain, and proclaims the existence of ‘nationalities’ when referring to the ACs, despite the Parliament of Catalonia openly and frequently proclaiming that Catalonia is a nation (Vaczi, Bairner and Whigham, 2020, p. 945). The Parliament of Catalonia has contributed to the defence of the Catalan national identity on different occasions. It has frequently requested that the central state has to recognize its plurinational (plurilingual and pluricultural) character (Viver Pi-Sunyer and Grau Creus, 2016, p. 26). The proposal to reform the Statute of Autonomy “was intended to take a definitive step to ensure that the central state recognized Catalonia’s national character” (p. 29). The first paragraph of section I of the proposed reformed Statute proclaims that “Catalonia is a nation” (p. 29). If this proposal would have been approved by the central Parliament, it would have, for the first time, constituted recognition of this fact of nationhood for Catalonia (p. 29). Section 3 “attests to the plurinational character of the state, section 8 refers to the ‘national’ symbols of Catalonia, and section 5 states that the ‘self-government of Catalonia as a nation’ is based on ‘the historic rights of the Catalan people’, in addition to the constitution and statute” (p. 29). When reviewed by the central Parliament, the reference to Catalonia as a nation and the fact that the

Catalan Parliament had *declared* Catalonia to be a nation - was moved to the preamble and there is no further recognition from the central state. The reference to the plurinationality of the state was also removed from section 3 from the version of the reform that ultimately agreed upon (p. 29).

On the matter of language, section 6 of the 2006 Statute emphasized that Catalan is the official language of Catalonia. In particular, it stated that it is the language that is used habitually and by preference of the public administration, the public media, and it is the common language of instruction in the education field (Viver Pi-Sunyer and Grau Creus, 2016, p. 37). Sections 32 and 36 also emphasized linguistic rights and duties (p. 37). The Statute specified that both Spanish and Catalan are the official languages of Catalonia and that every person has the right to use whichever they prefer. However, Catalans have the right and duty to know both languages (p. 37).

Constitutional Court Decision, 2010

Spain has a system of judicial review since its transition to democracy in 1978. Judicial review has become “an instrument for settling disputes in order to implement democratic constitutions in the aftermath of the transition to democracy” (do Vale, 2013, p. 90). do Vale (2013) argues that judicial review is a process of constitutional analysis with important implications for vertical intergovernmental relations (i.e. the relationship between different levels of government) (p. 90). They also consider that the role of supreme courts, or in this case, of the SCC, goes beyond the traditional function of checks and balances in governmental branches (p. 91). Courts are institutions that exercise the potential function of veto players, policy players and societally representative bodies (p. 91). The courts are holding a dominant role in an area that was once before almost exclusively taken care of by the executive and legislative branches of

government. In Spain, the SCC “can be considered one of the important institutions mediating relations between the ACs and the central state... in effect, the Court has been deemed the single most influential institution in the Spanish territorial system” (do Vale, 2013, p. 100).

The SCC is a pivotal actor in intergovernmental relations. The SCC represents the highest body in constitutional law and it is independent from judicial power. It also “holds a monopoly on the interpretation of the Constitution, and its decisions cannot be appealed” (Harguindéguy, Rodríguez and Díaz, 2020, p. 224). The SCC is ruled by constitutional articles 159 to 165 and by the 1979 Organic Law. It includes 12 justices, all of which are experienced jurists. The SCC is accessible to a wide range of plaintiffs in Spain, such as ordinary judges, the ombudsman, regional parliaments, the state legislatures, central and regional governments and even individuals can initiate the constitutional review procedure (Harguindéguy, Rodríguez and Díaz, 2020, p. 224).

The SCC was originally conceived by constitutionalists as the last step in the regulation of intergovernmental conflicts, because alternative institutions were supposed to prevent the rise of territorial litigations through institutional arrangements (Harguindéguy, Rodríguez and Díaz, 2020, p. 224). However, the SCC has been used as an ordinary court of last resort for dealing with centre-periphery tensions. Laws enacted by Parliament are reviewed by courts with the intent to assess their constitutionality. With the Court’s authority, its role is to rule on whether laws that are challenged are unconstitutional or not, meaning whether they conflict with rules, rights and freedoms that have been established in the Constitution. The SCC has played an important role in establishing the Spanish “state of autonomies”, a concept that is not well-defined in the Constitution (Adam, 2017, p. 367). The recent waves of reforms of the ACs statutes of autonomy, as well as the constitutional challenge to the Statute of Autonomy in

Catalonia, has put the SCC in the spotlight in terms of political conflict over the territorial organization of the state. As we have discussed already, the 2010 decision has strongly divided public opinion in Spain.

Not only did the decision take 4 years – from 2006 to 2010, which was cause enough for frustrations and rising tensions, the SCC decision declared 14 of the 223 articles in the Statute as unconstitutional (Helmich, 2020, p. 263). Despite this seemingly low number, the judgement's political impact was severe. This is because it overturned the Statute's main ambitions by striking down provisions that would have provided Catalonia with increased fiscal and judicial autonomy. It also overturned ambitions that would have increased Catalan language rights and it would have accepted Catalonia's declaration of nationhood. Thus, despite the majority of the articles in Statute being deemed as constitutional, the most important and symbolic provisions set out by Catalonia – those of language and nationality, were struck down.

We see that “the ruling by the SCC concerning the statute found that in Spain, from a legal point of view, there was only one nation – the Spanish nation” (Viver Pi-Sunyer and Grau Creus, 2016, p. 29). The Court wanted to avoid the possibility of a broader interpretation of some of the outlined provisions, such as those concerning historic rights, competences, and relations between the state and the *Generalitat* (i.e. Catalan government) (p. 29). Most importantly, it wanted to avoid the chance that the mention of Catalonia as a nation would introduce ambiguity on the unity of the Spanish nation (p. 29). On the issue of national identity, the Court narrowly interpreted the reference to Catalonia as a nation. It specified that the reference did not have any legal value –rather, Catalonia could only be considered a nation in the sociological sense (Lecours, 2020, p. 56). The Spanish Constitution acknowledges the existence of a *single* Spanish nation within Spain (Guibernau, 2013, p. 382). Additionally, the expression of ‘national

symbols' used in the 2006 Statute is to be interpreted rather as 'symbols of nationality', so that there is "no contradiction with the symbols of the Spanish nation, the only ones to be properly considered as 'national'" (Guiberneau, 2013, p. 382).

The reference to Catalonia as a 'nation' in the Preamble of the Statute asserts that:

The Catalan Parliament had indeed proclaimed Catalonia to be a nation, and that this declaration was to be taken as an acknowledgement of Catalonia as a 'nationality' – a term that figures in Article 2 of the Spanish Constitution, which grants self-government to the 'nationalities and regions' that exist in Spain. The Constitutional Court insisted that, from a legal point of view, Catalonia is not a nation – only Spain is (Comella, 2014, p. 575).

The Court found that the clauses that attempted to limit the involvement of the Spanish government in the affairs of the Catalan government were unconstitutional because they "undermined the state's ability to guarantee uniformity" (Lecours, 2020, p. 55).

In terms of fiscal autonomy and the proposal to alter the participation of Catalonia in the territorial equalization system, the SCC judged that this was unconstitutional. The 2006 Statute also demanded that the Catalan government be able to set up its own taxes at the local level and this was deemed unconstitutional (Guiberneau, 2013, p. 382).

Further, on the topic of language, the Court ruled that Catalan could not be the official language of Catalonia because Spanish has the same official language status as Catalan, thus concluding that both of the languages have to have the exact same status (Viver Pi-Sunyer and Grau Creus, 2016, p. 37). The SCC deemed unconstitutional to give a preferential status to Catalan within the Catalan Public Administration. Catalan is confirmed as a preferential language in terms of status in the Catalan education system (Guibernau, 2013, p. 382). Students

are obligated to, as well as have the right, to be fully able to speak and write in Catalan as well as Spanish after completing their compulsory education (p. 382). Having to be competent in using the Spanish language is given more importance in the Constitution than the duty to be competent in the Catalan language in Catalonia –it does not have the same meaning, importance and/or legal status (p. 382).

The following articles of the Statute were also deemed unconstitutional: “articles setting up a Catalan Council of Justice; establishing the exclusivity of the Catalan Ombudsman concerning the Catalan Administration; the status and role of the president of the Catalan High Court of Justice as the representative of the judicial power in Catalonia nominated by the King” (Guibernau, 2013, p. 382).

Harguindéguy, Rodríguez and Díaz (2020, p. 225) discuss the concept of judicialization, first defined by Hirschl (2011) as “the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies” (p. 121). They argue that territorial politics in Spain have been judicialized, and that the SCC has been a relevant player in the field of territorial governance since the beginning of the state of autonomies (p. 226). Compared to the central government, the ACs litigated twice as many times as the central government, with most of these litigations using the actions of unconstitutionality and the conflicts of competences (p. 226). Interestingly, only 65 percent of the total litigations produced a ruling by the SCC, the remaining were annulated by the SCC or withdrawn by the plaintiffs. Further, when looking at the victories of each side, it seems that the SCC favours the central state, as they won 71.5 percent of its claims from 1980 to 2014 (p. 226). In fact, from 2004 to 2010, the central state won 100 percent of its claims (p. 226). Catalonia is the region with the most litigations and has the highest level of intergovernmental contention compared to the

others, with 33.2 percent all of litigations (p. 228). As demonstrated by the battles concerning Catalonia's Statute, we are able to see how the judicial system has been used by political actors (such as the PP) as a way to transform political issues into judicial ones.

The ruling in 2010 is considered a landmark ruling in favour of the central government (do Vale, 2013, p. 101). Do Vale (2013) argues that this decision will have a deterrent effect on any attempt by the ACs to consider sovereignty in its preamble of its statute of autonomy (p. 101). The rulings of the Court have a significant weight on the intergovernmental balance of power. This is because it can shape the policies concerning territorial governance and it can influence the options and strategies of the national and subnational parliaments and executives (p. 105).

Time of political change: How the Spanish Constitutional Court's decision mobilized Catalans in favour of independence – post-2010

It is not always clear why a group of people chooses to become politically radicalized at a certain point in time. When trying to overturn the status quo, political activists must work out how to “anchor their grievance-based calls for change” through a narrative that focuses on a series of *accumulating* grievances, leading to a “cathartic turning point” (Basta, 2020, p. 756). This turning point justifies and builds up the “*exhaustion of collective patience* with the political status quo” thus motivating political action toward radical change (p. 756). A turning point can also be referred to as a critical juncture –which is an important component in the method of process tracing. I am arguing that the 2010 Court decision created a critical juncture in the mobilization of Catalans towards favouring secession.

The court took four years to hand down its decision in June of 2010. This decision has been controversial among not only politicians but also scholars. When it was announced, there

was a large protest in Barcelona. This protest was headed by the Catalan cultural organization *Òmnium Cultural* and it was supported by four of the six political parties represented in the Parliament of Catalonia at the time, as well as the two main trade unions –*Comisiones Obreras* and the *Unión General de Trabajadores*, and the main employer’s federation, and F.C. Barcelona (Comella, 2014, p. 575). The protest had over a million participants who were against the SCC’s decision to suppress 14 articles of the 2006 Statute and modified another 30, with people shouting “We are a nation. We decide” (Comella, 2014, p. 575; Guibernau, 2013, p. 384). The decision triggered a reaction that was primarily based on the idea that “no court should have been empowered to invalidate what the Catalan people had ratified in a referendum” as the new Statute was a pact between ‘Catalonia and Spain’ which should have been respected by the Court (Comella, 2014, p. 575). Comella (2014) states that “the 2010 decision was widely criticized in Catalonia” and that it was the “turning point that caused the rise of the strong independentist movement we have witnessed in recent times. The current rhetoric on the ‘right to decide’ is to be linked to the democratic objection that many people advanced against the Court’s decision” (p. 576).

The judgment of the Court “represented a direct statement on the part of the Spanish state about the (static) nature of autonomy for Catalonia that provided the impetus for Catalan nationalist parties to take a secessionist turn” (Lecours, 2020, p. 52). Even prior to the decision, there was no visible sign for Catalonia that the Spanish government was willing to make its autonomy more dynamic. However, with the SCC decision, Catalans consequently had reasons to believe that their autonomy would remain static and unchanging, and would not be adjusted to any change in their political or economic circumstances (Lecours, 2020, p. 44). Every attempt that the Catalan government made to hold popular consultations on the constitutional and

political future of the Community were met with not only political opposition, but with legal action to follow (p. 44). Each initiative to move away from the status quo was challenged by the Spanish state, ultimately narrowing the pathway that Catalans were aiming to take on a route to secession. Lecours (2020) discusses the fact that the Statute of Autonomy was initially presented in a way that was supposed to be interpreted in a dynamic setting (i.e. one that is capable of change and is open-ended, opposed to static – that is not open to change) (p. 45). Once Catalans knew their autonomy was no longer up for discussion of possible change and development, discontent began to develop even further. This feeling began prior to the renegotiation of the Statute. This possibility for change was why a renegotiation was initially put forward. The 2010 judgment emphasized this notion of static autonomy. The decision made a statement to Catalans –that their autonomy would no longer be adjusted to further the identity and interests of the Catalan people. There was no proposal for any progressive advancement. The PP, by taking legal action, proved that the Spanish state was not willing to adjust the status quo and proved that a change was not going to be possible. This was a major issue for Catalans because when the ACs were created, especially in the case of Catalonia and the Basque Country, it was anticipated that they would be able to seek greater powers than the other Communities, although the extent of these powers were undetermined (p. 50). When the *Estado de las Autonomías* (i.e. state of autonomies) was established, it initially offered dynamic autonomy, thus establishing Catalonia as an AC that had the potential to evolve “in a way that would allow Catalonia to develop its own political system, express a still-changing national identity, and formulate distinctive public policies considered by the Catalan political class to be in the best interests of Catalans” (p. 50).

The Court judgement also revealed a deep cleavage between Catalonia and the rest of Spain on the nature of autonomy. It created a highly polarized crisis between supporters and non-

supporters of independence. The decision created a critical juncture because of what it triggered, such as the Catalan nationalist parties reconsidering their previously autonomist positions; large public demonstrations by civil society actors and the general public; a new Declaration of Sovereignty in 2013; two illegally-held referendums in 2014 and 2017; and the eventual imprisonment of Catalan politicians and civil society leaders who partook in these events.

The Constitution “safeguards the ‘indissoluble unity of the Spanish nation’ and ‘guarantees the right to self-government of the nationalities and regions’” as stated in Article 2 (Adam, 2017, p. 371). The Statutes of Autonomy of the ACs protect their autonomy, which the Constitution proclaims is the “basic institutional rule of each autonomous community” and which the state is “obliged to recognize and protect... as an integral part of its legal system” in Article 147, Section 1 (p. 372). From a legal perspective, the statutes are “negotiated norms that are, at the same time, state laws and the basic institutional laws of the ACs, and are finally formally enacted by the state” (p. 372). This is why the reform of the Catalan Statute was so important –not only for cultural and fiscal reasons, but because its enactment and the ability to revise it is a right that has been granted to the region. It is up to each AC to appeal to the SCC if their autonomy is infringed upon and if they choose to make adjustments to their statutes. In the case where the central government uses the SCC to deem these adjustments as unconstitutional, is it not difficult to understand how this action can be taken as something that is hostile and confrontational towards the AC.

It is also the procedures for amending the statutes that are included *within* the statutes of each region themselves –and they require a strong majority to pass the preliminary stage of being initiated and drafted by the parliament of the AC (p. 375). This is representative of the importance of Catalonia’s 2006 reform. The AC already faces hurdles in making it to this stage

of reform. By the time it reaches this stage, it has achieved wide support backed by a lot of effort in making these potential changes. Thus, the “extent and nature of the challenge was received with outrage by supporters of the statute and by the Catalan people more generally, as it had been negotiated and agreed to by both the Catalan and state parliament and ratified by referendum in Catalonia” (Adam, 2017, p. 376).

Judicial decision making in a constitutional court is “the result of personal attributes and attitudes (including policy preferences), peer pressure and intracourt interaction... and party politics (loyalty to the appointer; prospect of a future career under political patronage)” (Garoupa, Gomez-Pomar and Grembi, 2013, p. 514). Constitutional judges are directly appointed by political bodies or actors – in this case they are appointed by the King after being nominated by the Spanish Parliament, the General Council of the Judiciary and the Spanish Government (Barrajo Iniesta, 2004, p. 158). Therefore, they are “likely to be exposed to heavy influence by political parties” (Gomez-Pomar and Grembi, 2013, p. 514). The alignment of constitutional judges’ decisions and opinions in compliance with political interests can be explained by several different theories. Garoupa, Gomez-Pomar and Grembi (2013) argue that is almost natural to expect judges to exhibit the same political preferences as the party that selects them, given their selection and appointment process (p. 515). They also put forward the idea that when judges do not have lifetime appointments, it can be beneficial for the judges to preserve a close relationship with the party that selected them in the case of possible future appointments or positions (p. 515). In either scenario, judges act under politically biased incentives and are not shielded from political controversies. They ultimately argue that the predictability of the SCC judges is due to the role of ideology in the Court, hence their behaviour is more easily anticipated by political actors (p. 515).

The portion of the Constitution that has been the most politically contentious has been the sections governing the territorial distribution of powers. The political efforts to amend the Constitution have been primarily focused on this territorial dimension of the text.

Judges are appointed to the SCC through a means that heavily relies on the political influence of the main political parties (the PP and the PSOE i.e. Spanish Socialist Workers Party at the time of writing) with the exclusion of other political interests such as smaller parties and nationalist parties (Garoupa, Gomez-Pomar and Grembi, 2013, p. 519). The appointment is based on a quota system that is implemented by different political institutions (p. 519). The national parties have no incentive to appoint judges with ideologies that significantly differ from their ideological preferences. This is especially due to the political importance of the Court – its decisions have very significant political implications. These ideological differences are present in the review of a large bulk of cases concerning the national and regional balance of powers. For some of these cases, these decisions can affect the continued existence of Spain as a unitary state. At different sides of the political spectrum, a clear ideological preference from either side can majorly sway a decision that affects the country as a whole. Notably, the way these cases are brought into consideration is often through claims made by political actors. The SCC does not have docket control (i.e. cannot control the cases that come in). Thus when major conflict arises concerning the legislative powers of the state and the ACs, it is brought up by political actors (i.e. elected officials) for political means, as “Constitutional judges in Spain have to decide a question of constitutionality precisely because political parties wish to have an answer from the Court, rather than providing a decision in spite of what political parties might want” (Garoupa, Gomez-Pomar and Grembi, 2013, p. 520). Conflict can be dealt with in the political arena or it can be dealt with through courts. Elected officials choose to deal with conflict in the political

arena if they do not suspect the Court to rule in their favour or they are not sure what the outcome will likely be (Sala, 2009, p. 180). However, if they do not know what the Court will rule and expect to win, then they will choose the judicial arena (p. 180).

Until the 2010 Court decision, the SCC was generally regarded as an institution that supported the state of autonomies and contributed to its development (p. 398). However, the decision “put the Court at the forefront of the political conflict on the territorial organization of the state and for the first time very strongly divided specialized scholars, political parties, and public opinion more generally on its role in the system” (Adam, 2017, p. 398). Because the SCC was particularly harsh in its tone and wording and it showed a lack of sensitivity to the concept of national pluralism (which is recognized in the Constitution), it thereby increased the feeling of alienation in Catalonia (p. 398). Adam (2017) argues that when the Court declared that the Constitution doesn’t recognize any other nation besides the Spanish nation, it missed an opportunity to set out an interpretation of the constitutional use of *nation* and *nationalities*, which could have “allowed for an inclusive understanding of the constitutional framework in a way that could accommodate both the minority and majority nations in recognition of Spain’s pluri-national reality” (p. 398). This criticism is yet another example of why the SCC’s decision on the Statute of Autonomy of Catalonia has increased support for independence in the region, with the recent push toward secession.

2012-2014: Political Demonstrations

Starting in September of 2012, several secessionist demonstrations occurred in the streets of Catalonia, organized by the *Assemblea Nacional Catalana* (ANC), a nationalist association. The people of Catalan displayed their frustrations with the SCC decision, as “the SCC became more entrenched in its role to reject Catalan attempts to unilaterally seize more autonomy. And

day by day, the Catalan separatists became increasingly allergic the SCC's intransigent 'no'". (Helmich, 2020, p. 264). Harguindéguy, Rodríguez and Díaz (2020) note that "the massive rallies demonstrated that the court was a central actor in the territorial politics in Spain... they also indicated that a significant part of the Catalan population considered the court to be an institution driven by political interests that favour centralism" and they continue to say that this "seems[s] to contradict the official version of the court as an impartial guardian of the Constitution" (p. 222).

The most notable demonstrations have taken place during the Catalan *Diada Nacional*, celebrated on September 11th every year (Comella, 2014, p. 572; Dowling, 2014, p. 226). These demonstrations typically involved flying the Catalan flag as well as chanting for a new European state (Lecours, 2020, p. 44). The ANC gathered people in Barcelona under the banner "Catalonia, the next European state" in 2012, and the following year it organized a human chain in favour of independence (Comella, 2014, p. 572). In the weeks prior to the *Diada* of 2012, the ANC organized over 500 meetings throughout Catalonia (Dowling, 2014, p. 227). Noticing the impressive number of people participating in the 2012 demonstration, the Catalan Parliament passed a resolution in September of 2012 to "express the need for Catalans to be allowed to determine their future through a popular consultation" and also called for the construction of a new state (Comella, 2014, p. 572).

In the following years, the SCC further blocked claims to sovereignty made by the Catalan Parliament. An example of this is in January 2013, when the Catalan parliament passed the *Declaration of Sovereignty*. The SCC annulled claims to sovereignty made by the Catalan Parliament in January 2013 – ruling that Catalonia could not unilaterally hold a 'referendum of self-determination' (Helmich, 2020, p. 263).

The 2013 *Declaration of Sovereignty* was proposed by CiU, ERC and ICV and obtained the support of 63 percent of the members of the Catalan parliament (Comella, 2014, p. 576). Its Preamble refers to the aspirations to self-government that the Catalan people have long desired. It also explains that the Catalan people wish to deepen their self-government through new legal frameworks –such as when they supported the revised Statute of Autonomy of 2006 that was ‘blocked’ by the Spanish state and the SCC. As a result of these events and the protests in November 2012, the Catalan Parliament decided to approve a “Declaration of sovereignty and of the right to decide of the Catalan people” (p. 576). The Declaration states that Parliament has “decided to start the process to make it possible for Catalan citizens to exercise their right to decide their collective political future” and enumerates nine principles that will govern this process (p. 577).

Further, the Spanish central parliament rejected a Catalan request for a bilateral referendum in April 2014. Therefore, the Catalan government sought the opinion of the public in an informal/non-official ‘referendum’, later framed as the “Citizen Participation Process on the Political Future of Catalonia” (Helmich, 2020, p. 263). Although the majority of those who voted, voted in favour of secession, all involvement in this vote was considered ‘illegal’ by the SCC (p. 263).

Similar to the 2010 Court decision, in this case, the Court once again invalidated the ‘principle of sovereignty’ for Catalans by announcing that ‘sovereignty’ is reserved for the Spanish people as a whole –as two sovereignties cannot legally coexist (Comella, 2014, p. 580). From this idea of Spanish sovereignty, the SCC further derived two consequences – first, that Catalonia cannot secede unilaterally, and second, it cannot hold a referendum on independence unilaterally.

2014 to 2017: Holding of Referendums

In 2014, a ‘non-official’ referendum was held, with low turnout however. The SCC also struck down the Catalan Parliament’s “Declaration of the Initiation of the Process of Independence of Catalonia” in November 2015 and annulled the law in Catalonia that approved the October self-determination referendum (Helmich, 2020, p. 263).

Then in 2017, the Catalan government “proceeded to pass two unconstitutional laws in the regional Parliament providing for a binding self-determination referendum and the transition to a new independent republic” (Moreno, Colino and Hombrado, 2019, p. 251; Helmich, 2020, p. 263). Both laws were suspended by the SCC. The vote was held anyway, with a 92 percent vote in favour of independence –with another low turnout. Police interference was ordered by the Spanish government in order to forcibly stop the vote. This action was met with highly publicized confrontations. Immediately following this was the Spanish government’s invocation of Article 155 of the Spanish Constitution, which suspended Catalan autonomy (Helmich, 2020, p. 263). Because the Generalitat and the Catalan Parliament were suspended, elections were called and won again by separatist parties. A new government was installed in 2018, regaining constitutional self-government for the region (Helmich, 2020, p. 263).

Since Catalonia’s attempt to secede from Spain in October 2017, political relations between Catalan secessionists and Spanish nationalists are still in a deadlock (Helmich, 2020, p. 259). Since 2018, Catalan streets have seen several mass protests: 11 September 2018 (200, 000 people); 1 October 2019 (180, 000 people); 16 February 2019 (200, 000 people); 18 October 2019 (500, 000 people) and 26 October 2019 (350, 000 people) (Helmich, 2020, p. 264).

2017 to present

As of more recently, in 2019, several Catalan politicians and civil society leaders were convicted of charges of “sedition and misuse of public funds for their roles in the October 1, 2017 referendum on independence” as it was considered illegal and unconstitutional by the Spanish state (Lecours, 2021, p. 1). These leaders were convicted to between 9 and 13 years of prison, despite human rights complaints raised by the Catalan Ombudsman, Amnesty International, the UN Working Group on Arbitrary Detention and International Trial Watch (Helmich, 2020, p. 260). Despite these convictions, they have since been released.

These actions represent the reaction of the Spanish state to the efforts of self-determination by Catalonia. The process of this intense nationalist mobilization has been strengthened since 2010. As previously discussed, the 2010 decision of the Spanish SCC, narrowly interpreting and striking down many of the provisions laid out in the 2006 reform of the Catalan Statute of Autonomy, pushed the CiU away from its previously autonomous position to a secessionist one in 2012. Beginning in between the period of 2010 and 2012, were public demonstrations of discontent with the ruling against Catalan peoples’ ‘right to decide’. This support for secession has only increased. In 2020, public opinion polls show that 34 percent of the population favour independence, which is approximately a 14 percent rise from 15 years’ prior (Lecours, 2021, p. 44).

Conclusion

In Catalonia, distrust of and resentment towards the political system is coupled with unhappiness regarding long-lasting demands for greater political autonomy (Guibernau, 2013, p. 390). As has been discussed, cultural and identity issues are at the forefront of Catalonia's demands. Other issues are the lack of recognition of Catalonia as a nation within Spain and a lack of fiscal autonomy. Catalans have shifted from an original desire for autonomy in the early 2000s to a push for secession starting in the 2010s. In chapter 1, possible explanations for why this occurred were discussed. These were 1) the *effects* and the *timing* of the economic crisis, 2) the push from major political parties, notably the *Partido Popular*, against the 2006 Catalan Statute of Autonomy. 3) the role played by the SCC in declaring 14 of 223 articles in the Statute as unconstitutional.

The role played by the Constitutional Court has given us a partial yet plausible explanation for the move towards secession in Catalonia over the last decade or so. In chapter 2, we discussed the argument that the SCC's 2010 decision, striking down and modifying many of the articles outlined in Catalonia's 2006 Statute of Autonomy, was the main cause for secessionism.

Main takeaways

In this paper, I showed through a method of process-tracing, that the events that took place from 2006 to 2010 (pre-court decision) and then 2010 to present (post-court decision) were pivotal in gearing Catalonia into a direction of secession. This first block of time set the tone for a negative reaction to the SCC decision. This is because, even without knowing the Court ruling, the 4 years that it took to decide on the constitutional status of Catalonia sent a message that its fate were not a priority. The event of the SCC decision in 2010 then triggered a negative

response from Catalan nationalists. The ruling caused a critical juncture in the path to secessionism.

The SCC has proved to be a political actor in this secessionist movement. No matter how the issue is evaluated, the SCC “has unmistakably become a player in a game that is deeply political. The Court at some point lost its de facto mediating authority and was stuck taking sides in a dispute that cannot be resolved within the logic of the constitution itself” (Helmich, 2020, p. 264). In leaving room for the self-governing communities, the Spanish Constitution proves to be accommodating towards wishes for autonomy, however, when the constitutional order’s supply of autonomy does not meet the demand of the ACs, tensions rise (p. 266). Catalonia’s steps to self-government, even if executed through peaceful means, were “repeatedly delegitimated by the law and pejoratively called ‘illegal’ (Helmich, 2020, p. 266).

Payero-López (2018) argues that territorial organization has been a constant issue that has affected Spain since the liberal state was established, thus explaining why the national question is always at the top of the agenda for politicians (p. 114). Although strong secessionist movements exist, such as Flanders, the Basque Country, and Quebec, none of them have gained sufficient nor popular support by their own citizens, enough to win referenda for example, in addition to not being recognized as nations by their central government.

Future avenues for research and unanswered questions

Based on my findings, I recognize that there are several different possible explanations for the push for secession in Catalonia. Based on the findings presented in this major research paper, I argued that the explanation of the SCC decision was the strongest in the push for secession. However, other explanations, such as the economic crisis or the role of the *Partido Popular* could have also played a major role in this. As discussed, several different factors led

into the direction of strong feelings of independence among Catalan nationalists. The movement towards this push resulted from many different processes that came together. Each event triggered another. Every pushback from the Spanish parliament further pushed Catalans towards secession. Catalan nationalism did not start as secessionism. Secessionism only began to develop in the 2010s. Catalan nationalism began as a demand for greater autonomy with more fiscal freedoms, language rights and most importantly, national recognition.

There are limitations in being able to fully answer any research question and prove an argument. The Major Research Paper (MRP) allows primarily for a use of the secondary literature. Without interviews of political actors, it is difficult to clearly establish causality. In this MRP, I built an argument drawing from the literature on nationalism and secessionism, and literature on the history and politics in Spain and Catalonia specifically. I also drew several arguments on why academics believe that the SCC decision in 2010 was the main trigger in secessionism in Catalonia.

There are several major questions left unanswered on this topic of secessionism in Catalonia. Will Spain ever recognize Catalonia as a nation? Will Catalonia receive fiscal autonomy or have Catalan declared as an official language? Will Catalan nationalists remain set on seceding and will they succeed? If the Catalan parliament were to ever renegotiate its Statute of Autonomy again, will its provisions still face the same level of opposition from the Spanish state and face the same ruling from the SCC? What about in the case of other ACs? Will the political mobilization we've seen continue and if so, for how long? Will this influence other ACs to pursue a path towards secession? These questions can only be answered with time. The current political state of Catalonia and its autonomy have remained in a static position. It seems as though it is unlikely to change in the near future. After countless demonstrations with over a

million participants, opinion polls in support of independence and non-official referendums held, little has progressed in terms of action on the part of the Spanish government in support of Catalonia. Will this continued dismissal of Catalan wants and demands continue to have a negative effect on Catalonia's relationship with the central state? Possibly. Again, that is not a question that can be answered here.

A future avenue for research could explore the theoretical issue of courts, in Spain and elsewhere, as political actors. From what was discussed, the SCC has proven to play a major role in the political realm in Catalonia. The SCC, in making its decision, involved itself in a major political issue involving the main ambitions of the Statute of Autonomy, striking down provisions that concerned nationhood and culture. The political impact of the judgement was severe and caused high tensions between those who supported independence and those who did not. By continuing to block claims to sovereignty over the years, despite the support by Catalan nationalists and a growing support from the rest of the population, the SCC made it clear that it was in support of the Spanish state rather than the AC. The Court became more entrenched in its role to reject Catalan attempts of autonomy (Helmich, 2020, p. 264). It inevitably became stuck choosing sides in a very complicated dispute. Thus, it would be interesting to ask the question: should the Constitutional Court (in any country facing an issue with majority and minority nations) be the final step in the regulation of intergovernmental conflicts?

A concept that was discussed in Chapter 2 is "judicialization", which as a reminder, is "the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl, 2011, p. 121). How relevant of a player should the SCC be in the field of territorial governance? How can their decisions be justified? Of course, the decision of the SCC is final and is unchangeable, and with respect to that, it is in their

power to make these decisions. However, it is worth asking, theoretically, how do we know that these decisions are being made fairly and without bias? In the short form, we do not know. The judicial system is used by political actors (either the PP in this case or by Catalan party elites) as a way to transform political issues into judicial ones. As also discussed in Chapter 2, SCC judges are nominated by elected officials who are most likely politically aligned with their nominators. One can assume it would only make the most sense for someone in an elected political position to choose a judge who aligns with their political beliefs. Especially if issues such as the challenging of a Statute of Autonomy are raised by the party who is opposing it. If the Spanish state did not believe the provisions in the Statute would be struck down, it would not have challenged it. Although the SCC must analyze both sides in cases such as this and invalidate the initiatives that do not comply with the Constitution, it will also contribute its own doctrines and principles to the interpretation and development of the Constitution (Adam, 2017, p. 386). Because of the personal contribution of the SCC, it had been criticized within and outside Catalonia for the harshness of its decision. Does the role of the SCC go beyond that of regular checks and balances in governmental branches? Should major political decisions be left to executive and legislative branches of government? My final question: how much influence should the SCC have in mediating relations between the ACs and the central state?

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