

‘The People, Year Zero’: Secessionism and Citizenship in Scotland and Catalonia

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Abstract: The article compares how secessionist elites in Scotland and Catalonia discursively and legally constituted the people that is the subject of their claim of self-determination in relation to immigrants and emigrants during their recent bid for independence (2012-2017). The results point to important similarities between the two cases, which privileged the territorial inclusion of immigrants over the ethnocultural inclusion of emigrants and embraced the principle of multiple nationality. The outcome is interpreted as a sub-set of a broader ‘independence lite’ strategy, serving the aim of reducing the prospective cost of independence in the eye of the population they seek support from, and of the international community of states they seek recognition from.

Introduction

According to the 1933 Montevideo Convention laying out the criteria of statehood in international law, a state must not only have a government, a capacity to enter into relations with other states and a defined territory, but also a permanent population. In established independent states, the latter is constituted and reproduced through citizenship laws, the main purpose of which is to ensure the continuity of the state population across generations (Vink and Bauböck 2013, pp.621-623). Such task is complicated by international migration, which creates a mismatch between the territorial boundaries of the state and the membership boundaries of the citizenry (Bauböck, 2018). As a result, states find themselves with a varying proportion of aliens residing within their territory, and of citizens abroad. The scale of the phenomenon depends not only on the size of the migrant population, but also on citizenship laws that determine how easy it is for immigrants to acquire the citizenship of their state of residence, and for emigrants to pass their native citizenship to their descendants born abroad. States practices vary widely along both internal and external dimensions of the politics of membership (Brubaker, 2010). Describing, measuring, normatively assessing and explaining these variations over time and across states with regard to immigrant and emigrant populations have been the main items on the research agenda of an ever-expanding comparative scholarship on citizenship regimes (Vink, 2017).

The paper proposes to shift the focus away from the politics of citizenship in *established* states to *aspiring* states, or more precisely, to cases where democratically-elected political elites seek to secede from an established state in order to create a new independent one. Their quest to

independent statehood necessarily entails gaining sovereignty over a territory that has seen protracted population movements, from and to the rest of the state in which it is incorporated and beyond. While their claim for secession is rooted in the principle of self-determination, who belongs – and who does not belong – to the people entitled to exercise and reap the benefits from that right is by no means self-evident. The creation of a new state is at heart a disruptive process that ‘internationalises previously internal migration’ (Brubaker, 1992, p.272) and has far-reaching implications on the status of foreigners settled in the claimed territory and diasporic communities abroad (Shaw, 2017). The question of whether immigrants and immigrants ought to be included in the citizenry of the new state and under what conditions is thus inherent to any secessionist project.

Against this background, the article addresses two questions, comparatively examined in two Western European cases of protracted nationalist mobilisation and recent secessionist upheavals, Scotland and Catalonia: (1) *How have secessionist elites defined the ‘demos’ in the independence referendum and the projected citizenry of the putative new state* (2) *What are the determinants of their people-making strategy?*

The empirical analysis covers the period from 2012, when democratically-elected regional governments in both Scotland and Catalonia made the decision to organise a referendum on independence, up to 2017. The paper neither discusses why they attempted to secede from their parent state, nor why to date their project has not come to fruition. These are important questions, but to deal with these would be to write a different paper. For our purposes, the constitutional outcome is largely irrelevant, for what matters is not the triumph, but the struggle. Secessionist elites in both cases devised elaborate strategies in a play with two acts: defining who belongs to the demos in the independence referendum, and who ought to be a national of the new state in the event of independence. These are worth being told to get a deeper understanding of how a secessionist project unfolds in the context of stable democracies, and of the strategies driving the actions of its main protagonists (Cetrà and Liñeira, 2018, Bauböck, in this Issue).

To address the first empirical question, I examine the patterns of *inclusion* and *exclusion* of *immigrant* and *emigrant* populations in the demos and projected citizenry and whether citizenship is conceived of as exclusive or plural status. Moving beyond framing analysis of elite discourse, the focus is placed on ‘legislative acts’ that crystallise the debate between rival conceptions of the people and enable political elites to translate a self-determination claim into a set of laws and policies. The empirical analysis thus concentrates on three aspects of the citizenship legislation (policy output) in Scotland and Catalonia and how they were negotiated (policy input): (1) The scope of the political franchise in independence referendums, determining who can exercise the right to self-determination; (2) the projected nationality law upon independence, defining who ought to formally belong to the national community of the new state; and (3) the provisions on multiple citizenship. The first two aspects allow us to assess the relative degree of *territorial* and *ethnocultural* inclusion of the demos in the referendum and of the citizenry in the putative independent state, while the third indicates whether national membership is conceived of as a *singular* status or tolerates *multiple* affiliations.

The case studies are based on a range of sources, including parliamentary transcripts, policy documents, press articles as well as a series of open-ended elite interviews conducted between May and November 2017 in Barcelona and Edinburgh. The empirical results point to important similarities between the two cases. In both Scotland and Catalonia, the main secessionist parties have defended a predominantly territorial and plural conception of citizenship, which privileged the inclusion of immigrants over emigrant populations and embraced the principle of multiple nationality, including with the state they sought to secede from. The discourse, however, was only partially fulfilled in practice, as policies do not significantly deviate from pre-existing citizenship norms and practices in their respective devolved policy context.

To address the second explanatory question, I interpret the findings in the light of existing scholarship on secession. The argument gives prominence to secessionist elites' agency and the strategic pursuit of their interests. My interpretation is therefore instrumental and starts from the premise that secessionist elites adopt the script of action on citizenship which maximises their chances of achieving their ultimate goal of independence. More specifically, I interpret their actions as driven by the strategic aim of fulfilling three necessary – yet insufficient – conditions along the road to independent statehood: (1) securing a democratic majority of *support* for independence among their own people; (2) creating the conditions for the minority who opposes it to *consent* to the outcome; and (3) enhancing the *legitimacy* of their claim towards the existing community of states in an international environment that strongly discourages outright ethnic justifications. Ultimately, a territorial and plural conception of citizenship allows them to decrease the perceived cost of independence, in the eye of the population they seek support from, and of the international community they seek recognition from.

The article is divided into five parts. Following this introduction, part two discusses the main concepts and introduces the comparative framework. Parts three and four successively examine the Scottish and Catalan cases. The fifth and last part summarises the comparative findings and interprets them through an instrumental lens. It then discusses how the three conditions outlined above have played out differently in the two cases put under scrutiny.

Conceptual and Comparative Framework

The subject of this paper builds upon two relatively large strands of existing scholarship. On the one hand, it relates to the comparative literature on citizenship in new states. To date, it has been the prerogative of area studies, either concerned with states that acquired their independence in the aftermath of decolonisation (Sadiq, 2017), or those that were born out of the dissolution of the multinational Soviet (Shevel, 2017) and Yugoslav (Krasniqi and Stjepanovic, 2015) federations. In new states, the citizenry does not exist as a subject of international law prior to independence, and must therefore be brought into existence through a foundational act. Accordingly, the literature has focused on the laws of 'initial attribution' (Shevel, 2017) or 'citizenship ab initio' (Ziegler, Shaw and Bauböck, 2014), which determine who is automatically or conditionally entitled to citizenship on day one. Others have examined subsequent developments in order to uncover

whether the laws of the ‘nationalising state’ have become more or less inclusive over time towards internal minorities residing within their territory, and towards kin minorities abroad (Brubaker, 2011). On the other hand, it overlaps with a growing body of research on the link between minority nationalism and migration (Kymlicka, 2011). Here, the empirical focus has been placed on those territorially concentrated national minorities enjoying extensive means of territorial self-government and nested within Western multinational democracies, such as Scotland (Hepburn and Rosie, 2014, Arrighi, 2012), Catalonia (Arrighi, 2012, Conversi and Jeram, 2017), the Basque Country (Jeram 2014), or Québec (Barker, 2010). It covers a range of aspects, including the attitude of sub-state nationalist parties to immigration (Jeram, Van der Wertz and Wisthaler, 2016), sub-state governments’ policies on immigrant integration (Barker, 2010, Conversi and Jeram, 2017), or their diaspora engagement policies directed to their emigrant populations (Arrighi and Lafleur, 2019).

The present paper focuses on cases where democratically-elected political elites attempt to constitute an independent state out of a portion of an existing one. What I refer to as *aspiring states* lie somewhere in between new states and self-governed nations. In aspiring states, secessionist elites are unsatisfied with the status quo of territorial autonomy and aspire to independent statehood, with the important caveat that their aspirations may never be fulfilled. They operate at the interface between an old constitutional order they repudiate, and a new order which may not come about (Stjepanovic and Tierney, in this issue). The politics of independence thus takes place at ‘year zero’, a liminal space which is not mentioned in the calendar, and yet signals an epochal shift (see Arrighi and Stjepanovic, Introduction to this Issue).

Conceptually, there are four sub-groups of mobile populations whose citizenship status is most likely to be affected by the secessionist project, namely: *internal immigrants*, who hold the citizenship of the state and reside in the contested territory but were not born there; *foreign immigrants*, who reside in the claimed territory but do not hold the citizenship of the encompassing state; *internal emigrants*, who were born in the claimed territory and moved to another region of the encompassing state; and *expatriates*, who were born or used to reside in the claimed territory and moved abroad. In practice, one category tends to be more salient and politicised than another at a given point in time while some may be essentially invisible, either because their demographic weight is insignificant or because their inclusion or exclusion from the citizenry is consensually taken for granted by all relevant political actors (Wimmer, pp. 976-978 and 984. However, at least conceptually, paying equal attention to *internal* and *international immigrants* and *emigrants* allows us a greater understanding of contrasted patterns of territorial inclusion (with regard to immigrant communities) and ethnic inclusion (with regard to emigrant communities) of a given people-making project (Vink and Bauböck, 2013).

In aspiring states, the focus cannot be placed on a foundational act of independence, for the obvious reason that it has not and may not happen, but on the *actions undertaken towards that goal*. The analysis thus covers three core aspects of citizenship which become salient in the politics of independence.

First, the scope of the franchise in the independence referendum that determines the ‘demos’, that is the population who enjoys the right to vote and therefore to decide whether a territory ought to become independent or remain part of an existing state. Referenda have become the main source of legitimacy of contemporary secessionist projects (see Stjepanovic and Tierney in this Issue), and thus constitute the quintessential act of self-determination (Shaw, 2017). They may also turn extremely divisive when those who are on the losing side of the vote do not consent to the outcome or dismiss the entire process as illegitimate. Such risk is aggravated by rules controversies regarding the question that is put on the ballot, minimum participation or supermajority thresholds, and the scope of the electoral franchise (Qvortrup, 2016). Here, I am only concerned with the latter, and ask whether and under what conditions immigrant and emigrant populations were granted the right to participate in the referendum. Independence referendums usually occur within existing administrative units whose government is democratically elected by and accountable to a relatively stable regional demos (Ziegler, Shaw and Bauböck, 2014). However, by contrast with regional elections, the stakes in an independence referendum are higher, thus encouraging the legislator to exclude certain categories of voters or enfranchise new ones perceived as directly affected by the outcome. Such change in the composition of the demos may cast doubt on the integrity of the electoral process, thereby undermining the legitimacy of the referendum (Qvortrup, 2016; see also Spanu, 2019).

The second aspect I focus on is the projected nationality law which determines the citizens who are automatically granted or conditionally entitled to citizenship *ab initio*, that is on independence day. Such legislation may combine some elements of *jus domicilii*, (targeting the resident population), of *jus soli*, (targeting the population born in the claimed territory), and of *jus sanguini* (targeting the population born outside the territory of one citizen parent). It may also include a more or less easy path to naturalisation for long term residents who do not automatically qualify for citizenship, as well as provisions targeting co-ethnic or kin populations abroad (Vink and Bauböck, 2013; Brubaker, 1992). Like the franchise, the content of the proposed legislation and the debate surrounding it allow us to assess and contrast our cases on a spectrum of territorial and ethnic inclusion targeting immigrants and emigrants, respectively.

A third and critical aspect, which has to date been largely overlooked in existing scholarship, are the legal provisions on dual citizenship that determine whether or not newly-made citizens may retain their citizenship of origin, including the nationality of the former state. New states often oppose multiple citizenship that raises concerns for ‘safeguarding state sovereignty, territorial integrity, and associated fears of possibly subversive action by other states’ (Shevel, 2017, p.413). On the other hand, new states may tolerate dual nationality for more pragmatic reasons. As our cases will illustrate, allowing for dual citizenship may signal undecided voters in the referendums that independence would not come at the expense of their pre-existing rights derived from their previous citizenship status. In a similar line of reasoning, it can also increase the legitimacy of the new state, including among those who opposed it in the referendum (Brubaker, 1992). What matters here are not the boundaries of citizenship *per se*, but whether it is conceived of as a singular status, or as a plural one that can accommodate multiple (national) affiliations.

Absolute exclusivity and unconditional plurality are two ideal-typical ends of a continuum. For example, multiple citizenship can be restricted to specific countries (such as the parent state or neighbouring states), or be tolerated for emigrants or citizens by birth but not for naturalised citizens (Spiro 2017).

To sum up, the article compares who could vote in the referendum and who ought to be granted nationality status in the event of independence in two aspiring states and assesses the outcome along two continuums: Territorial inclusion vs ethnic inclusion, status singularity vs plurality. Before moving on the empirical analysis, let me say a few words about the case selection.

Scotland and Catalonia share a number of commonalities that make them the usual suspects of comparative research on minority nationalism. They both host strong nationalist movements and have been at the vanguard of far-reaching processes of decentralisation in their respective states. Until recently, they were widely considered as successful cases of accommodation of national pluralism through extensive territorial autonomy falling short of independent statehood, in an interdependent and ‘post-sovereign’ European order (Keating, 2001). But since 2012, the preferences of the main nationalist parties have shifted from enhanced territorial self-government within their respective states, to independence in Europe (Cetrà and Liñeira, 2018).

Their recent bids for independence share at least four similarities in terms of *timing*, *strategy*, *aim* and *outcome*. First, independence has become the dominant issue on their respective political agendas roughly at the same time – from 2010 onwards. Second, they pushed for the organisation of a popular referendum as the most appropriate democratic procedure for settling the issue – as opposed to a strictly parliamentary route. Third, they have advocated independence within the European Union – seeking to renegotiate their constitutional status within an existing multilevel federation instead of leaving it altogether (Bauböck, 2019; Arrighi and Stjepanovic, 2019). Fourth, their project has, for the time being, neither led to the creation of an independent state, nor significantly changed the constitutional status quo with their respective central governments.

Finally, the cases also exhibit one crucial difference. In Scotland, the referendum took place under the auspices of a concerted bilateral agreement between the Scottish and British government, in which both parties committed themselves to accept the outcome. Conversely, In Catalonia, it occurred in a context of mutual defiance that eventually turned into outright hostility, where the Spanish government and Constitutional Court flatly and consistently dismissed the very principle of a Catalan right to self-determination. As we shall see in the case studies, this has had significant implications for the strategies of the main actors, including with regard to citizenship.

Scotland: Towards a Citizenship ‘Lite’

Independence has been part of the Scottish National Party’s (SNP) platform since the 1970s, yet it remained somewhat marginal in the constitutional debate as long as the party was confined to the electoral fringes. The 1980s was the heyday of the pro-home rule movement, led by the Scottish

Labour Party at a time when Margaret Thatcher's neo-liberal agenda proved particularly unpopular north of the border (Mitchell, 1998). In 1999, the re-establishment of a Scottish Parliament, endowed with considerable powers and endorsed by two thirds of Scottish voters in a referendum held two years earlier, further decreased popular support for independence. Paradoxically, it also provided the SNP with a forum where issues of direct concern to the Scottish people could be debated, and the perspective of an independent Scotland, more seriously pondered (Curtice, 2009). In 2007, the SNP obtained a relative majority of seats for the first time since the advent of devolution and could thus form a minority government. However, without the support of other parties, it was unable to fulfil its campaign promise of organising a referendum on independence by the end of its term. The SNP majority victory in the 2011 Scottish elections allowed First Minister Alex Salmond to immediately push for a referendum. In sharp contrast with Catalonia, the Conservative-led British government elected a year earlier, as well as all pro-Union parties in Scotland, accepted the challenge (Keating, 2017). After one year of bilateral negotiations between the British and Scottish governments, the Edinburgh Agreement set the broad parameters of a 'legal, fair and decisive' referendum to be held by the end of 2014, on a single question on independence (HM government, 2012).

A Franchise 'Based on Residence, not Ethnicity'

In the Edinburgh Agreement, both governments agreed that the referendum ought to be based on the franchise for local and devolved elections in Scotland, while allowing the Scottish Parliament to extend the right to vote to other categories of voters. Under the existing legislation left unchanged since the 1997 referendum on devolution, citizens of other European Union (EU) Member States, as well as Commonwealth citizens were included under the same conditions as British citizens residing in Scotland.

In the debates that ensued in the Scottish Parliament, no parties challenged their continued enfranchisement in the referendum, which was largely taken for granted after four rounds of devolved elections. The SNP merely restated what had been the official party line since the 1990s in its effort to stress the civic credentials of the national movement, that in the words of an SNP Member of the Scottish Parliament, 'shows Scotland standing out of the crowd as a progressive and forward looking nation' (Scottish Parliament, 2013b, p.21826).¹ The territorial principle that underpinned the enfranchisement of non- British residents, such as EU citizens, also had implications for Scots-born British citizens living elsewhere in the UK or abroad, who amounted to about one fifth of the domestic electorate and under the proposed bill, were disenfranchised. The likely consequences of a 'yes' vote on their citizenship status conferred them a stake in the referendum that for some pundits, gave them a rightful claim to participate (Ziegler et al., 2014, pp.1-5). However, the SNP reiterated its view that 'Scotland's future lies ultimately with those

¹ While largely uncontroversial in Scotland, the inclusion of EU citizens offers a striking contrast with their exclusion in the June 2016 BREXIT referendum, even though their status made them particularly vulnerable to the outcome.

living and working in Scotland – *and no-one else*.² The exclusion of emigrants was further substantiated by what the party claimed to be ‘widely regarded as best international practice on referenda, whereby residency is considered to be the most appropriate criterion for setting the vote’ (Scottish Parliament, 2013a, p.19719).

The Referendum (Franchise) Bill was passed in the Scottish Parliament on 14 May 2013, with 97 votes in favour and 12 against with no abstention, thus bringing considerable legitimacy to a referendum based upon a territorially inclusive and ethnically exclusive franchise where all parties accepted to take part in the campaign and agreed upon the rules of the game (Arrighi and Lafleur, 2019).

An ‘Inclusive Model of Citizenship’

The actual making of a body of nationals and implementation of rules of acquisition and loss of nationality in an independent Scotland intrinsically depended upon the outcome of the referendum. The SNP's plan was arrested by the rejection of the Scottish people on 18 September 2014. However hypothetical, it was extensively discussed in the run-up to the referendum and clearly spelt out in two documents issued by the Scottish government: the White Paper on Scotland's Future: Your guide to an Independent Scotland, a 600-page report published in November 2013 (Scottish Government, 2013), that included a whole chapter on citizenship and immigration; and the Scottish Independence Bill (Scottish Government, 2014) unveiled in June 2014, setting out the Government's two-stage plan for an interim and then a permanent constitution in the event of a ‘yes’ vote. The British Home Office responded to the SNP's proposal in a lengthy report on Borders and Citizenship, as part of its Scotland Analysis series, whose purpose was to inform the democratic debate with an evidence-based and arguably neutral inquiry on the main issues (HM government, 2014).

References to nationality in an independent Scotland could be found in the SNP's propaganda ever since the party embraced independence as a long-term objective. As early as 1997, the party defended a radical application of the territorial principle, envisaging citizenship in its draft constitution as the ‘right of everyone whose principal place of residence is in Scotland at the date on which the Constitution comes into force’ (Scottish National Party, 1997, p.8). Twenty years later, the SNP reiterated its commitment to an ‘inclusive model of citizenship, whether or not individuals define themselves as primarily Scottish or wish to become a Scottish passport holder’ (Scottish Government, 2013, p.269).

In actuality, the rules of automatic acquisition of citizenship in the proposed interim constitution were less inclusive than earlier declarations suggested and come closer to the British legislation at the time, as laid out in the British Nationality Act. Residence in Scotland was neither a sufficient, nor necessary condition to be automatically granted nationality status upon

² Alex Salmond, speech at the launch of the second phase of the National Conversation at the University of Edinburgh, 26 March 2008 (our emphasis).

independence. Instead, the bill proposed to restrict it to British citizens either currently residing or born in Scotland. It also provided for a qualified form of *jus soli*, extending citizenship to those persons born in Scotland with at least one parent holding a permanent residence permit, thus matching the existing UK legislation. With regard to ordinary naturalisation, the text does not make explicit the residence, integration and other criteria that have become common currency in virtually all Western European States (Goodman Wallace, 2012), although the Scottish government committed itself not to include a written examination similar the 'Life in the UK' test, deemed too restrictive.

As for emigrants, the document spelt out rules of acquisition of citizenship for citizens' descendants born *abroad* (including in what was commonly referred to in the public debate as the 'rest of the UK' should Scotland become independent). Citizenship was to be extended to the second generation born outside Scotland as long as the birth was registered in Scotland, on a par with Irish nationality law, thus reflecting the Government's strategy of reaching out to the 'Scottish diaspora', mainly for economic purposes (Arrighi and Lafleur, 2017, p.16). The Scottish Government cautiously tamed down the ethnic undertones of such a measure, by complementing it with what has been referred to as the principle of *jus connectionis* (HM Government, 2014, p.63) offering citizenship to persons who have spent at least ten years in Scotland in the course of their lifetime and can justify an ongoing connection with the country. Again, this disposition imitates an existing UK nationality provision.

The government's conception of Scottish nationality after independence was a compromise between the SNP's commitment to an expansive citizenship that includes both immigrant and emigrant populations, while ensuring some degree of continuity with existing UK-wide nationality law. The bill largely conforms to the party's long-standing effort to stress the civic and open character of its self-determination claim, as opposed to a primordial appeal to a narrow and exclusive Scottish ethnicity. Still, it remains within the orbit of existing UK-wide practices. The strategy is nowhere as explicit as in the party's unqualified commitment to dual nationality, which in effect would have allowed virtually all newly-made Scottish nationals to retain their British nationality in an independent Scotland. Officially, the move was meant to reflect 'Scotland's close ties to the other parts of the British Isles' (Scottish Government, 2009, p.109), its people's attachment to 'multiple identities, be they national, regional, ethnic or religious', and the SNP's 'commitment to a multicultural Scotland as the cornerstone of the nation on independence' (Scottish Government, 2013, pp.270-271).

But the SNP's reluctance to portray Scottish and British citizenship as mutually exclusive also served the purpose of appealing to the median voter among an electorate that overwhelmingly self-identifies as both Scottish and British (albeit to different degrees) and was reluctant to renounce the affective and instrumental value of British nationality status (Liñeira, Henderson and Delaney, 2017). The move thus translates in the realm of citizenship the SNP's defense of an attenuated form of independence, under which Scotland would still share a common head of state, currency, free travel area and social security system with its southern neighbour, as well as, to a

large extent, an overlapping citizenry (Keating, 2017, pp.8-25). The SNP's strategy, which has been referred to as the pursuit of an 'independence lite' (Keating, 2012), must be read as the pragmatic move of a party confronted with the reality of an electorate that consistently showed more support for a soft deepening of devolved powers within the existing constitutional British framework, rather than a hard divorce in the form of independence.

Catalonia: Towards an (Ephemeral) Republican Citizenship

Despite a strong and diffuse national sentiment, support for independence in Catalonia has long been limited. Until 2012, political parties openly advocating independence in the Catalan party system were marginal (Cetrà and Liñeira, 2018). The left-wing party *Esquerra Republicana de Catalunya* (ERC) half-heartedly embraced independence in Europe as a long-term objective as early as 1993, mainly to differentiate itself from other parties. But, *Convergència i Unió* (CiU), the real powerhouse driving the Catalan nation-building project since the first Catalan Parliamentary elections were held in 1980, remained faithful to its strategy of enhancing territorial autonomy through gradual concessions from the central state (Wilson, 2012). However, the firm rebuff of the Spanish government to the fiscal deal proposed by the *Generalitat* in 2010, together with growing pressure from pro-independence civil society associations and corruption scandals shaking the party to the core, encouraged its leader to take a more radical stance along the centre-periphery axis (Basta, 2017, pp.10-11). Following the party's victory in the 2012 regional elections with a relative majority of seats and formation of a coalition government with ERC, the regional parliament adopted the Declaration of Sovereignty and Right to Decide of the People of Catalonia, setting in motion a process of 'promoting the right of the citizens of Catalonia to collectively decide their political future' (Parlament de Catalunya, 2013, p.2).

The Catalan Demos: between Democratic Innovation and Legal Continuity

The initial proposal to hold a referendum was brought by the state-wide conservative party (PP) to the Constitutional Court, which immediately ruled it out on the grounds that it violated the sovereignty of the Spanish people. Consequently, the *Generalitat* searched for alternative ways to let the people exercise what it claimed to be its inalienable 'right to decide'. The CiU-ERC coalition government sought to stretch the legal competence of the *Generalitat* under the Autonomy Statute with its Law on Non-Binding and Non-referendary Consultations adopted by the regional Parliament in September 2014.

Since the first regional elections of the post-Franco period were held in 1980, the Catalan demos has been defined under art. 4 of the 1979 Catalan Statute, which grant the 'political status of Catalan' to all Spanish citizens currently residing in Catalonia and those abroad whose last place of residence was in Catalonia prior to emigration. The legislation proposed to expand the franchise to European Union citizens and third-country nationals who had legally resided in Catalonia for a period of at least one and three years, respectively. Parliamentary debates and negotiations evinced

important dissensions within the pro-independence camp. An earlier draft of the Bill limited the franchise to EU citizens, reflecting the position of the centre-right nationalist party CiU, but its left-wing coalition partner ERC insisted it be expanded to all residents, irrespective of their nationality and residence status.

The franchise that was eventually adopted in the law was thus a compromise between the two parties that met two objectives. First, as in Scotland, it fulfilled the political aim of stressing the territorially inclusive underpinning of a legislation that, in the words of a CIU Member of the Catalan Parliament, ‘does not ask people where they come from, but where they want to go (...) for we are a nation that does not rest in the nostalgia of the past, but lives in the fervent desire of a better future’ (Parlament de Catalunya 2014: 22). Second, it served the legal purpose of accentuating the difference between the proposed citizens’ (non-binding) initiative and a fully-fledged referendum, in an effort to circumvent the earlier judgment of the Constitutional Court and get the support of the Catalan Socialist Party (PSC), torn apart between its opposition to independence and its reluctance to prohibit a non-binding consultation on the issue.

The decision, however, did not go unchallenged. The Advisory Council for the National Transition, a group of experts appointed by the *Generalitat* to inform the government’s strategy, questioned the *legitimacy* of a franchise that, by extending the vote to non-citizens, might be perceived as over-inclusive for the purpose of a referendum on independence (Generalitat de Catalunya, 2013). Also, the head of the unionist opposition party *Ciudadanos* dismissed the *legality* of a law that ‘grants the right to vote to people who, under the existing electoral law, do not have that right, and therefore does not meet the basic standards of democratic elections in our country’ (Parlament de Catalunya, 2014, p.12). Eventually, the law was suspended by the Constitutional Court a few days after it was passed in parliament, thus jeopardising the consultation scheduled one month later.

The ‘9-N’ popular vote that took place in November 2014 was essentially deprived of a legal basis, thus casting serious doubts on the integrity of a largely improvised electoral process. While not ending the regional government’s separatist ambitions, the episode encouraged secessionist elites to devise a new strategy, which culminated with the organisation of a referendum on independence on 1 October 2017. The strategic aim of highlighting the inclusiveness of a self-determination claim rooted in a plural resident population that underlined the 2014 consultation, gave way to the perceived necessity to ensure legal continuity with the existing framework regulating regional elections within the constitutional order of the Spanish State of Autonomies. As far as the franchise is concerned, it meant returning to the existing demos, as defined by the 1979 Statute, thus excluding foreign residents.

The Referendum on Self-determination of Catalonia Bill was presented in Parliament on 7 September 2017. Following a heated debate that saw almost all members from opposition groups leave Parliament, the bill was passed with 72 votes in favour, exclusively from the pro-independence ruling coalition. Under such circumstances, the scope of the franchise was at best a

secondary issue, a sizeable minority of elected representatives opposing the very principle of a unilateral right to secession.

An Independent State of Euro-Spano-Catalan Citizens?

Who belongs to the Catalan nation is a long-standing debate that goes back at least to the nineteenth century (Arrighi, 2012, pp.119-123). It was extensively discussed in the early days of the democratic transition in the late 1970s, at a time when over 30 percent of the resident population was born in other parts of Spain. The debate regained considerable vigour in the 2000s, when the *Generalitat*, then confronted with a massive influx of international migrants into its territory, sought to devise its own ‘Catalan Way of Integration’ complementing, and at times challenging, the state-wide Spanish policy (Conversi and Jeram, 2017). In 2005, the *Generalitat* proposed a ‘new conception of citizenship moving towards the full recognition of the rights and duties of all Catalans, irrespective of their nationality or legal status’ (Generalitat de Catalunya, 2005, p.12), thus embracing an uncompromisingly inclusive discourse on citizenship that was not always translated into inclusive immigrant integration policies (Arrighi, 2012, pp.206-226).

The Catalan nationality law in the event of independence was extensively discussed in the White Paper of the Advisory Council for the National Transition published in December 2013. The citizenry *ab initio*, however, was defined in less explicit terms than in the corresponding Scottish Government's White Paper. The Council made few prescriptive recommendations other than inviting the legislator to conform with existing international norms regarding protection against statelessness and respect for individuals’ right of option, as laid out in the section of the 1997 European Convention on Nationality dedicated to Nationality and State Succession.

The uncertainties surrounding who would be entitled to a Catalan passport in the putative independent state were lifted when the Bill on the Referendum of Juridical Transition and Foundation of the Republic was made public, in August 2017. The document was meant to serve the same purpose as the SNP's Independence Bill. It laid the groundwork for an interim constitution and the ensuing participatory process towards a permanent constitution, in the event of a ‘yes’ vote. A major difference with the Scottish case is that the bill was presented to Parliament and turned into law before the referendum, a move that reflects the uncertainties and tensions surrounding the ‘Catalan question’ at the time. However, the law defined the underlying principles of Catalan citizenship in terms that are reminiscent of the Scottish White Paper on Scotland’s Future, as ‘broad and generous, including towards those foreigners who legally reside in our country’ (Parlament de Catalunya, 2017).

But again, the legislation failed to translate into law the promise of a citizenship strictly based on residence in the territory irrespective of one’s prior citizenship that permeated the official secessionist discourse. Instead, it embraced a more conservative view largely inspired by the existing legal framework regulated under the 1979 Catalan Statute and current Spanish nationality law. Citizenship ‘by origin’ was to be automatically conferred to all Spanish citizens residing in a

Catalan municipality upon independence and to those abroad or in the rest of Spain who were born or had spent at least five years in Catalonia. As for foreign residents, the law heavily qualified the principle of *jus soli*, restricted to persons born in Catalonia of foreign parents who would otherwise be stateless. The exclusive edges of this disposition were tempered by a relatively generous path to ordinary naturalisation for non-Spanish residents, subjected to a five-year residence condition and allowing for retention of former citizenship, compared to ten years and a formal renunciation requirement under Spanish nationality law (Rubio Marín, Sobrino, Pérez, Fuentes, 2015).

The most puzzling aspect of the legislation was art. 9, according to which ‘the acquisition of Catalan nationality did not require renunciation of Spanish citizenship’. In Scotland, we saw that the same disposition was primarily meant to reassure the median voter, in line with the SNP’s broader ‘independence lite’ strategy. As dual national self-identification is widespread among the Catalan population (Serrano and Bonillo, 2017), we may presume that Catalan secessionist elites were moved by similar concerns. But in reality, the decision was principally driven by the perceived need to signal to putative Catalan nationals that independence would not come at the cost of losing their EU citizenship status and rights. The retention of Spanish citizenship was therefore not an end in itself, but a proxy for guaranteeing continued enjoyment of EU citizenship rights for its newly-made citizens should the independent Republic be excluded from the Union.

To a much greater extent than in Scotland, the prospect of being left out of the EU had a significant and negative impact on voters’ support for independence (Muro and Vlaskamp, 2016). The scenario of a forced CATEXIT was made considerably more palpable by repeated alarmist declarations from both the Spanish government and prominent EU leaders.³ The secessionist elites’ strategy was summed up by Oriol Junqueras, then leader of ERC and vice-President of the *Generalitat* who declared, not without irony: ‘The Spanish Constitution does not allow for withdrawal of citizenship. If we remain citizens of the Spanish state, then how could we possibly remain outside of the European Union?’⁴ The argument, however, was fiercely rejected by the Spanish Minister of Foreign Affairs, who claimed that it was ‘absolutely out of the question that Catalans could retain Spanish citizenship should they become independent’ for letting seven million Spanish citizens in an independent Catalonia is at best absurd.⁵

Explanatory Analysis: Reducing the Cost of Independence

³ Whether those threats would have come true in the event of independence falls well beyond the scope of this paper (see the edited volume by Closa (2017) for a comprehensive legal, political and normative overview of the main arguments).

⁴ In *El País* (2 November 2012). *ERC asegura que los catalanes seguirían en la UE con nacionalidad española*. Available at https://elpais.com/ccaa/2012/11/05/catalunya/1352133935_430268.html [last consulted online 15 February 2018].

⁵ In *La Razón* (22 September 2015). *Los catalanes perderían la nacionalidad española si se independizan*. Available at <https://www.larazon.es/espana/margallo-los-catalanes-perderian-la-nacionalidad-espanola-si-se-independizan-AO10786574> [last consulted online 15 February 2018].

Comparative Findings

Our comparative analysis points to important parallels and similarities between our cases. In both Scotland and Catalonia, secessionist elites grounded their claim of self-determination in a territorially inclusive and plural conception of the people where residence takes precedence over ethnicity and multiple memberships are tolerated, if not encouraged. Such radically progressive discourse, however, was translated into moderately conservative policies, which do not significantly deviate from the existing legal framework regulating access to the franchise and to nationality within the devolved British state and the Spanish State of Autonomies.

In Scotland, the pre-existing institutional context made it easier for the SNP to plug the gap between discourse and policy. Since 1999, the franchise in devolved elections has included certain categories of non-British residents and excluded Scots-born emigrants in the rest of the UK or abroad. It was left unchanged for the purpose of the referendum on independence. In Catalonia, secessionist elites inherited a regional franchise which, since the first autonomous elections were held in 1980, has been reserved to Spanish citizens currently residing in Catalonia and to those abroad whose part residence was in Catalonia. The inclusion of non-Spanish residents in the 2014 Consultation was subsequently abandoned in 2017, as the franchise for the referendum lurked back to the pre-existing regional demos, in an effort to stress continuity with established democratic practices.

In its proposal on Scottish nationality after independence, the SNP could also build upon a British nationality law that includes some elements of *jus soli* for the children of immigrants born in the territory, places restrictions on the transmission of citizenship to the descendants of emigrants, and unconditionally tolerates multiple citizenship. In Catalonia, the proposed policy on Catalan nationality replicates some exclusive elements of the Spanish nationality code, such as the absence of a *jus soli* provision for children born in the territory of foreign parents. Foreign residents were nonetheless offered a path to ordinary naturalisation that is relatively easier than under the Spanish nationality law at the time. As for emigrants, both proposals foresaw their automatic inclusion in the national body of the new state, although such disposition was rather framed on the basis of their past residence or birth in the territory than a pervasive ethnic bond. The most remarkable aspect of the proposed policy lies in the embrace by secessionist elites of the principle of multiple citizenship, thus potentially allowing the totality of citizens in the new state to retain the citizenship of the previous state, should the rest of the UK and Spain accept to reciprocate.

In sum, our case studies reveal a balancing act between an elite discourse that portrays citizenship in unequivocally territorial and plural terms, and a more messy reality of policies that heavily draw on pre-existing norms and practices in the devolved institutional context.

An Instrumental Interpretation

What are the determinants of nationalist elites' people-making strategy? This puzzle has been extensively discussed in the context of migration politics within multinational democracies, and

the broad variety of explanatory theories that have been advanced in existing scholarship cannot be summarised here (e.g. Barker, 2010, Hepburn and Rosie, 2014). In brief, the debate has centered around three main explanatory variables: the prevalence of a more or less civic or ethnic conception of national identity, the degree of political autonomy of sub-state governments, and party competition in the sub-state party system. ⁶In the remainder of this paper, I would like to propose an alternative ‘instrumental’ interpretation that places secessionist elites and the strategic pursuit of their aims at the centre of the explanatory framework. In such instrumental view, the dominant narratives on national identity, dynamics of party competition, and institutional set up are rather intervening variables than the main *explanans*. While they set the stage of a more or less open political opportunity structure providing secessionist elites with incentives and constraints for undertaking certain actions, they do not *determine* those actions. Instead, secessionist elites select the script of action that is most suited to the pursuit of their objectives (Wimmer, 2008). In aspiring states, there is no ambiguity as to the nature of the objective and their actions – including in the realm of citizenship – are a sub-set of a broader independence-seeking strategy.

A similar approach has been fruitfully applied to show how sub-state nationalist parties in multinational democracies have used immigration-related issues as an instrument of competitive nation-building. Rather than an end in itself, the adoption of inclusive and multicultural policies and discourses have been convincingly interpreted as a strategic response to state-level developments, and a means to highlight or even exaggerate the distinct – and more liberal and solidary – values of the minority nation (Jeram 2014, Conversi and Jeram, 2017). In a similar vein, I argued elsewhere that they served the twin aim of transcending ethnic divisions between natives and non-natives within the homeland while challenging the central state in its own liberal and democratic space (Arrighi, 2012). Following up on this line of reasoning, my main argument is that in their recent bid for independence, secessionist elites in Scotland and Catalonia discursively articulated and institutionally entrenched a conception of the people that best serves their core aim of constituting an independent state within the EU (Cetrà and Liñeira, 2018).

The argument invites us to reflect upon the conditions that must be met to achieve such aim. Although securing large support in a referendum has become a *sine qua non* of constitutional change (see Stjepanovic and Tierney, 2019), actually achieving independence takes far more than a democratic majority (Bauböck, 2019). In the European context of relatively stable liberal democracies, acquiring internal legitimacy among the totality of the resident population and external legitimacy in the eyes of an international community made of sovereign states and international organisations they aspire to join is at least equally important. Secessionist entrepreneurs are confronted with what Linz and Stepan (1996, pp.36-38, see also Shevel, 2017, p.408) referred to as the ‘stateness problem’, which looms large in aspiring states and has both an internal and an external dimension. Domestically, the problem arises when a significant proportion of the resident population questions or even denies the legitimacy of the secessionist project.

⁶ For a good overview of existing explanatory theories on sub-state nationalist parties’ attitude to immigration, see Jeram et al. (2016).

Internationally, even a partial recognition by some states but not others bears the potential of seriously jeopardising the viability of the new state (Fazal and Griffiths, 2014, Krasniqi, 2019).

Hence, secessionist elites must devise a strategy that fulfills three necessary – yet insufficient – conditions along the road to independent statehood: (1) securing a democratic majority of *support* for independence among their own demos; (2) creating the conditions for the minority who opposed it to *consent* to the outcome; and (3) enhancing the *legitimacy* of their claim towards the existing community of states that hold the ultimate key to sovereignty through recognition. Below, I explain why the conception of citizenship defended by pro-independence parties in Scotland and Catalonia constituted an adequate, if not optimal, script for action to meet those three requirements, albeit with relative success.

Support: engineering a democratic majority. Out of the 38 referendums on independence that took place in the world between 1980 and 2016, only three did not see a majority of voters casting a ‘yes’ vote: The 1980 and 1995 referendums in Québec and the 2014 referendum in Scotland (Qvortrup, 2016). The fact that all three took place in consolidated ‘plurinational democracies’ (Keating, 2001) highlights the considerable challenge facing independence-seeking elites eager to secure a democratic majority in a context where the claimed territory already enjoys far-reaching means of self-government. At the individual level, voters rarely exclusively identify as either members of the minority or state-wide nation but instead claim multiple (national) identities that are nested and interact with each other in less than tidy ways. Their institutional preferences are equally messy, ranging from further centralisation, the status quo, further devolution and outright independence (Liñeira and Cetrà, 2015). The binary choice of a referendum neither does justice, nor provides a suitable answer to the complex socio-political reality of today’s nationality question in liberal democracies.

One advantage, however, is that the outcome of referenda tends to reflect the preference of the median voter, an observation that holds true both from a theoretical and empirical perspective (Hug and Tsebelis, 2002). It thus encourages both pro-independence and pro-union parties to compete for the vote of the median and undecided voter, instead of appealing to the more narrow and radical fringes of the electorate. Somewhat paradoxically, the referendum may, therefore, have a moderating effect, as political elites in both camps must make a reasonable case for or against independence that goes beyond identity issues into more utilitarian considerations.

In this light, the emphasis placed by Catalan and Scottish secessionist elites on continuity with the existing citizenship regime and plural membership within a European rescaled political space can be understood as a subset of a broader ‘independence lite’ electoral strategy (Keating, 2012). In other words, they sought to minimise the cost of independence in the campaign by assuring that it would not affect voters’ citizenship rights, whereas pro-union parties sought to maximise it by prophesying a major shrinkage of their *droits acquis* due to the concomitant loss of the encompassing state’s nationality and EU citizenship status that is derived from it. The uncertainty surrounding the implications of independence, exacerbated by the absence of a

comparable precedent at least within the EU, provided the latter camps with an in-built advantage (Keating, 2017, pp.104-106).

The SNP failed to gain support of a majority of voters for an attenuated form of independence in a revamped union with the constituting nations of the United Kingdom and the Member States of the European Union. The Catalan case is less clear. While a large majority of those who participated in the 2014 Consultation and 2017 Referendum on independence cast a 'yes' vote, an even larger majority of eligible voters did not turn out, thus signaling a large boycott of the process. This leads us to a second central concern in the citizenship-secession nexus, that is the necessity of assuaging the legitimacy of the secessionist project over the entire resident population, including among those who do not support it.

Consent: building internal legitimacy. Extending the franchise to immigrants may jeopardise the pro-secession camp's ability to secure a majority in the referendum. The 1995 referendum in Québec, in which so-called 'Anglo-Québeckers' and 'Allophones' voted *en masse* against independence, provides a telling example (Clarke and Kornberg, 1996). In Catalonia, 'internal immigrants', that is voters born in other parts of Spain, tend to vote for more centralist parties in regional elections, even though the electoral behaviour of the first-generation born in the region tends to approximate the native population (Serrano and Bonillo, 2017). As for international immigrants, recent scholarship found that they were less likely to participate in the referendum and to support independence than native citizens (Franco-Guillén and Esteve i Garcia 2016). In Scotland, post-independence survey data suggests that voters born in England were significantly less likely to cast a 'yes' vote than those born in Scotland, while non-British EU citizens fell somewhere in between (Liñeira, et al., 2017).

Like the leader of the *Parti Québécois* (PQ) who famously blamed the 'ethnic vote' on the night of its party's slim defeat in 1995, secessionist elites may lament their inability to gain wider support beyond the constituency of native citizens. But none of them ever suggested that the right to vote should be reserved to natives only, not least because it would alienate a large share of the resident population. In Scotland and Catalonia, secessionist elites insisted that the franchise should include long term residents irrespective of their degree of attachment to the land and actively sought to gain support among this population. The adoption of a territorially inclusive franchise and toleration of dual nationality upon independence serves at least two purposes. First, it mitigates ethnic divisions within the territory by appealing to a common democratic interest that transcends identity cleavages. Second, it decreases the prospective cost of independence in the eyes of those who opposed it in the ballot box by signaling that the creation of the new state finds its legitimacy in a democratic process in which they could participate and does not come at the expense of their continued membership in the previous state.

The creation of a state implies a monopolistic claim over the means of coercive power that can only be regarded as legitimate if those who are subjected to it have a say in how the state was created in the first place (Dahl, 1989, pp.208-209). Granting equal access to political participation

and full membership in the political community after independence constitutes a necessary condition to mitigate the prospective ‘stateness problem’ in the eye of the population who is to be subjected to the new state’s authority. It is, however, by no means a sufficient one, as the Catalan case illustrates. Here, the fierce opposition of the Spanish central state to the very idea of organising a referendum on independence encouraged non-secessionist voters and unionist parties alike to boycott a consultation they saw as fundamentally illegal. While the pro-secession camp based its democratic mandate for independence on those 90 percent of voters who cast a ‘yes’ vote in the October 2017 referendum, their opponents emphasised that only 43 percent of the eligible electorate participated in the plebiscite. The clash of legitimacy between an input-based conception of the democratic process focusing on turnout, and an output-based one focusing on electoral results has remained a strong dividing line in the post-referendum Catalan debate. The use of coercion by the Spanish state to prevent voters from accessing polling booths on the day of the referendum adds explosive fuel to the controversy.

Legitimacy: laying the groundwork for international recognition. Independent statehood presupposes external recognition by the existing community of states, who collectively hold the ultimate key of access to the ‘sovereignty club’ that secessionist elites eagerly aspire to join (Griffiths, 2017). The international community’s reluctance to concede recognition has at least two motives. The first, results from concerns for their own territorial integrity, as successful secessionist projects may emulate territorial movements within their borders, and/or create a precedent in international law that could be exploited elsewhere. The second, reflects concerns for the stability of the international system, especially as the creation of new states has been a major cause of ethnic conflict over the past two centuries, particularly when ‘the new nation states were captured by ethnic elites who excluded others from the political and symbolic benefits of statehood’ (Wimmer, 2012, p.5).

Hence, promoting an inclusive conception of the demos and citizenship, constitutes the most appropriate script of action to enhance the legitimacy of a claim to self-determination in an international environment that leaves no room for an outright ethnic claim. The latter is particularly true in the European Union, where compliance with the Copenhagen political criteria of “guaranteeing respect for and protection of minorities” is a prerequisite for opening any accession negotiations (Chamon and Van der Loo 2014: 622-624).

To be sure, external legitimacy does not equate to external support, and it may be that the decision of existing states to accept a new member into the sovereignty club is rather driven by realist power considerations than compliance with pluralist norms of equality and inclusion (Saideman, 2002). But at the very least, the long and uncertain journey to statehood can hardly be undertaken without signaling a firm commitment to liberal and democratic values which, year in, year out, have underpinned the European order since 1945.

Conclusion

The article has compared how pro-independence elites in Scotland and Catalonia have sought to constitute the people that is the subject of their claim of self-determination through policies defining who belongs to the demos in the independence referendum, and who ought to belong to the national community of the new state in the event of independence.

The explanatory analysis gave prominence to political elites' strategic considerations over structural factors – such as the inherently 'civic' or 'ethnic' quality of the nation they speak on behalf of, the dynamics of sub-state party competition, or ideological orientation of secessionist parties – in determining the outcome. I do not dismiss the explanatory power of alternative accounts and fully acknowledge that secessionist elites' actions are constrained by the political opportunity structure in which they are embedded. Yet, such instrumental approach has the advantage of treating secessionism as an essentially political and relational process whose success depends on the actors' capacity to gain support, consent and legitimacy for their claim, both internally and externally. In this light, how the people is defined through citizenship policy is not an end in itself. Instead, it is a means that serves secessionists' main objective of achieving independent statehood. In our cases, elites selected a script of action on citizenship that reduces the prospective cost of independence towards a skeptical domestic population concerned with the potential consequences on their existing citizenship status and associated rights in the European citizenship constellation, and towards an international community of states that shows little appetite for accepting a new member in the sovereignty club.

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