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TERRITORIAL POLITICS IN FLUX

AUTONOMY AND SECESSION IN

THE UNITED KINGDOM AND SPAIN

by

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Abstract

The UK and Spain are paradigmatic examples of plurinational democracies that have sought to use political decentralisation as a means to manage the autonomy and secessionist aspirations of the states' national minorities. The existence of vociferous independence movements in Scotland and Catalonia pose a serious challenge to the constitutional integrity of the UK and Spain, but while both states remain intact – at least for the time being – autonomy arrangements have come under increased strain. In light of this, this thesis examines the evolution of territorial politics in the UK and Spain, with particular focus on debates on autonomy and secession in Scotland and Catalonia. It investigates the limitations of existing autonomy arrangements, sketches potential scenarios for the future terrain of territorial politics and ultimately offers some possible avenues for future reform.

The theoretical framework is informed by the theories of liberal nationalism, multinational federalism and power-sharing, principally consociationalism. In this vein, the thesis seeks to make at least two principal contributions. First, a theoretical contribution as relates to further developing and refining the theory of multinational federalism, specifically examining how its theoretical underpinnings can be translated into political reality. Second, the thesis seeks to make an explanatory contribution to improve the understanding of the accommodation of national minorities within plurinational contexts, paying particular attention to the design of autonomy models.

Taking stock of autonomy arrangements in the UK and Spain, the thesis demonstrates the limited nature of existing autonomy models and the necessity of reform to better accommodate national minorities as well as hold the existing states together. Drawing upon normative and empirical debates, I discuss a number of potential reforms to achieve a more coherent and accommodative autonomy model and posit three possible scenarios for the future development of territorial politics in both cases: recentralisation, reformulation and disintegration.

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List of Abbreviations

AC	Autonomous Community
AMS	Additional Member System
ANC	National Catalan Assembly
AP	Popular Alliance
BNG	Galician Nationalist Block
C's	Citizens (Party)
CDC	Democratic Convergence of Catalonia
CE	Spanish Constitution
CEO	Centre d'Estudis d'Opinió
CiU	Convergence and Union
CSA	Campaign for a Scottish Assembly
CSQEP	Catalonia Yes we Can
CSD	Commission on Scottish Devolution
CUP	Popular Unity Candidacy
DUP	Democratic Unionist Party
ERC	Republican Left of Catalonia
EU	European Union
FPTP	First Past The Post
GCPJ	General Council of the Judiciary
GFA	Good Friday Agreement
ICV-EUiA	Imitative for Catalonia Greens – United and Alternative Left
IGR	Intergovernmental Relations
IPR	Interparliamentary Relations
JMC	Joint Ministerial Committee
JMC (EN)	Joint Ministerial Committee (EU Negotiations)
JxCat	Together for Catalonia
JxSí	Together for Yes

LOAPA	Organic Law for the Harmonisation of the Process of Self-government
LOMCE	Organic Law for the Improvement of Educational Quality
LOTC	Organic Law of the Constitutional Court
MP	Member of Parliament
MSP	Member of Scottish Parliament
N-VA	New Flemish Alliance
OSCE	Organization for Security and Co-operation in Europe
PDeCAT	Catalan European Democratic Party
PM	Prime Minister
PNV	Basque Nationalist Party
PP	Popular Party
PP-C	Popular Party-Catalonia
PQ	Parti Québécois
PSC	Socialists' Party of Catalonia
PSOE	Spanish Socialist Workers' Party
RAI	Regional Authority Index
SCC	Scottish Constitutional Convention
SI	Catalan Solidarity for Independence
SNP	Scottish National Party
TC	Spanish Constitutional Court
UCD	Union of the Democratic Centre
UDC	Democratic Union of Catalonia
UK	United Kingdom
UKSC	United Kingdom Supreme Court
UN	United Nations

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1. Chapter One: Introduction

This thesis is about territorial autonomy and secession in plurinational states.[1] Reconciling the increasingly vociferous demands from national minorities for self-government with the aspirations of host-state governments to hold existing states together remains one of the most intractable challenges encountered by plurinational democracies in the twenty first century. As a result, territorial autonomy has been increasingly promoted as a means of diversity management; enabling national minorities to manage their own affairs and conserve their national identities and cultural heritage, while the extant borders of the state remain unaltered (Keil and Anderson, 2018: 89). Yet, while autonomy is often promoted, and in the case of some states conceded as a necessary arrangement to prevent territorial disintegration, secessionism has not been entirely abated. From the United Kingdom (UK) to Spain, Iraq to Papua New Guinea, secessionism abounds in states throughout the world.

Scotland and Catalonia are oft-cited examples of territorial movements seeking enhanced self-government within plurinational, multilevel states and remain at the forefront of current debates on secession in the real world as much as in academia. Alongside other sub-state entities such as the Basque Country, Flanders and Quebec, Scotland and Catalonia are typically described as the 'usual suspects', that is, a group of sub-state entities often compared as sources of movements for self-government and/or independence. To offset aspirations for independence and to meet demands for self-government, decentralisation projects were enacted in Spain and the UK in the late 1970s and 1990s respectively. These decentralisation processes set in train a series of changes that have not merely altered the political and electoral landscapes of the sub-state territories themselves, but engendered the evolution of the states into multilayered, asymmetric polities in which devolution and decentralisation continue to evolve. In fact, and much to the chagrin of state elites which saw decentralisation as a settlement rather than a project of continual change, both the UK and Spain have become prominent sites for experiments in constitutional and territorial reform. In 2018, both are in a state of constitutional flux.

Scottish independence, framed as a once in a generation opportunity to recast Scotland's relationship with the rest of the UK, was rejected in the 2014 referendum in which

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[1] Chapter Two provides a detailed analysis and discussion of the main concepts in this thesis.

55% of the huge electoral turnout (85%) voted against the Scottish National Party's (SNP) constitutional preference for independence (McHarg et al 2016). Paradoxically, however, despite losing the referendum, the SNP triumphed in the 2015 general election, winning all but three of Scotland's seats and was re-elected to government in Scotland in 2016, albeit two seats short of a majority (Anderson 2016a). As Mitchell (2015: 90) put it, 'within days of the referendum it had become clear that the SNP would not adopt the political equivalent of the foetal position common after a traumatic defeat.' This was evidenced by the rapid growth in party membership which reached more than 100,000 only six months after the referendum and became all the clearer in the aftermath of the referendum on the UK's future membership of the European Union (EU), when the SNP-led Scottish government, supported by the Scottish Greens, called for a second independence referendum.[2]

In the EU referendum, voters in Scotland registered an overwhelming affirmative vote to remain in the EU (62%), but the majority vote to leave in England (53%), not only illuminated the profound divergences in territorial politics and constitutional visions within the UK, but spotlighted the impotence of the Scottish minority in the face of the more Eurosceptic English majority. Notwithstanding predictions that EU withdrawal would precipitate a spike in support for independence, the figure has yet to reach and remain steady at 50%. Independence, however, remains the constitutional preference of the Scottish government. Plans for a second referendum have been placed on hold in the aftermath of the results of the 2017 general election in which the SNP lost 21 seats, but the incumbent Scottish government remains committed to a second independence referendum, particularly in the face of the overwhelming vote in Scotland to remain in the EU (McHarg and Mitchell 2017). The UK government has not ruled out transferring power to the Scottish Parliament to hold a second referendum but given the near-death experience of the union in 2014, is unsurprisingly hesitant in doing so anytime soon. Withdrawal from the EU poses an indisputable risk to the continued existence of the UK in its current form, but while the secession of Scotland is not inevitable, there is nothing guaranteed about the future constitutional integrity of the UK. As Anderson and Keil (forthcoming) posit, 'the tectonic plates of British politics are shifting and the UK's once strong and stable constitutional edifice is beginning to crack.'

The agreed referendum between the Scottish and UK governments has been held up

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[2] In September 2018, SNP membership reached 125,000 and the party became the second largest party in the UK.

by the Catalan sovereignty movement as an example to emulate. Nonetheless, while pro-independence parliamentarians and civil society activists have consistently pressed the Spanish government to reach a negotiated solution on an independence referendum, the latter has firmly rejected this offer, citing the indivisibility of the Spanish state – as expounded by the Constitution – as one of several impediments to facilitating the secession of an Autonomous Community (AC). Much like Scotland, support for independence in Catalonia was a historically marginalised option, but has steadily increased over the last few years. There are numerous reasons behind the growth of independence, not least the intransigence of the Spanish government and other (Spanish) political elites to take seriously Catalan demands for constitutional change, including Statute and fiscal reform and ultimately a referendum on Catalonia's place within Spain (Dowling 2017).[3]

In the context of the failure of concerted efforts on the part of the Catalan government to secure support for a negotiated referendum, in 2014 and 2017 unofficial referenda were organised, albeit the former was rebranded a 'participation process' as a result of the litigation of the Spanish Constitutional Court (TC). The 2017 referendum, however, went ahead despite the judgments of the TC. An overwhelming majority voted in favour of secession (92%), but the result was nothing short of a contested mandate, marred by the heavy-handed reaction of the national police (*Guardia Civil*) to disrupt the vote (Cetrà et al 2018).

In June 2018, the *Partido Popular* (Popular Party – PP), having been in power since 2011, was ousted from government after a vote of no confidence triggered by a series of damaging corruption scandals. The PP was replaced by the largest opposition party, the *Partido Socialista Obrero Español* (Spanish Socialist Workers' Party – PSOE) and its leader, Pedro Sánchez, became Prime Minister (PM) (Margulies 2018). Yet, while Sánchez has sought to appear much more conciliatory than his conservative predecessor and championed dialogue with the Catalan government as a first step to reconciling differences and resolving the unfolding territorial crisis, much like Rajoy, he remains firmly opposed to the celebration of an independence referendum. Instead, the PSOE government advocates territorial reform as a potential solution to the so-called 'Catalan crisis', but it remains to be seen whether any change short of an independence referendum is too little too late for a majority of Catalans.

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[3] For more on the reasons behind the growth in independence see Muñoz and Tormos (2014) and Serrano (2013).

The cases of Scotland and Catalonia demonstrate the continued struggle of minority nations in the twenty first century. Evidently, a number of reasons contribute to the rise of secessionist movements, one of which is the insufficiency of autonomy models to abate minority nations from pursuing the more radical secession option.[4] The inability of minority nations to secure, and the unwillingness of host states to concede models of autonomy in which minority nations are not merely accommodated, but sufficiently empowered and officially recognised remains a pertinent concern for minority nations, especially within plurinational states. This is the main topic of this thesis.

The crises unfolding in the UK and Spain illuminate some of the challenges encountered by host states in attempting to forge a stable equilibrium between the aspirations and demands of minority and majority societal groups. The proliferation of pro-autonomy and pro-independence movements does not render the objective and existence of plurinational states obsolete, but recent events in Scotland and Catalonia evince the widening gap between the roles these minority nations currently play and the roles they expect and wish to play. In this regard, it is not only plurinational states that seem to be in trouble, but the future existence of minority nations, too. In the parlance of Gagnon (2014), both minority nations and their plurinational hosts reside in 'an age of uncertainty'.

Recent events in Scotland and Catalonia underline Gagnon's assertion. They show that while much has been done to move power away from the centre and provide national and regional minorities with a political and legislative arena to protect and preserve their ethnonational diversity, this has yet to completely satisfy the self-determining aspirations of minority nations and thus quench their potential thirst for secession. The aim of this thesis, therefore, is to map and explain the development of territorial politics in both Scotland and Catalonia, taking stock of the autonomy arrangements already in place, examining the efficacy of such arrangements in accommodating and meeting the demands of the minority nations and ultimately asking what else could be done to ensure the development of a more coherent, accommodative and empowering autonomy model.

This thesis originates from two main sources, one intellectual and one personal. The first puzzle relates to the rise of secessionism in Scotland and Catalonia and the efficacy of autonomy arrangements in accommodating national minorities and thus abating secessionism. Both Scotland and Catalonia are powerful sub-state territories, yet in recent

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[4] For more on the rationale behind secession see Pavković and Radan (2007).

years disenchantment with the host state and thus support for secession has steadily increased. For this reason, this thesis examines the rise of secessionism in both cases and how central governments have responded to this. It examines the merits and limitations of these approaches and at the same time seeks to discover whether a more coherent and efficient model of autonomy for minority nations in plurinational states can be designed and what sort of arrangements this would entail.

This thesis is also shaped by a personal interest in both cases. As a Scot who predominantly grew up in autonomous Scotland and spent five years working and studying in Catalonia, I have spent most of adult life in the context of intense discussions on territorial politics and the status of these territories within the UK and Spanish states. I left Scotland for Catalonia in 2011, only a month after the election of a majority SNP government to Holyrood and the increasing prospect of a referendum on independence. In Catalonia, the prospect of a referendum seemed a remote possibility, but similar to Scotland, and more vociferously so, there was (and continues to be) enhanced debate over the future of Catalonia within the Spanish state. These evolving debates were not new in either case, but in an era of heightened awareness of minority rights, sparked my interest in why successful and liberal democratic states such as the UK and Spain struggle to meet the demands of minority nations seeking to offset their vulnerability as culturally distinct sub-state territories within larger states.

1.1 Research Questions

This thesis explores the development of territorial politics in Scotland and Catalonia, paying particular attention to debates around autonomy and secession. It begins by addressing a basic question: to what extent can plurinational states accommodate diversity? More specifically and applied to the case studies, the main research question is:

How have the UK and Spain managed demands from Scotland and Catalonia for enhanced autonomy and secession, to what extent are these strategies effective in meeting these demands and eschewing secession and are there alternative strategies that would better meet these demands while preventing state dissolution?

The normative assumption that undergirds this question relates to how democratic states deal with ethnonational diversity and ensure the accommodation, empowerment and

recognition of such minorities within the parameters of the extant state. The question is multifaceted and thus requires a combination of normative/theoretical studies with empirical research in order to be sufficiently answered. For this reason, several sub-questions also guide the study:

How have the UK and Spain responded to demands in Scotland and Catalonia for autonomy and secession?

How effective have existing autonomy arrangements in the UK and Spain been in accommodating, empowering and recognising Scotland and Catalonia's ethnonational diversity?

Are there other mechanisms that may be employed to ensure the development of a more coherent model of autonomy for Scotland and Catalonia?

Each sub-question is answered through the different sections in Chapters Four and Five which examine the cases of Scotland and Catalonia separately, and examined through a comparative lens in Chapter Six. Chapters Four and Five begin with the first sub-question. Drawing upon secondary literature, these chapters discuss how demands for autonomy and secession in Scotland and Catalonia have been managed by central states, from both a historical and contemporary perspective. These chapters also provide a detailed discussion on more recent debates on autonomy and secession in both cases, beginning with the election of the SNP in Scotland in 2007 and the increasingly pro-sovereignty platform endorsed by *Convergència i Unió* (Convergence and Union- CiU) after re-winning power in the 2010 Catalan election.

The second sub-question is one of the principal foci of Chapters Four and Five. To answer this question, I examine existing autonomy arrangements through the prism of merits and limitations. To this end, I draw upon interview data, document analysis and the academic literature, identifying several benefits and shortcomings of extant arrangements in managing demands for autonomy and secession. In this vein, the 'effectiveness' of existing autonomy arrangements is examined in line with the theoretical framework laid out in Chapter Three, specifically drawing upon the theories of liberal nationalism and multinational federalism, with particular emphasis on the key themes of accommodation, empowerment and recognition.

The final sub-question is divided into two parts in each chapter. This begins by examining the future terrain of territorial politics in each case through the prism of the main

political parties active within the sub-state electoral systems. Taking into account the different territorial perspectives endorsed and advanced by the main parties, three scenarios are sketched for both cases: recentralisation, reformulation and disintegration. Bearing this in mind, the penultimate sections of Chapters Four and Five draw together the preceding analysis as well as the theoretical framework and analyse potential routes to ensure the development and institutionalisation of a more coherent, accommodative and plurinationally sensitive model of autonomy. In this vein, this section draws upon both the normative and empirical dimension of the study, seeking to build on the existing theory of multinational federalism while further deepening existing knowledge of the autonomy and secessionist movements in Scotland and Catalonia and the territorial strategies employed by the UK and Spanish governments.

1.2 Contribution

This thesis specifically contributes to the evolving scholarship of territorial politics, particularly with regards to sub-state territories and plurinational states.[5] The first contribution lies in the examination of the merits and limitations of autonomy arrangements in both countries. Although not a research lacuna, analysing the development of these autonomy arrangements vis-à-vis Scotland and Catalonia, bolstered by interview data from parliamentarians in Edinburgh and London, Barcelona and Madrid, helps shed light on the efficacy of current arrangements. As identified by Kraus (2015: 74), while territorial autonomy remains politically relevant and for many constitutes a moral good, the heating up of long-standing tensions in sub-state entities like Scotland and Catalonia necessitates a deeper examination of the effectiveness of institutional arrangements. Basta and Simeon (2015: 321) underline a similar point, illuminating 'the need for a deeper case study-based understanding and interpretation of how particular communities and political elites conceive of institutional arrangements of autonomy'. This thesis does just that. Doing so allows for the exploration of themes and nuances unique to each case, but also enables a comparative discussion on those characteristics shared by both the UK and Spain in respect of the normative and institutional merits and limitations of autonomy arrangements and what this means for existing structures in plurinational states with vociferous autonomy and secessionist movements. From a methodological point of view, this thesis offers a detailed

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[5] On territorial politics more broadly see Detterbeck and Hepburn (2018).

perspective of the limitations of current autonomy arrangements as described by those political elites which function within them.

A second contribution of this thesis relates to further examining the experience of the management of national minorities in plurinational states, specifically developing the theory of multinational federalism. For Swenden (2006: 290), 'how to manage multinational polities is among the most complex and fascinating questions that should concern the community of social scientists.' In line with this, this thesis contributes to the growing literature on this 'complex and fascinating' phenomenon. In addition, it seeks to build on and further develop the theory of multinational federalism by adding empirical flesh to its theoretical bones. Burgess (2012a: 182), heralds multinational federalism as an innovative political model designed to alleviate some of the most pressing tensions and problems encountered in plurinational contexts. Yet, while an advocate of multinational federalism, Burgess (2012b: 42) notes that one of its biggest pitfalls is the inability to successfully translate it from a normative theory to empirical reality: 'we know what some of its properties are…it remains unclear and uncertain just how far we can take this concept in order to translate it into practical reality'. In light of this, this thesis seeks to contribute to a better understanding of how this translation may be achieved, identifying the limitations of existing autonomy arrangements and seeking to rectify these to create a more coherent and accommodative model of autonomy.

Third and drawing on the last point made above, this thesis also aims to use the data gathered from interviews and documents as well as the subsequent themes that emerged from the analysis to suggest and evaluate ways in which current autonomy arrangements could be reformed and improved to increase their effectiveness as tools of accommodation. To this end, I examine the future terrain of territorial politics in Scotland and Catalonia and the UK and Spain. Drawing upon the different visions espoused by political elites in each of the cases under study, I shine light on the evolutionary nature of territorial politics as well as the challenges and opportunities for both minority nations and plurinational states in the twenty first century. At the same time, I seek to offer a clearer picture of the options available in crafting autonomy arrangements in what remains a volatile and somewhat hostile political environment. This, as will be further elaborated in the Conclusion, is important to help better understand and respond to recent developments in the UK and Spain, but may also offer lessons and implications for other well-established plurinational and multilevel states as well as newly emerging ones, too.

1.3 Methodology, Research Approach and Design

This thesis is a qualitative research project that seeks to fuse theoretical and empirical work on autonomy strategies. The main objective is three-fold: to analyse the strategies of Spain and the UK as relates to responding to demands for autonomy and secession, to evaluate the merits and limitations of the autonomy models institutionalised to manage the aforementioned demands and to examine whether other mechanisms could be employed in order to better meet the demands from Scotland and Catalonia for accommodation, empowerment and recognition. To do so, this thesis draws upon process tracing, a case study approach and a comparison of these cases. This section proceeds as follows: first, I will define my case selection, then discuss the research approach and methods of the study. This will be followed by a discussion of the methods of analysis used – elite interviews and document analysis – before concluding with some brief notes on fieldwork.

1.3.1 Case Selection

Case selection, particularly for small N research projects, is an important task for researchers that eschews the random sampling approach undertaken when conducting large N cross-case analysis (Seawright and Gerring 2008). This study adopts a case study and comparative case study approach as its broad research design (Yin 2014), whereby the two cases – the UK and Spain – were selected based on the 'most similar systems' approach (Przeworski and Teune 1970). The most similar method has increasingly become the most common approach for small N research in political science, enabling the researcher to study a limited number of highly similar cases in which the common characteristics of the different cases can be controlled to reduce the number of potential explanations (Della Porta, 2008: 214).

Seawright and Gerring (2008: 294) posit that, 'choosing good cases for extremely small samples is a challenging endeavour'. As already mentioned above, Spain and the UK are part of a genus of plurinational states with sub-state movements demanding enhanced autonomy and independence, but I have chosen in this thesis to focus only on two of these cases. The similarities and differences of the UK and Spain – which make the comparison plausible, worthwhile and insightful – are discussed below, but prior to looking at these, it is important to justify the choice of only two cases. The UK and Spain were chosen as these

are considered the best cases to explore 'causal inference' as relates to the development of autonomy systems in plurinational states (ibid: 296). This relates not only to the entrenchment of autonomy arrangements in both cases, but how these have been used to manage growing levels of secessionism. Both cases are the most current examples of plurinational states in Western liberal democracies wrestling with secessionist movements. Referenda have occurred in other states, such as Canada, whereby Quebec held referenda on independence in 1980 and 1995, but independence remains a marginalised option and discussions vis-à-vis secession in Quebec are relatively absent from current political debates (Bélanger et al, 2018: 4). For this reason, Canada was dismissed as a case study in this thesis, although this does not mean that future comparison with Canada, albeit in a more historical approach, is completely futile.

In addition, pro-independence nationalist parties hold the reins of power in Scotland and Catalonia and have done so for significant periods of time in both cases. In Quebec, the pro-independent *Parti Québécois* (PQ) was elected to power in 2012 but lasted only 18 months in office and subsequently lost the 2014 provincial election (Maioni 2014). In the most recent elections held in October 2018, the PQ was relegated to third place, winning only 17% of the vote and 10 seats (Gould 2018).[6] In Flanders, Belgium, a pro-secessionist party, the New Flemish Alliance (N-VA), was elected to office in 2014, but was also discounted as a case study given the very low support amongst the public for secession (see Popelier 2015).

A final consideration that helped inform the choice of the two case studies relates to empirical politics and recent scholarship. Recent events in Catalonia and Spain underline the heightened discussion of autonomy and assuaging support for secessionism in both cases. The UK and Spain thus stand out as cases ripe for analysis, particularly in the wake of the UK's withdrawal from the EU, which has reignited calls for a second referendum in Scotland, and the ongoing territorial turmoil in Catalonia whereby support for a referendum and independence itself remains historically high.[7] In so doing, this thesis will therefore contribute to the emerging new knowledge on these events and what this means for the future evolution of territorial politics in both cases.

At the same time, comparing only two cases from the broad genus of plurinational

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[6] In the 2014 election, the PQ won 32% of the vote and 54 seats (Maioni 2014).
[7] In the most recent polling published by the *Centre d'Estudis d'Opinió* (CEO) in November 2018, 47.2% of Catalans would vote in favour of independence, while 43.2% would vote against.

states is not uncommon and more recent scholarship has often focused on only two cases (see Basta 2017; Cetrà and Harvey 2018; Convery and Lundberg 2017; Keating and Laforest 2018). Basta compared Canada and Spain, Cetrà and Harvey and Convery and Lundberg examined the UK and Spain, while Keating and Laforest focused on Canada and the UK. Similar to the abovementioned research, in analysing only two cases this thesis provides a richer, more in-depth examination of the evolution of territorial politics in the UK and Spain as well as a detailed analysis of the limitations of extant autonomy arrangements, how these can be modified to improve existing arrangements and where the constitutional future for Scotland and Catalonia lie beyond 2018.

Comparing Spain and the UK is not novel and is in fact a common comparison in the academic literature (Alonso 2012; Cetrà and Harvey 2017; 2018; Convery and Lundberg 2017; Guibernau 2006; Keating 1996; Swenden 2006). The two states have much in common: Spain and the UK are economically developed European liberal democracies with constitutional monarchies; both countries are plurinational states with at least one territorially distinct community with an active independence movement; they are multilevel states with asymmetrical decentralised systems and finally, in neither case is there a constitutionalised right to independence.

In spite of these mutual features, a number of differences between both cases are also evident, not least, the acknowledgement and recognition of the UK as a plurinational state compared with the lack of consensus and predominantly mononational interpretation that prevails in Spain. Second, the UK's flexible and codified constitution contrasts with the rather rigid Spanish Constitution. In addition, while decentralisation in Spain was rolled out to eventually create 17 ACs, this is not the case in the UK in which the largest nation, England, has no sub-state executive or legislature. Devolution affects only 15% of the UK's population. There are also differences in the nationalist and pro-independence movements active within those sub-state units which demand recognition as separate political communities. Both Scotland and Catalonia are the most active and well-known independence movements in the world today, but while the independence issue has been around in Scotland for several decades, albeit in various guises, the Catalan nationalist movements' support for independence is a recent conversion. In this regard, another notable difference between both cases is the willingness of the UK government to work with the Scottish government to facilitate the holding of a referendum compared with the complete refusal of the Spanish government to engage with the issue. The abovementioned similarities

thus render comparison between the two cases a credible task, but an examination of the differences and thus the diverging outcomes in the cases as relates to the management of demands for future autonomy and independence also make the case for comparison an interesting endeavour.

1.3.2 Research Approach and Methods

Examining the evolution of territorial politics, more specifically the dynamics of continuity and change in federal political systems, relies on several approaches including historical institutionalism (see Broschek 2008) and process tracing (see Falleti 2008). This thesis is a small N comparative study, which as well as drawing upon within-case analysis of case studies and a comparative approach, also uses historical institutionalism and process tracing to track and analyse the historical processes at work in Spain and the UK vis-à-vis the development of autonomy arrangements and evolution of these states' territorial trajectories. Historical institutionalism is an approach primarily rooted in political science which, 'focuses on how institutions…structure action and outcomes' (Schmidt, 2010: 10). The development of institutions and territorial trajectories does not occur within a political vacuum, thus not only is an understanding of history essential, but so too is awareness that actors and institutions are mutually related (Lecours 2005). As Steinmo (2008: 127) attests, 'behaviour, attitudes and strategic choices take place inside particular social, political, economic and even cultural contexts'. Actors, then, are agents with the power to guide the direction of political systems, albeit 'they are students of political history whose ideas and attitudes are products of their own past experiences and their own interpretation of events' (Convery, 2016: 7).

Historical institutionalism is used in this thesis to identify critical junctures and long-term processes as relates to the evolution of territorial politics in the UK and Spain. Critical junctures refer to major transitions in institutional contexts that shape future politics and policy formation (Collier and Collier, 1991: 27). For Pierson and Skocpol (2002: 693), historical institutionalism is an indispensable approach for the identification of critical junctures while simultaneously highlighting the 'overarching contexts and interacting processes that shape and reshape states, politics, and public policymaking'. In order to better understand the historical dimensions of territorial politics in the UK and Spain, as well as what this will mean for these states' future territorial trajectories, the historical

institutionalist approach draws upon a combination of single and comparative case studies and process tracing.

At the core of this study is a comparison between two cases. This thesis thus employs a small N study comparative study using within-case analysis and methods particularly suited to this type of analysis, namely process tracing (George and Bennett 2005). Gerring (2004: 342), defines a case study as 'an intensive study of a single unit for the purpose of understanding a larger class of (similar) units' in which the term unit represents a spatially confined phenomenon, such as a state or sub-state territory. Case study research is a central component of social science inquiry, which facilitates the investigation of contemporary phenomena in the real-world context (Yin, 2014: 16-17). George and Bennett (2005: 19) identify several benefits to case study design, including high levels of conceptual validity, the identification of causal mechanisms, the ability to capture complex phenomena succinctly and the incorporation of a multiplicity of perspectives in a holistic manner.

This thesis is predicated on a 'structured, focused comparison' method of analysis in which the researcher asks the same questions in each of the cases that are being compared (George and Bennett, 2005: 69). As discussed by George and Bennett (ibid), this method of analysis borrows from both statistical and case study methods. From the latter, it borrows the practice of asking several general questions for each case that is 'carefully developed to reflect the research objective and theoretical focus of the inquiry' (ibid: 69). At the same time, the single case-study approach lends to it the process of elaborating the historical detail of the case under study: 'the method is "focused" in that it only deals with certain aspects of the historical cases examined' (ibid: 67).

Chapters Four and Five adopt a single case-study approach, while Chapter Six represents a comparative design, in which the different autonomy strategies of the UK and Spanish states, the limitations of these autonomy models and what could be done to overcome identified shortcomings, are compared. The use of single case study and comparative methods not only enables the collection of rich and in-depth data, but also better facilitates a proper understanding of the context of the cases under study. This is particularly important in this study given the necessity of comparing strategies and institutions, which do not occur in a political vacuum. A thorough and detailed knowledge of both the historical and contemporary context of each case is thus essential and better achieved by the level of description provided for by a case study approach.

The use of a case study and comparative case study approach thus provides this thesis with the richness and thick description offered by these methods, although this does not counter one of the oft-cited limitations of case study designs, that of limited probabilistic generalisation. However, as discussed by Gerring (2007: 248), limited generalisation does not entail no generalisation, particularly if the case shares some similarities with a larger population of cases. In this regard, case studies not only contribute to theory building, as is the case in this thesis vis-à-vis the theory of multinational federalism, but can potentially possess significant external validity rendering findings applicable to other cases. This will be further developed in the Conclusion to this thesis when mapping out the implications of the study for other cases and avenues for further research.

Process tracing is used to trace the evolution of the strategies employed by successive Spanish and UK governments with regards to the establishment and implementation of autonomy regimes. In recent years, process tracing has become an increasingly popular tool in political science, capable of empirically demonstrating the causal mechanisms influencing certain observed outcomes (George and Bennett 2005). Vennesson (2008: 224) defines process tracing as 'a research procedure intended to explore the processes by which initial conditions are translated into outcomes.' Process tracing is thus a powerful and flexible analytical tool that allows for the identification of intervening causal processes and enables a systematic analysis of the political and social phenomena under study.

1.3.3 Methods of Data Collection

This section discusses the principal methods used for data collection: interviews and document analysis. It provides a brief overview of the choice of these research methods but will not discuss in detail how I carried out the data analysis; this will follow in the next section. For King, Keohane and Verba (1994: 46) data collection, 'refer[s] to a wide range of methods, including observation, participant observation, intense interviews, large scale sample surveys, history recorded from secondary sources, randomised experiments, ethnography, content analysis and any other method of collecting reliable evidence.' Data for the analysis in this thesis is based on a multiplicity of primary and secondary sources, including elite interviews, party political publications and academic scholarship. The use of more than one data collection approach is considered important to corroborate the findings of the thesis, thus further substantiating the validity of the study (Eisner, 1991: 110). This

triangulation is achieved through combining insights from the academic literature and elite interviews with analysis of documents, which not only eschews a unidimensional approach to data analysis, but further adds depth to the research *per se* (Mason 2002). I draw upon the secondary literature by historians and political scientists to provide the historical background to the case studies as well as examine the evolution of nationalist mobilisation in Scotland and Catalonia, the rise of the independence movements in these territories and how the UK and Spanish governments have sought to manage these challenges through autonomy arrangements.

Interviews have increasingly gained traction as a prominent tool for data collection in qualitative research (Rubin and Rubin 2005), particularly in political science (Mosley 2013). In this thesis, I conducted semi-structured elite interviews with politicians and political party representatives in the UK and Spain.[8] I consider the use of these in-depth interviews a valuable method in contributing to original knowledge as it enables the collation of different perspectives from ideologically distinct political parties with diverging and in some cases opposing constitutional visions. The data collected from interviews helps to deepen existing knowledge and research on accommodation strategies as well as contributes to further elaborating on theoretical approaches to the topic.

The use of elite interviews is an effective method, particularly when combined with process tracing, which enables researchers to garner fine-grained, reliable and valid data to follow in detail the factors (such as actions or decisions) that constitute events (Tansey 2007). In the words of Beamer (2002: 86), 'elite interviews offer political scientists a rich, cost-effective vehicle for generating unique data to investigate the complexities of policy and politics'. I adopted the semi-structured approach in order to facilitate an open-ended conversation in which participants were free to share their viewpoints and interpretations on the questions being asked. Semi-structured interviews are usually the favoured approach in elite interviews as they maximise the validity of responses, provide rich description to help inform data and context and because elites are often put off by a list of closed-ended questions (Harvey, 2010: 202). This semi-structured approach thus allowed interviewees to talk freely about specific topics, albeit I guided these conversations using a list of questions and themes to ensure that the main topics I wanted to cover were discussed. In this regard, interviews were also tailored to each participant's profile, such as expertise on certain topics

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[8] The profiles of interviewees will be discussed in the next section.

or in some cases, questions related to information the interviewee had previously said or written in published documents. Given that interviews were used to gain information related to the particular perceptions of parliamentarians and other political party representatives of autonomy models as well as to gain unique insights into their political parties' current and future approach to the topic of territorial politics, I employed purposive and snowball sampling techniques. I began by using a purposive sampling strategy to identify key interviewees in different political parties (see below). As the initial previously arranged interviews progressed, snowball sampling was also used as some interviewees recommended other potential interview partners.

Document analysis 'is a systematic procedure for reviewing or evaluating documents – both printed and electronic (computer-based and Internet-transmitted material)' (Bowen, 2009: 27). As a data analysis method, document analysis has long been a central component in qualitative research, particularly in case study approaches. It serves several important functions in the development of qualitative research including: providing background, context and supplementary data, posing additional questions for the researcher to investigate and as a tool to verify and corroborate the findings of a study (ibid: 29-30). In this thesis, document analysis serves all three functions detailed above and was also used to match what was said in interviews with data published in other contexts. In this vein, document analysis was a particularly valuable tool in the triangulation of data collected from interviews and the secondary literature. Documents can include an array of different sources, but in this thesis mainly refers to political documents, which includes manifestoes, reports, press releases, blog entries and articles written by different party representatives in newspapers.

1.3.4 Fieldwork and Data Analysis

The initial stages of research covered the existing scholarship associated with the UK and Spain. This involved reading and analysing scholarship straddling both historical and political disciplines related to the evolution of the nationalist movements in Scotland and Catalonia, the rise of independentism in both territories as well as the general development of territorial politics in the UK and Spain. After engaging with existing scholarship and prior to undertaking interviews, I started to collate other primary sources for the document analysis method. While I did not necessarily begin to analyse in detail these documents before conducting interviews, I read a number of different documents – including party

speeches, press releases and blog entries – which also helped with the identification of themes to be the subject of interviews, as well as specific people whom I would be interested in interviewing.

All interviewees in Catalonia and Scotland were contacted via email. Given my interest and previous knowledge of the topic, I had already compiled a list of potential names that I would like to interview for the thesis. The advice and suggestions of other academic colleagues was also used as well as names I came across from my initial reading of primary documents. I sought to interview candidates who are the party representative on constitutional issues, those parliamentarians who serve as members of committees that deal with the topic under study and those that have, for example, written newspaper articles or blog posts on the same or related topics. Although I did not consider the topic under study to deal with any controversial topics, the fact that interviewees are political elites in the public eye, I guaranteed all interviewees anonymity. I am aware that given the numerical differences between parties, for instance some political parties have very few seats in parliament, that this might lead to some interviewees being recognisable, even though names have not been used. This, however, was raised with all interview partners and none objected to being identified as a representative of the party.

All in all, 37 interviews were conducted for this thesis (21 in Scotland and 16 in Catalonia). I spoke to representatives from all political parties represented in the Scottish and Catalan Parliaments, as well as a few representatives from the House of Commons in the UK and Spanish Congress and Senate. In Scotland, I also interviewed two former shadow Secretaries of State for Scotland. Speaking to politicians representing all parties was considered an important task to maintain balance and better understand the nuance of party political debates about constitutional and territorial politics. I managed to interview almost all the people I had hoped to interview but was unsuccessful in securing interviews with representatives from the Scotland Office or the Rajoy government in Spain. I did, however, have interviews with representatives of the same parties in the Scottish and Catalan parliaments and these interviews, which both lasted around 80 minutes, provided me with useful information and valuable insights into the party's policies and priorities vis-à-vis autonomy, independence and territorial politics.

I carried out 21 interviews with politicians in Scotland in February/March 2017 (see table one), and 16 interviews in Catalonia in April/May 2018 (see table two). Fieldwork for Catalonia was initially planned for November 2017 and then February 2018, but given the

suspension of Catalan autonomy, I postponed these trips until April 2018 when at least some of the dust from the political upheaval in the aftermath of the suspension of Catalan autonomy had settled. In Scotland, most interviewees were Members of the Scottish Parliament (MSPs) but also included 2 serving Members of Parliament (MPs) in Westminster as well as two former MPs. In Catalonia I interviewed 12 members of the Catalan Parliament, two members of Congress and two Senators.[9]

Table One: Interviews in Scotland

Party	Number of Interviews
Conservatives	1
Greens	2
Labour	6
Liberal Democrats	2
SNP	10
Total	21

One issue that I encountered in Catalonia, but not in Scotland, was the role of 'gatekeepers' defined as 'a person who stands between the data collector and a potential respondent' (Lavrakas, 2008: 299). In Scotland, most potential interview candidates responded personally to their emails or had their assistants arrange a meeting with me. In Catalonia this was also the case for most interviewees, but in the case of *Ciutadans* (C's) and *Esquerra Republicana de Catalunya* (ERC), the secretaries of the parliamentary groups took charge of arranging these meetings.[10] In the case of the latter, the secretary was very forthcoming in arranging several interviews (including re-scheduling a last-minute cancellation), but for C's, the party secretary was insistent that I be able to interview only one-party representative. In the cases where only one-party representative was interviewed, I have sought to make more use of different party documents to bolster arguments and corroborate findings.

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[9] I have used the acronym MP for all interviewees except Senators. The only interviewees from the Congress were from PDeCAT, but, as is practice in the academic literature, I have used the same MP acronym.
[10] I switch between the Catalan *Ciutadans* and the Spanish *Ciudadanos* depending on context.

Table Two: Interviews in Catalonia

Party	Number of Interviews
Catalunya en Comú- Podem	2
Ciutadans	1
CUP	1
ERC	4
JxCat	2
PDeCAT	3
PSC	2
PP	1
Total	16

Interviewees were free to choose the time and location of the interviews. Most interviews took place in the Scottish and Catalan Parliaments, but others were conducted in constituency offices in various locations in Scotland and Catalonia. In both cases, I found most interviewees were very generous with their time, with most interviews lasting between 30 and 90 minutes. In Catalonia, I offered interviewees a choice of three languages: English, Catalan and Spanish. Three interviews were conducted in English, one in Spanish and the remainder in Catalan. Being able to speak both Catalan and Spanish was evidently a significant advantage and thus increased my potential pool of interviewees, not just those who felt comfortable speaking in English.

As with all research projects and particularly given my interest in the topic straddles both academic and personal spheres, I have sought to be reflective and critically reflect throughout this process of inquiry. It is important, therefore, to offer some reflections on my role as a researcher whilst conducting this research. I have attempted to be as objective as possible during my research. I am aware of the fact that my personal background and beliefs will have an influence on my work, but have sought to offset any potential bias and maintain balance through engaging with political representatives from all sides of the debate. This approach not only helped eschew or indeed counteract any potential bias but simultaneously aimed to better understand and explain the nuances of the existing and ongoing debates vis-

à-vis autonomy arrangements in both cases. At the same time, and in line with established practice for conducting semi-structured interviews, I used a list of open-ended questions which ensured that each interviewee was responding to the same set of questions, albeit had enough space to explain their views in more detail as well as cover topics not included in my interview schedule. This was important as it not only allowed me to learn more about certain aspects related to the research, but provided further detail in answering the research questions.

Data analysis was performed in an iterative manner, 'meaning there is repeated movement back and forth between raw data (narrative text), codes, categories and plausible explanations that emerge' (Suter, 2012: 351). The philosophy that undergirds an iterative process of data analysis facilitates a flexible approach whereby analysis is an ongoing process which involves going through the data several times to generate categories. At the same time, the iterative method was also applied to data collection whereby themes that emerged in interviews, as well as specific comments, were referred to in later interviews to elicit comments from other interviewees to develop what could potentially be an emerging theme. I transcribed each interview and I decided to translate all interviews conducted in either Catalan or Spanish into English at the point of transcription. Interviews were analysed and coded according to key themes and sub-themes and were ultimately matched and compared with other primary documents. This is a key aspect of the iterative process whereby I oscillated between interview data and primary and secondary sources as different codes and concepts emerged from analysis.

1.4 Structure of the Thesis

This thesis consists of seven chapters, including an Introduction and Conclusion. Chapter Two discusses several concepts that underpin the study of autonomy in plurinational states, as well as discusses the importance of these concepts in the contexts of the UK and Spain, Scotland and Catalonia. This chapter looks at the oft-discussed elusive concept of nationalism, drawing upon historical and philosophical debates relating to states, nations and nation-states. In addition, this section also features an important and detailed discussion on the concepts of minority and majority nationalisms, their relevance for this thesis and a definition of 'plurinational state'. This chapter also focuses on the typical tools employed by governments – whether mononational or plurinational – to deal with diversity and

vociferous minority groups that seek a refashioning of state structures along decentralised lines. In this vein, four main strategies are presented on a continuum, ranging from assimilation to integration, accommodation to separation. As this thesis is mostly concerned with the latter two strategies, I provide a detailed discussion of the different methods of accommodation, namely devolution and federalism. The chapter concludes with a discussion on secession. It examines the conceptual confusion that surrounds the term and discusses the working definition employed in this thesis.

Chapter Three presents the theoretical framework undergirding this study and situates the concepts discussed in Chapter Two within the theoretical debates surrounding accommodation strategies within plurinational states. The chapter focuses on the theory of liberal nationalism which seeks to reconcile democracy and nationalism through challenging the traditionally monist interpretation of liberalism. To complement the discussion on liberal nationalism, this chapter also examines the theory of multinational federalism. The multinational federal model represents an institutional blueprint of the liberal nationalist theory and seeks to put into practice many of the propositions advocated by liberal nationalists in order to marry the concepts of liberalism and nationalism and provide institutional structures that accommodate, empower and protect minorities. Multinational federalism is not without its flaws, thus after a discussion of these, the thesis concludes with examining theories of power sharing. Drawing on the literature of comparative politics and conflict studies, the theoretical framework seeks to further bridge these two literatures to develop a more holistic approach to the management of ethnonational diversity in plurinational contexts.

Chapters Four and Five examine the historical, contemporary and future evolution of territorial politics in the UK and Spain, with sole focus on the territories of Scotland and Catalonia. Each chapter begins with a historical overview of territorial politics in each case before examining in detail the development of debates on autonomy and secession over a specific time frame. In Scotland this period begins with the election of the SNP and Alex Salmond as First Minister in 2007 until 2018, whereby the party remains in power under the leadership of Nicola Sturgeon. In Catalonia, the period starts a few years later in 2010 with the election CiU (which had been out of power since 2003) until 2018. As a result of disagreements over territorial and constitutional politics, CiU was dissolved in 2015, but *Junts per Catalunya* (Together for Catalonia – JxCat) one of its successor parties remains in government headed in Parliament by President Quim Torra. These case studies then examine

the merits and limits of extant autonomy arrangements, before mapping out the potential scenarios of the future terrain of territorial politics in both cases.

Chapter Six is a comparative chapter which compares the development and experience of territorial politics in both cases. It examines the strategies employed by both states to manage and accommodate the autonomy and secessionist aspirations of the pro-independence governments in Scotland and Catalonia. The chapter then draws upon several themes from the analysis in the preceding case studies to compare the limits of autonomy in both cases and how these can be offset and improved to ensure the entrenchment of a more coherent, accommodative and plurinationally sensitive autonomy strategy. This chapter concludes with a discussion on three potential scenarios for the future development of territorial politics in the UK and Spanish states. Interestingly, the three potential ways to address territorial issues in both cases are the same and straddle the broad categories of: recentralisation, reformulation and disintegration. This is followed by the Conclusion, which provides an overview of the study, illuminates the implications of the research and discusses the limitations of the thesis and possible avenues for further research.

In the next chapter, I develop and define the main concepts undergirding this thesis.

2. Chapter Two: Conceptual Outline

2.1 Introduction

In recent decades it has become increasingly accepted that cultural diversity in liberal democratic states is a growing and permanent phenomenon. The culturally homogenous nation-state ideal – venerated in the past by so many liberal democracies – has been seriously challenged by territorially concentrated sub-state minorities, cultural groups, indigenous peoples and immigrants (Kymlicka 2007). This increasing political assertiveness, including vociferous demands for recognition, self-government and independent statehood, has led to important debates on minority rights and diversity management in the international arena. These debates have ushered in greater awareness of minority concerns, as well as a marked shift in official responses from states towards national minorities and cultural differences.

This chapter outlines the main concepts underpinning this study. Before presenting the theoretical framework in Chapter Three, it is important to provide some conceptual clarification of the core terms of this thesis; namely nationalism, democracy, territorial autonomy and secession. The chapter begins with the phenomenon of nationalism, defining the key terms associated with the debate: nation, state and nation-state. Additionally, it looks at the development of plurinational states with particular focus on the evolution of majority and minority nationalisms. Secondly, the term democracy is defined. Here, I examine both minimalist and maximalist definitions of democracy and, important for this thesis, explore the relationship between democracy and diversity. The final sections of this chapter analyse the concepts of territorial autonomy and secession. I do not intend to exhaust all existing definitions related to these concepts, but seek to provide a working definition which from my point of view retains the most important characteristics of these terms.

2.2 Nationalism

2.2.1 Nation, State, Nation-State and Nationalism

Nationalism has been and remains a potent force in the contemporary world. The voluminous literature on this multifarious phenomenon straddles the disciplines of political science, sociology, history, geography and anthropology. Academic contributions have not

only charted the influence and impact of nationalism on specific cases but have equally sought to define this polysemic concept, alongside the kaleidoscope of expressions pertaining to the topic: nation, state and nation-state.

Theorists of nationalism have, over many years, explored, defined, detailed and interpreted several avenues related to the topic. Scholars, such as Benedict Anderson, Ernest Gellner, and Anthony Smith, have championed particular understandings of what nationalism entails, including their own interpretations of key terms, as well as debates concerning its origins. The academic literature recognises the Janus-faced nature of nationalism, situated between ethnic and civic conceptions (Brown 1999; Brubaker 1996; Smith 1991). Renan (1990) is one of the scholars most associated with this paradigmatic approach. His coining of the nation as 'a daily plebiscite', underlined the civic (French) nature of the nation, to be contrasted with the ethnic (German) conception, related to 'blood' and 'soil'. Some scholars, however, acknowledge that nations are neither exclusionary civic nor ethnic, but in fact a hybrid of both (Brown 1999; Keating 2001).[11]

Ernest Gellner distinguishes between a cultural and voluntaristic approach in his tentative definition of a nation. According to Gellner (1983: 7), a nation comprises people who 'share the same culture' and 'recognise each other as belonging to the same nation'. A nation, then, requires a person to not only accept a shared common culture (defined as a set of ideas on behaviour and communication), but moreover necessitates recognition of their mutual belonging by other members of the nation. Nationalism is thus construed as 'primarily a political principle which holds that the political and the national unit should be congruent' (ibid: 1). For Gellner (ibid), 'ethnic boundaries should not cut across political ones' and therefore the rulers of a nation should belong to the same ethnic group as those being ruled.

Benedict Anderson, akin to Gellner, shared an equally modernist approach to nationalism. Anderson (2006: 6), however, attached no importance to the issue of ethnicity, instead arguing that the nation was an 'imagined political community'. The nation is imagined because most members 'will never know most of their fellow members, meet them, or even hear them, yet in the minds of each lives the image of their communion' (ibid).

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[11] Keating (2001: 6) points out that these are two 'ideal types', 'normative and value-laden' and consequently must be considered in an abstract and conceptual rather than concrete manner.

Anthony Smith defined the nation in relation to *ethnies*.[12] A nation is thus construed as 'a named political community possessing an historical territory, shared myths and memories, a common public culture and common laws and customs' (Smith, 2002: 15). Whereas Gellner and Anderson argue that nations are modern constructs, Smith contests that nations are pre-modern entities, formed around an ethnic core, rooted in historical myths, symbols and history. A nation is thus, 'first and foremost a community of common descent', where national identity is ascriptive rather than voluntary (Smith, 1991: 11). Smith sees nationalism as 'an ideological movement' combining elements of the cultural, political and social ambits (ibid: 71).

In his discussion on nationalism, Smith draws upon the ethnic and civic dichotomy, identifying ethnic nationalism as according membership based on ascriptive criteria, i.e. ethnic origin, and civic nationalism as based on voluntary association. At the root of civic nationalism is the idea that 'people and territory belong together' (ibid: 9). The civic nation is built around historic myths and symbols, with emphasis on the homeland and civil society; membership is open to anyone who wishes to share these values, irrespective of ethnic origin. Ethnic nationalism, on the other hand, narrows membership of the nation by basing it on genealogical descent; emphasis is placed on ethnic distinctions, common ancestry, historical myths, shared history and a vernacular language. There is, however, no clear-cut distinction between ethnic and civic nationalism insofar as all nationalisms contain varying degrees of ethnic and civic elements (ibid: 13).

The nation-state is a conjunction of two separate terms, and having defined 'nation', I shall now turn to the concept of 'state', before concluding this discussion with an examination of the concept 'nation-state'. Max Weber (1919:1) famously defined the state as 'a human community that (successfully) claims *the monopoly of the legitimate use of physical force* within a territory' [italics in original]. The state therefore is conceived as a political entity exerting control over several ambits of the territory, particularly administrative institutions. According to Birch (2007: 14), a state 'is a legal entity possessing sovereign independence, having unfettered control over its own territory, defining its own citizenship rules, and equal in international law to all other states'. States, as a result, differ from nations in that they are essentially political entities, whereas nations are inherently

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[12] Smith (1991: 13) defines an *ethnie* as 'a named human population with myths of common ancestry, shared historical memories and one or more common elements of culture, including an association with a homeland and some degree of solidarity, at least among elites'.

ethnic or cultural communities.

The amalgamation of 'nation' and 'state' results in the 'nation-state'. The nation-state is an entity which combines the ethnic and civic sense of the nation with the ultimate political authority of the state. For Keating (2001: 27), 'the nation-state represents a concentration of authority within territorial boundaries and the imposition of common values upon the society. Its essence is the claim to sovereignty, that is, to ultimate authority within a territory'. In a similar vein, Guibernau (2000: 989) underlines the power and 'use of force' imbued in the nation-state, noting that it seeks to unite all citizens in a common national project by means of cultural and linguistic homogenisation. The nation-state is a relatively modern phenomenon which emerged from the ashes of the French Revolution to replace the small principalities, city-states, empires and tribal communities which had been heretofore dominant in the European political space (Keating, 2001: 2). In the twenty first century, however, the nation-state model is no longer limited to (Western) Europe and has been exported all over the world to become *the* recognised 'unit of political power, *par excellence'* (Guibernau, 1996: 57).

2.2.2 Majority and Minority Nationalisms and Plurinational Solutions

In addition to dividing nationalism into ethnic and civic dichotomies, academic analysis of nationalism in different states has also identified the existence of minority and majority nationalisms (Gagnon et al 2011; Lecours and Nootens 2009). These nationalisms differ, however, in that while the latter 'legitimise[s]/consolidate[s] the established order' of the state, the former 'challenge[s] it' (Nootens, 2015: 38). For Lecours and Nootens (2011: 10), majority nationalism 'consists in the articulation of a national community that usually has its core within the majority group and/or within the representations of the state's national identity as that group sees it (notably through the elites)'. This is manifest, they note, in a number of diverse ways including through 'education systems, military service, wars, and colonialism; political practices, traditions, and institutions; and the use of myths and symbols' (ibid: 11). Gagnon (2011: vii) develops this further, noting that 'the protagonists of majority nationalism most often drape themselves in patriotic discourse to protect existing nation-states and to oppose all other expressions of nationalism'. Such nationalism, he posits, can be found in Canada, France and Spain while its minority counterpart can be located in sub-state territories like Scotland and Catalonia (ibid).

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In contradistinction to national majorities, national minorities are 'groups that formed functioning societies, with their own institutions, culture and language, concentrated on a particular territory, prior to being incorporated into a larger state' (Kymlicka, 2001a: 72). Kymlicka divides national minorities into two sub-categories: stateless nations and indigenous peoples.[13] Scotland and Catalonia, alongside other sub-state territories such as Flanders and Quebec, are often held up as clear, paradigmatic examples of stateless nations, thus it is important to provide a concrete definition. Requejo (2013: 31), in a similar vein to Kymlicka, defines such nations and movements as:

> Territorially concentrated collectives with a basic national identity that does not coincide, at least for a significant number of their members, with the national identity of the majority group of the polity. These collectives display distinguishing features, such as a different history from the rest of the state, a specific language, a different religious culture etc. Some of them may even have been independent powers in the past. They also express a will to be recognised as a different collective and a clear desire for self-government.

Minority nationalism, much like its majority counterpart, embodies a political dimension. However, whereas majority nationalism is used to legitimise the state and its established order, minority nationalism challenges these assertions, instead propounding national rights including, but not limited to, demands for internal and/or external self-determination (Seymour 2004). Akin to majority nationalisms, minority nationalisms are a variegated phenomenon. On the one hand, some minority groups seek only a political voice and representation in (autonomous) governmental institutions, firmly within the confines of the already established state. On the other hand, some minorities champion territorial independence, seeking to establish a separate, independent state. Minority nationalist movements of both persuasions described here can be found all over the world, from Europe to North America, Asia to Africa.

Historically, minority nationalists have been characterised as bulwarks to modernism. Parekh (2011: 38), for instance, argues that national minorities were often the subject of stigmatisation, primarily by enlightened liberal thinkers who saw them as 'backward groups, tribal, closed, custom-bound, anti-modern, driven by ethnic nationalism and an obstacle to progress'. Today, however, this is *not* a widely-accepted opinion. Scholars such as Kymlicka (1995), Keating (2001) and Requejo (2005) posit that, contrary to the view described by

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[13] The literature on minority nationalism interchanges between the terms minority nations, stateless nations, nations without states and peripheral nations.

Parekh above, modern national minority movements tend to be champions of democratic principles, endorsing a multidimensional identity and representing a civic nationalist movement, with a focus on territorial self-government as opposed to genealogical purity.

The UK and Spain are plurinational states which have sought to accommodate and manage their internal ethnonational diversity through territorial autonomy.[14] A plurinational state is taken as a state in which there is more than one national group, recognised as a distinct community with self-governing aspirations whose members endorse a multidimensional, rather than mutually exclusive, sense of identity (Keating 2001). It is important to distinguish a plurinational state from a multi/pluricultural one. The two differ in that in both there may be several cultures and/or language groups, yet in the latter such groups do not identify themselves as distinct national communities. Switzerland is a case in point. While it is a culturally and linguistically diverse country, with, for example, four official languages, it remains a mononational state (Dardanelli 2008).

Scotland and Catalonia are two minority nations located within plurinational democratic states. Spain, however, presents some problems when defined as plurinational. Whilst there is extensive scholarly opinion that Spain constitutes a plurinational state, the Spanish Constitution itself endorses only a weak commitment to its internal pluralism. Article Two of the Constitution, for instance, guarantees self-government to the different nationalities and regions of the Spanish state, yet concomitantly declares 'the Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards'. In other words, there is only one recognised nation: Spain.

The UK stands in contrast to Spain in that firstly, it has no codified constitution and second, there is relative ease at the recognition of the UK as a plurinational state. The UK is a union-state comprised of four distinct nations: Scotland, England, Wales and Northern Ireland (Rokkan and Urwin 1983). The variegated historical processes which led to the different unions between the four countries have been relatively hospitable to the plurinational makeup of the state, albeit tensions remain and have occasionally flared up

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[14] The term plurinational as opposed to multinational will be employed in this thesis. A plurinational democracy is one in which there are 'separate national groupings' whose members may have more than one national identity, identifying, for instance, with their national community (Scotland) and the state (UK) (Keating, 2001: 27). A multinational state is also used by authors (particularly from Canada) in lieu of plurinational. However, the conception of a multinational state does not necessarily recognise, at least to the same extent, the overlapping identities which exist with sub-state communities in plurinational states (McGarry and O'Leary 2009; Keating 2001; Requejo 2001). For this reason and with reference to the cases examined here, plurinational is deemed the most appropriate term.

over time. Scotland, for instance, is not only considered a nation, but a nation with a right to self-determination. Successive British PMs including those vehemently opposed to devolution, such as Margaret Thatcher and John Major, conceded a right of (external) self-determination to the Scots. Keating (2015a: 187-188), however, qualifies this unionist approach to Scottish self-determination. He observes that such concessions are 'a typical case of British pragmatism' underlined by 'a statement of rather intransigent unionism'. The Scots may pursue and ultimately gain territorial independence but until they do so they must remain under the auspices of Westminster and on dictated terms. The UK may very well be a plurinational state, but a plurinational culture is lacking.[15]

2.3 Democracy

2.3.1 Defining Democracy

The voluminous literature on democracy is testament both to its relevance in the modern world as the most prevalent and celebrated form of government, as well as the difficulties encountered in defining exactly what democracy is. Democracy is a venerable concept in political science and according to W. B. Gallie (1956) is an 'essentially contested concept' imbued with several meanings.

Democracy in its pre-modern sense is inherently associated with the participatory form of government practiced by the Ancient Greeks in the *polis.* For the Greeks, democracy was essentially 'rule by the people', exercised in small city-states (Birch, 2007: 109). The Greeks, however, despite exporting the idea of democracy, had very limited practical conception of what this form of rule entailed. Athenian democracy, for instance, was considered viable in only small communities, whereby communitarian values took precedence over individual rights and the right to vote was limited to a small minority of adult males.

The archetypal democracy outlined above stands in stark contrast to modern versions of democratic governance. Modern democracy is rooted in the writings of political philosophers such as John Locke, John Stuart Mill and Jean Jacques Rousseau. These enlightened thinkers emphasised values such as individual rights, fundamental freedoms,

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[15] This point will be further developed in Chapter Four.

equality of participation and representation and separation of powers; principles which have over time transmuted into 'meta-values' for democratic rule (Requejo, 2001: 1). Most modern democracies are deemed 'representative' and/or 'liberal', as opposed to the direct democracy exercised by the Greeks (Birch, 2007: 110). As explained above, defining democracy has a long and, at times, convoluted history and a range of definitions, both minimalist and maximalist, have been expounded by numerous scholars. It is to these definitions we now turn.

Lipset and Lakin (2004: 19) define democracy as: 'an institutional arrangement in which *all adult individuals* have the power to vote, through *free and fair competitive elections*, for their chief executive and national legislature' [emphasis added]. The authors offer an avowedly minimalist conception of democracy, which considers the fundamental ideals underpinning it to be: inclusiveness ('all adult individuals') and contestation ('free and fair competitive elections'). In essence, the authors consider elections to be the crux of democratic rule, whereby adult citizens have the freedom to elect political representatives, hold them to account and remove them from office should they fail to deliver on their electoral promises. Scholars defending a minimalist conception of democracy are often criticised for focusing on merely one component of democratic politics – elections – and thus failing to encompass other fundamental political and civil liberties. Hence, other scholars provide a more substantive maximalist definition of democracy which shifts focus from the political sphere to include other non-political, yet equally essential liberties such as social and economic freedoms.

Robert Dahl (1971; 1989; 2015) is one of the most prominent scholars who has defined democracy in maximalist terms. Dahl (1971: 9) considers democracy an 'ideal system', a hypothetical, utopian ideal yet unachieved. Instead, he employs the term 'polyarchy' to describe the imperfect real-world form of democracy. Dahl develops a maximalist conception of democracy through enumerating various rights and liberties which he considers essential for democratic rule. He (2015: 85-86) details six characteristics which underpin truly democratic states:

1. Elected officials
2. Free, fair and frequent elections
3. Freedom of expression
4. Access to alternative sources of information
5. Associational autonomy

6. Inclusive citizenship

These six attributes represent a substantial definition of democracy which contrasts with the aforementioned minimalist conception. Dahl, in a similar vein to those scholars advancing a minimalist definition, avers that regular competitive elections are essential in a democratic system. However, he attests that other components such as constitutionally guaranteed civil and political liberties must also be the fundamental building blocks of any democratic edifice. Citizens, besides having a right to vote, equally have an absolute right of fundamental freedoms including freedom of speech, expression and association.

Before proceeding to the relationship between diversity and democracy, this section offers a brief insight into democracy in the UK and Spain. The two states are democratic countries, with Spain being the most recent convert to democratic rule (the transition began in the late 1970s). In both states, there is a firm commitment to democratic principles and the decentralisation projects in each country have advanced their commitment to deepening democracy. In Spain, the division of the state into 17 ACs, each with a regional government and legislature was part of the wider democratisation project pursued in the wake of the death of dictator, General Francisco Franco. Political decentralisation and democracy in Spain are thus construed as 'mutually reinforcing' (Colino and Hombrado, 2015: 184). The devolution project in the UK equally sought to broaden the scope of democratic politics, bringing government closer to the people and ensuring the Scots, Welsh and Northern Irish had representation in their own territories as well as the Westminster Parliament in London (Bogdanor 2001).

2.3.2 Between the Majority and the Minority: Democracy and Diversity

The modern conception of the nation-state and its subsequent acceptance as the most dominant form of political organisation evolved alongside the development of modern democracy in the aftermath of the French Revolution (Loughlin, 2011: 44). Democracy, thus, has come to be defined in statist terms, whereby majority communities, as opposed to minority nations, are the principal actors in traditional democratic theories. Kymlicka (2001b: 19) and Requejo (2010: 149) argue, therefore, that traditional theories of democracy are ill-equipped and consequently flawed when attempting to manage issues of diversity. Both scholars consider liberal democratic assumptions developed in the eighteenth and

nineteenth centuries, including the monist conception of the *demos* and the idea of a culturally neutral nation-state, as unsuitable for the ethnically and culturally plural societies of the twenty first century.

Alexis de Tocqueville (1969 [1835]) in his analysis of American democracy illuminated what he considered an inherent danger in democratic systems: 'the tyranny of the majority'. Minority factions, it was noted, could easily be outvoted, yet a majority faction in possession of unbridled power posed a perennial threat to democratic society, able to dominate the political process and impose its opinion on minority communities. The problem was summed up years earlier by James Madison (1961 [1787]**:** 323) who wrote, 'it is of great importance in a republic not only to guard a society against the oppression of its rulers, but to guard one part of the society against the injustice of another part.'

Tocqueville, considering his concern for minority rights, argued that while majority rule may be the essence of democratic governance, minority rights must equally be safeguarded from infringement by a majority faction. To achieve a balance between majority rule and minority protection, Tocqueville, emulating Madisonian principles, advocated the legal entrenchment of minority rights. In the twenty first century, minority rights are legally ensconced in the realms of domestic and international law insofar as the protection of minority rights is considered 'the *telos* of modern constitutionalism' (Sisk, 1996: 67).

A vigorous re-examination of accommodative principles in democratic states has ensued as a result of increasing awareness of ethnonational diversity and the importance of accommodating and recognising this. This involves not only a tacit acceptance of cultural and ethnic diversity, but an explicit commitment to respect, celebrate and protect the basic rights of minority groups. Within the academic literature there is an ongoing debate about the relationship between democracy and diversity, with scholars on both sides of the debate able to produce ample empirical evidence to strengthen their claims. As McGarry and O'Leary (2015: 15) note, 'for every Switzerland, Canada, Belgium and India, there is at least one Austro-Hungary, Soviet Union, Yugoslavia, and Pakistan.'

John Stuart Mill (1958 [1859]: 230), famously contended that a single national identity was necessary for democratic governance to take root.[16] He argued that diversity inhibits processes of democratisation in ethnically diverse societies and thus democratic stability can only function in relatively homogenous societies. Other scholars, however, have taken

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[16] See also Barro 1999; Jensen and Skaaning 2012; Rabushka and Shepsle 1972.

exception at this received wisdom. They posit that while pluriethnic and plurinational societies may entail and engender more challenges, and thereby render the development and consolidation of democracy more difficult, diversity does not prevent democratic principles from taking root. Fish and Brooks (2004) and Fish and Kroenig (2006), for instance, show that ethnic heterogeneity does not necessarily destabilise democracy. Fish and Kroenig (ibid) posit that while ethnic heterogeneity is a challenge, the assumption that diversity imperils democratisation or the achievement of peace does not hold true.[17]

From the inception of democratic rule in Greece, democracy has been a permanently evolving project. In the context of the twenty first century, globalisation and increasing societal heterogeneity have necessitated changes to traditional democratic ideals. As Keating (2001: 166) notes, 'there are new political spaces beyond the state, whether above, below or alongside, and these are the loci of new democratising pressures'. The increasing presence of 'new' political voices demanding recognition and accommodation within liberal democratic frameworks has brought democratic ideals under the scholarly microscope and has resulted in the distinction between two forms of liberalism: liberalism I and liberalism II. The former is concerned with traditional democratic assumptions and basic freedoms, while the latter champions collective rights (in addition to individual rights) and promotes recognition, respect and the accommodation of minority groups (see Taylor 1994; Walzer 1994).[18]

Liberal democratic theories, in view of their conservative roots, have tended to disdainfully dismiss claims from minority nations for increased autonomy or secession. Some accuse minority nationalists of promoting policies antithetical to democratic ideas. Horowitz (2003), for instance, condemns minority nationalists as seeking to create a new state in which other minorities would be oppressed. Kymlicka (2001b) and Requejo (2011a), however, challenge this notion. Kymlicka (2001b: 18) argues that while national minorities may advocate secession from an already established democracy, they tend do so within a democratic framework, seeking to create a new state committed to modern democratic principles. This line of argumentation is furthered by Requejo (2011a: 14), who posits that the real problem vis-à-vis illiberal notions is not national minorities, but states and majority communities, which in true Jacobin fashion unfairly treat national minorities and try to inhibit their self-determination aspirations.

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[17] See also Bunce 2005; Fearon and Laitin 2003; Hoeffler 2012.
[18] This will be further developed in Chapter Three.

Not all minority nationalist movements are secessionist, and state governments, in an attempt to prevent autonomist movements pursuing this more radical alternative, utilise different measure of autonomy as a mechanism to prevent territorial breakup.[19] Territorial autonomy, nonetheless, whilst it is instituted to meet national minority demands and/or abate secessionists, equally enhances democratic legitimacy. For instance, it involves the diffusion of power from the central government to sub-state components, thus providing 'an excellent check on central despotism' (McGarry and O'Leary, 2015: 38). In addition, through moving government closer to the people, autonomy arrangements widen the possibility for participation, ensuring that all members of society, whether belonging to the majority or a minority community, can effectively participate (Smith, 2014: 17). Furthermore, territorial autonomy overtly challenges majoritarian assumptions because it recognises the existence of several *demoi* within the state (Requejo and Caminal, 2011: 5). Territorial autonomy then, not only has the ability to placate secessionists, but moreover is construed as an instrument of democratic reform.

In sum, understandings of democracy have shifted from a strong focus on majoritarianism to an overt concern with minority rights and pluralism, to the extent that 'for a regime to be considered democratic today, it also must protect the rights of individuals and minorities' (Plattner, 2010: 84). Nonetheless, according to Requejo (2011b), the conceptual and normative 'timbers' of modern democracies are 'still too straight': democratic states have yet to embrace a suitable model of governance to adequately accommodate the range of identities, ethnicities and cultures which may exist within a polity. States have made progress in dealing with the new agenda of issues introduced by national pluralism, but a mismatch remains between democratic ideals and institutional realities. Much work remains to be done.

2.4 Managing Diversity

In terms of identity, language, culture and religion, almost all states in the world today are considered ethnically and culturally diverse. Governments have, in response to such diversity, developed numerous strategies to temper this unprecedented challenge, ranging from draconian and undemocratic measures – genocide, ethnic cleansing and coercive

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[19] A detailed discussion on territorial autonomy and secession will follow.

assimilation – to more liberal, integrative and accommodative public policies, including territorial autonomy and consociationalism. Whereas accommodative repertories accord respect and recognition to cultural differences, albeit in different ways, those that eliminate diversity seek to reinforce a homogenous ethnic identity (McGarry et al, 2008: 42). Figure one lays out responses to managing diversity on a continuum, from assimilation (where homogeneity is prioritised), to secession, where a particular part of a state secedes to form a separate, sovereign, independent state.[20]

Figure One: State Responses to Diversity

| Assimilation | Integration | Accommodation | Secession |
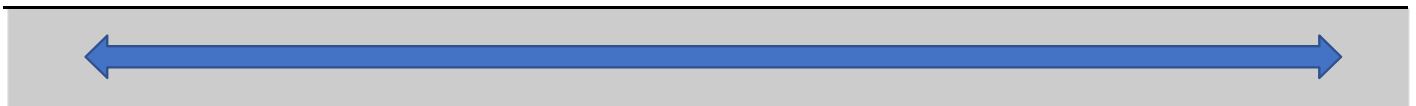
Source: Own elaboration, based on McGarry et al, 2008: 41-91.

The history of most modern states, democratic or otherwise, is peppered with systematic attempts by governments to eliminate national diversity and foster a culturally homogenous ideal: a mononational state in which all citizens share a singular national identity, speak the same language and participate in the common public institutions of the state. As discussed in the previous section, liberal theorists have traditionally venerated the homogenous nation-state ideal, often in the name of political stability and modernisation. John Stuart Mill, for instance, considered minority groups as bulwarks to modernisation and vehemently argued in favour of their absorption into the dominant majority. In the words of Mill (2010 [1861]: 300):

> Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current ideas and feelings of a highly civilised and cultivated people to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship, sharing the advantages of French protection, and the dignity and prestige of French power than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to Welshman or the Scottish Highlander as members of the British nation.

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[20] The primary strategies examined in this chapter are non-violent responses by states. For this reason, genocide and ethnic cleansing are not featured on the continuum in figure one.

Throughout the nineteenth and twentieth centuries, the predominant idea that both state and nation should coincide resulted in intense inimicality towards sub-state collectives seeking status as a 'nation'. Genocide and ethnic cleansing, universally recognised as the most brutal methods in eliminating diversity, have been carried out by states uncomfortable with their heterogeneous makeup (O'Leary 2011). In addition, liberal governments, overt in their aim of rejecting diversity and eradicating difference, have sought to impose uniformity on the state as a whole (Caminal, 2011: 240). In recent years, however, governments have opted for other coercive yet less violent methods, such as forced cultural, religious and linguistic assimilation. Modern history, as a result, is replete with examples of state-sponsored programmes adopted to erode competing senses of nationhood and assimilate minority groups into the dominant majority (Kymlicka, 2007: 20).

Nowadays, however, conventional wisdom dictates that coercive assimilation is unjust, illiberal and ineffective. Instead, liberal and democratic diversity management tools, such as territorial autonomy, are considered more humane and efficient in dealing with minority demands, while at the same time ensuring the political stability and territorial integrity of existing states (Keil and Anderson 2018). Discussions on the management of diversity have become part of the wider academic, political, social and legal debate on minority rights, and minorities – be they national, linguistic, cultural or religious – are afforded protection at both international and national levels, including the United Nations (UN), Organisation for Security and Cooperation in Europe (OSCE) and Council of Europe.

2.4.1 Assimilation and Integration

This thesis is primarily concerned with accommodation and secession strategies, but before delving into what these repertoires entail, this section provides a short discussion on the other strategies displayed in figure one, assimilation and integration.

Assimilation is one of the least tolerant responses a government may employ in dealing with its internal pluralism. The principal objective of assimilation is to efface cultural differences between different groups, whereby a minority group is encouraged (or forced) to relinquish its cultural identity in return for assimilating into the dominant culture (Gordon 1964). This can happen in two ways: the *fusion* method, whereby two or more communities merge together to create a new culture or through *acculturation*, which involves one minority group adopting the prevailing culture of an existing community (McGarry et al,

2008: 42).

Forced assimilation has come to be predominantly considered unjust and ineffective in that rather than achieving cultural homogenisation, it breeds contention, provokes destabilisation, heightens ethnic identities and encourages secession (ibid). In the twenty first century, some states continue to engage in assimilationist policies. Neither Spain nor the UK endorse assimilation policies vis-à-vis the national minorities in their states, but assimilationist practices related to religion in the case of the UK and language in Spain are features of the chequered tapestries of UK and Spanish history. In the UK this relates to the discrimination and assimilation of Roman Catholics in the nineteenth and twentieth centuries (McGarry and O'Leary 1993), while in the case of Spain refers to the unbending and repressive policies of the Franco dictatorship, particularly towards Catalonia (Hargreaves, 2000: 28).

Integrationists, according to McGarry et al (2008: 41), 'promote a single public identity conterminous with the state's territory'. Integration therefore, akin to assimilation, seeks to engender a homogenous identity in the public sphere, but in contradistinction to assimilationist practices does not advocate the eradication of cultural differences. These differences, however, are to be limited to the private realm. Group identities, save the principal public identity of the state, are *not* recognised by public institutions (O'Leary, 2013: 17). There are different processes of integration as well as different attitudes towards integrationist policies. Kymlicka (1995: 36), for example, considers integration an appropriate policy for voluntary migrants (those who choose to move countries) because it eases their learning of the language and the adoption of the cultural values of the state. Integrationist policies, however, are considered inappropriate and inadequate for sub-state minorities which strive to maintain their cultural and political autonomy.

In spite of the popularity and adoption of integrationist approaches amongst liberal democracies, however, it is not without its problems (McGarry et al 2008). Integrationist policies may appear fairer and more democratic than the assimilationist approach, yet it is important to note that whilst this may be true, integration still involves a partial assimilation of minorities. Minorities are free to participate in public life and to share in the collective culture, traditions and identity of the state, but pluralism is only accepted insofar that it remains private. As Parekh (1998: 8) notes, this model of integration combines 'a monocultural public realm with a multicultural private realm', whereby diversity is only tolerated provided that it remains behind closed doors. This means, therefore, that the official

culture of the state is institutionalised and thus imbued with more value, power and prestige than minority cultures practiced in the private realm which become marginal, peripheral and consigned to remain in the shadow of the dominant culture. Integrationist policies may not seek to eradicate diversity, but in the same vein as assimilation projects, they advocate a mononational agenda where only one culture and one identity exist in the public realm; uniformity is prized over diversity.

2.4.2 Accommodation

Assimilation seeks to achieve an ethnically homogenous state and integration, despite allowing the existence of diverse cultural practices in the private sphere, values uniformity in the public realm. Accommodation, on the other hand, differs from both these approaches insofar as it permits diversity in both the public and private spheres. This section, therefore, examines the different strategies under the accommodation heading employed by governments to manage diversity in pluriethnic, plurinational and/or plurilingual states (see figure two). In line with this, I begin with a discussion related to the concepts of territorial and non-territorial autonomy, before focusing on the concepts of federalism and political decentralisation.

Accommodation involves the adoption of some form of autonomy which ensures the transfer of certain powers from a central authority to lower level entities (Wolff and Weller, 2005: 11). Such autonomous measures, ranging from federalism to quasi-federalism, political decentralisation to non-territorial autonomy, stand out from assimilationist and integrationist measures in that they are designed to address the needs and aspirations of both minority and majority communities (Hannum, 2004: 395). In essence, accommodation provides 'limited self-rule' for minority communities (Lapidoth, 1997: 3) whilst concomitantly satisfying the majority community's preoccupations vis-à-vis secession and political stability (Benedikter, 2009: 10).

Figure Two: Forms of Accommodation
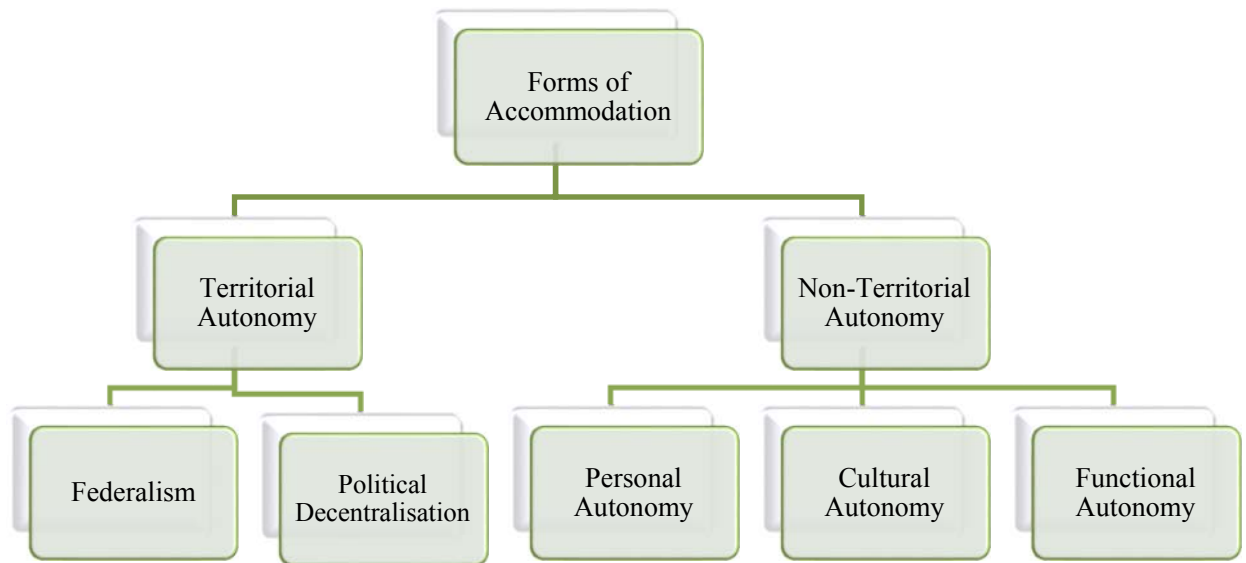
Source: Own elaboration, based on Lapidoth 1997 and Tkacik 2008.

Before discussing the different terms as relates to mechanisms of accommodation, it is worthwhile underlining what autonomy means. Lapidoth (1997: 3) defines autonomy as 'a means for diffusion of powers in order to preserve the unity of a state while respecting the diversity of its population'. In a similar vein, Ghai (2000b: 8) writes that autonomy is '[a] device to allow ethnic or other groups claiming a distinct identity to exercise control over affairs of special concern to them, while allowing the larger entity those powers which cover common interest'. Autonomy, therefore, grants national minorities powers of internal self-determination to develop the economic, social, cultural and political spheres of their communities. Institutional representation and control over certain public policies, however, remain within the framework of the existing state, where the state government continues to legislate on non-devolved matters (Hannum 1996; Heintze 1998).

There is broad agreement in the academic literature that one of the strengths of autonomy, both as a concept and a strategy, is its flexibility (Hannum 2004; Keating and Gagnon 2012; Suksi 1998; Tkacik 2008). Autonomy, then, is taken to be a 'multifaceted, polyvalent concept' (Basta and Simeon, 2015: 320) and 'an encompassing category without a rigid definition' (Keating and Gagnon, 2012: 2). In this thesis, autonomy is construed as an overarching framework within which territorial autonomy and non-territorial autonomy

are core components.

The academic literature distinguishes between both territorial autonomy and its non-territorial alternative (Basta et al 2015; Lapidoth 1997; Malloy and Palermo 2015; Nimni 2008; Suksi 1998; Tkacik 2008; Wolff and Weller 2005). It is worth noting, however, that while, as is the case in this thesis, these terms are often examined separately – important here for the sake of terminological clarification – it is not uncommon for states to employ both territorial and non-territorial autonomy to manage ethnonational diversity. Belgium, for instance, is a case in point (see Dalle Mulle 2015).

Territorial autonomy has become increasingly viewed as an umbrella term to refer to the spectrum of mechanisms which liberal democracies can employ to accommodate territorially concentrated minorities. Federalism and political decentralisation – institutional strategies employed to accommodate minorities and deter secession – can be found in a whole range of liberal democracies, including, *inter alia*, Canada, Belgium, Italy, Spain and the UK (Bauböck, 2001: 19). With regards to the semantic properties of the term, the *territorial* aspect refers to the geographical condition that a minority group seeking some form of territorial autonomy inhabits a delineated area of the state in question. *Autonomy* denotes the desire for independent decision making in certain policy spheres. Territorial autonomy, then, involves a transfer of power to the sub-state level whereby a minority group constitutes a majority in a specific territorial region.

Non-territorial autonomy, as the titles suggests, does not require the territorial concentration of a minority group. Political powers, typically over cultural and functional affairs, are devolved to minority groups which reside within the parameters of a given territory, but do not necessarily constitute a majority in any specific area. Non-territorial autonomy bestows collective rights upon members affiliated with a particular cultural group irrespective of their place of residence in the territory. This group is in turn viewed as a 'single public body' empowered to exercise control over devolved competences for those inhabitants of the territory who identify with that group (Nimni, 2008: 11). Non-territorial autonomy, in contrast to its territorial counterpart, does not endow dispersed minorities with far-reaching autonomous powers.

Nimni (2013: 1) defines non-territorial autonomy as 'a generic term that refers to diverse practices and theories of minority community empowerment and self-determination that does not entail exclusive control over territory.' In contrast to territorial strategies,

which apply to all inhabitants of a territory regardless of their ethnic or cultural affiliation, non-territorial autonomy appertains only to those members identifying with a specific minority group irrespective of where they reside within the region or country.

In the academic literature, non-territorial autonomy is divided into three types: personal, cultural and functional (Suksi 2015; Tkacik 2008). Personal autonomy is primarily grounded in the 'personality principle' whereby the collective group rights of a minority 'are transferred to an individual' (Heintze, 1998: 22). In this vein, personal autonomy is seen as the personal choice of an individual to choose to be recognised as a member of an ethnic, cultural or linguistic group and to utilise provided services, such as correspondence with state authorities in minority languages, in his/her engagement with society. Cultural autonomy, on the other hand, involves the establishment of special bodies to administer control over those cultural, linguistic or religious ambits which have been transferred to them. Finally, functional autonomy implies the transfer of legal authority over one or a few state functions to a minority group which becomes responsible for the self-management of this matter (Tkacik, 2008: 371).

According to Lapidoth (1997: 174-175) territorial autonomy is 'an arrangement aimed at granting a certain degree of self-identification to a group that differs from the majority of the population in the state, and yet constitutes the majority in a specific region'. Benedikter (2007: 42) formulates his definition of territorial autonomy by focusing on legislative powers, noting that territorial autonomy 'requires the existence of a regional parliament with a minimum power to legislate in some basic domains as well as an independent elected executive which implements this legislation in the given autonomous area.' Based on these conceptualisations, the working definition used in this thesis takes territorial autonomy as *an institutional arrangement involving both a regionally elected legislature and government, exercising limited self-rule over a particularly defined geographical area.* Territorial autonomy is 'limited self-rule' in that sub-state governments are only permitted to implement policies in specific policy areas. In addition, whilst territorial autonomy is normally demanded and thus given to a certain group which constitutes a majority in the 'particularly defined geographical area', it is important to note that it applies to all inhabitants of the territory regardless of their identification with the group on whose behalf the arrangements were implemented.

A pantheon of scholars has contributed to discussions on territorial autonomy and the numerous institutional mechanisms it embraces. Most of these discussions have focused on

federalism, but a growing literary industry has emerged related to political decentralisation, with particular emphasis on devolution. The range of scholarly contributions will be examined in further detail below, but here it is worthwhile drawing attention to the works of Ronald Watts (1998; 2008), particularly his discussion of 'federal political systems'. Watts (2008: 8) describes 'federal political systems' as:

> A broad category of political systems in which…there are two (or more) levels of government thus combining elements of shared-rule (collaborative partnership) through a common government and regional self-rule (constituent unit autonomy) for the governments of constituent units. This broad genus encompasses a whole spectrum of more specific non-unitary forms, i.e. species ranging from "quasi-federations" and "federations" to "confederacies" and beyond. As in a spectrum, the categories are not sharply delineated but shade into one another at the margins.

For Watts, 'federal political systems' is a necessary term to be differentiated from 'federalism' and 'federation' in order to illuminate the increasing number of hybrid polities which fail to comfortably fit within established categories such as 'unitary state', 'federation' or 'confederation'.[21]

Minority groups demand self-government for a variety of reasons, primarily to have their sense of difference recognised and institutionally enshrined, protect them from unjust assimilation, and to provide them with legal and institutional apparatus to make policy in those fields which are devolved (Rothchild and Hartzell, 1999: 259). It is worth bearing in mind, however, that while state governments may employ rhetoric and institutional measures to demonstrate their commitment to meeting minority demands, such mechanisms are simultaneously used to encumber national minorities. In adopting territorial autonomy, central governments not only attempt to placate minorities and deal with the 'problematic periphery', but furthermore seek to maintain their own dominance and protect the stability and integrity of the state (Kraus, 2015: 85).

As figure two shows, governments seeking to accommodate national minorities and avoid territorial breakup have different institutional strategies to do so and a growing constituency has developed in favour of flexible and fluid forms of territorial governance. Having defined territorial autonomy, as well as identifying some of its principal rationales, I now continue with a detailed discussion of two of its main forms: federalism and political

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[21] In this thesis, Watts' 'federal political systems' is considered synonymous with territorial autonomy, but detailed discussion will be limited to those categories relevant to the selected case studies, i.e. federalism and devolution.

decentralisation.

2.4.2.1 Federalism and Federation

There seems to be general consensus amongst political scientists that defining federalism is no mean feat. According to Henig (2006: 4), despite the outpouring of academic work on conceptualising federalism, there remains 'no universally accepted definition'. This is further substantiated by Burgess (2006: 1) who points out that, 'while such a thing as federal theory does exist, there is, as yet, no fully-fledged theory of federalism' (see also Palermo 2018). Davis (1978: 3) identified the Latin root of federalism as *foedus* taken to mean, *inter alia*, 'covenant', which is also lexicographically connected to the term *fides*, translated as 'faith' and 'trust'.[22] Federalism has thus come to represent different forms of human association, combining 'union' and 'autonomy', underlined by principles such as cooperation, consent, partnership, mutual recognition and respect (Burgess, 2006: 113).

One of the most important conceptual discussions which has featured in the scholarly literature is between the terms 'federalism' and 'federation', a debate most widely associated in its early stages by Preston King (1982) and in later years by Watts (1998; 2008) and Burgess (2006). King (1982: 74) argued that federalism was to be taken 'philosophically or ideologically rather than institutionally' and discussed federalism as a normative and philosophical notion of envisioning shared rule and regional autonomy. For King, (and hence Burgess and Watts) federalism represents a normative idea with a set of guiding principles to accommodate unity and diversity, thus 'perpetuating both union and non-centralisation at the same time' (Watts, 2008: 8). Federation, in turn, is considered 'a tangible institutional reality' (Burgess, 2006: 285), where a combination of self-rule and shared rule ensures the accommodation and participation of both central and sub-state elites (see also Elazar 1987). Watts (2008: 8) defines a federation as:

> [A] compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens.

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[22] Burgess (2000: 13) acknowledges that *foedus* means covenant, but may also be interpreted as 'agreement', 'bargain', 'compact' and 'contract'.

King's discussion of federalism and federation remained at an abstract level, yet comparative analysis by both Burgess and Watts has helped to develop and enrich its empirical relevance. This triumvirate of scholars, in light of King's (1982: 76) oft-quoted dictum that 'although there may be federalism without federation, there can be no federation without some matching variety of federalism', has illuminated and developed the normative and empirical nuances concerning federalism and federation as distinct, separate concepts. Federalism and federation, therefore, are interpreted as two sides of the same coin; federalism may exist without a federation, but there can be no true federation without the guiding principles of federalism. Indeed, this is a particularly important point when discussing the UK and Spain – classic cases of decentralised states with federal traits without a clear commitment to federalism.

Daniel Elazar stands alongside figures such as Burgess, King and Watts, as a leading authority of intellectual importance in federal debates. In line with the etymological origins of federalism, Elazar purported federalism as a covenant based on a contractual relationship between the central government and its sub-state units, summed up in his well-known epigram '*self-rule plus shared rule*' (Elazar, 1987: 12 [italics in original]). For Elazar, federalism necessitates autonomous infrastructures for sub-state units, but equally requires a unifying project to which all constituent components of the state can contribute. In so doing, diversity is both managed and respected, whilst power is 'non-centralised', that is, distributed among different national and sub-state centres (ibid: 34). In Spain and the UK, there is a strong emphasis on the 'self-rule' aspect depicted by Elazar, yet this has been developed at the expense of shared rule. As will be further developed in Chapters Four and Five, these states have built out but failed to build in.

As discussed supra, neither the UK nor Spain are fully-fledged federations. In the case of the former, the decentralisation project initiated in the late 1990s took the UK down a federal path, but the absence of shared rule has inhibited any moves towards federation. In Spain, on the other hand, there is ongoing debate concerning whether the polity constitutes a federation (Requejo 2017; Sala 2014).[23] The evolutionary nature of federalism, as identified in the UK and Spain, resonates with Carl Friedrich's innovative, yet often overlooked, conception of federalism as a dynamic process as opposed to a political system frozen in time. For Friedrich (1968: 7), 'federalism should not be seen only as a static pattern

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[23] This will be further developed in Chapter Five.

of design, characterised by a particular and precisely fixed division of powers between governmental levels'. Instead, he construed federalism as an evolving pattern, a flexible institutional approach in constant motion, able to evolve and adapt to shifting circumstances within the federation (Friedrich, 1963: 591).

Friedrich's fluid conception of federalism, like all federal theories, is not without its conceptual pitfalls (see Burgess, 2012a: Ch 5). Yet, despite being oft-consigned to the theoretical wilderness, Friedrich's understanding of federalism as a process merits further analysis in light of federal political systems, like Spain and the UK as well as other emergent federations which empirically support his federalisation theory, such as, Bosnia. In both Spain and the UK there is an identifiable form of creeping federalisation, thus Friedrich's conception of federalism proves pertinent for this study.

The conceptualisation of federalism and federation is, like the development of territorial autonomy itself, an ongoing process. Despite conceptual differentiation, however, it is possible to identify characteristics which underpin federations, in both classical examples (such as the USA, Germany and Switzerland) and other plurinational federations (Canada and Belgium). In essence, a federation is a state divided into regional polities where sovereignty is divided between both central and regional levels of government. Regional units are generally symmetrical in status and power with both autonomous and shared competences entrenched in a written constitution.[24] Moreover, there is some form of intergovernmental relationship between the different levels of government, typically in the form of a territorially representative second chamber. Federations are thus a form of territorial governance which embrace Elazar's (1987: 2) combination of 'self-rule plus shared rule' and involve a significant redistribution of political power throughout the entire state. By contrast, devolution is a form of asymmetrical territorial governance applied only to certain units in a territory, chiefly based on the notion of self-rule with limited opportunities for meaningful shared rule.

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[24] In Canada, India and Belgium notable examples of plurinational federations, forms of asymmetrical federalism prevail. Watts (2008: 125-130) distinguishes between two forms of symmetry: political symmetry (which applies to all federations and refers to attributes such as territorial size, population and economic character) and constitutional asymmetry (special provisions provided for specific constituent components of federations). The definition referred to here in relation to Canada, India and Belgium, is the latter (see Tarlton 1965).

2.4.2.2 Political Decentralisation

Decentralisation is a term often bandied around in the academic literature and is typically seen as an umbrella term that encompasses the different mechanisms used to shift power and resources away from the central government towards sub-state levels of political organisation. Treisman (2007) classifies numerous dimensions by which decentralisation takes place, including political decentralisation, administrative decentralisation and fiscal decentralisation. While various terms have been used in the UK on debates on decentralisation, including *inter alia*, 'home rule', 'devolution', 'devo-max' and 'independence-lite', this section will focus on the term devolution.

Devolution is rooted in the Latin word *devolvere*, which translates as 'rolling back' or 'rolling down'. It involves a vertical transfer of political authority and legitimacy from a central government to a regional or local authority which accordingly gains independent decision-making powers over at least one policy area. According to Bogdanor (2001: 2), 'Devolution involves the transfer of powers from a superior to an inferior political body', continuing that, 'more precisely, devolution may be defined as consisting of three elements: *the transfer to a subordinated elected body, on a geographical basis, of functions at present exercised by ministers and Parliament'* [italics in original]. Devolution, then, involves the conferral of considerable powers in a limited number of policy areas to sub-state parliaments, which, despite their legitimate status as democratically elected bodies, remain legally subordinate to the supremacy of the central parliament.

Both federalism and devolution are used by governments to address similar issues of ethnic and cultural diversity, yet there are significant differences between these approaches. Firstly, devolution ensures that ultimate power, that is parliamentary sovereignty, remains with the central authority. Power, therefore, is not constitutionally divided, as is apparent in a federation, but is merely devolved, thus ensuring the supremacy of the central parliament remains unabridged; power devolved is power retained (Watts 2007).[25]

Secondly, devolution is lop-sided in that its focus is primarily on self-rule rather than a combination of self-rule and shared rule. Devolved legislatures have powers to legislate and enact laws on specific policy areas, yet there is no institutional structure (such as a

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[25] This is exemplified in the *Scotland Act 1998*, which, in spite of granting law-making capabilities to the Scottish Parliament, equally sought to safeguard the doctrine of parliamentary sovereignty and ensure Westminster retained the power to legislate on devolved areas, although in principle it accepted that this should not be done.

territorially representative second chamber) of the central state to bind these territories in a common project. Federations not only create sub-state parliaments, that is, 'build out', but they simultaneously seek to 'build in' through a territorially representative second chamber (Simeon, 2015: 115). Devolution builds out but fails to build in. Power and subject briefs are thus devolved but not coordinated, shared or divided.

Thirdly, one of the most distinctive features of devolution is its asymmetrical approach to peripheral territories. Whilst federalism is applied to the entire territory, devolution is an institutional arrangement that can be designed, tailored and implemented to the needs and aspirations of selected territories of a state. The UK's model of asymmetrical devolution is a case in point, where devolution, in responding to the different territorial demands in each constituent nation, was implemented to different degrees (Jeffery, 2009: 93).

Finally, devolution is not legally enshrined to the same extent as federalism and consequently is afforded weaker legal protection. Whereas federations are usually established by a constitution, a devolved settlement can be enacted by an ordinary Act of Parliament, subject at any time to amendment, suspension or repeal (Agranoff, 2004: 19). Nonetheless, as Leyland (2013: 152) notes, there is some form of constitutional protection for devolved settlements, in that Acts of Parliament for devolved systems become de facto constitutions for the devolved nations.[26]

Territorial autonomy is an attractive option for both sub-state minorities and central governments. It provides the former with a measure of self-government to reflect, protect and develop their sub-state identities, traditions and heritage. For the latter, it presents a democratic and workable alternative to more radical options such as assimilation or secession. I now discuss the latter concept, drawing on scholarly debates in political science and constitutional and international law.

2.4.3 Secession

Secession in established democracies is a rare occurrence (Dion 1996).[27] Huntington (1972: vii), wrote that, 'the twentieth century bias against political divorce, that is, secession,

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[26] It is also worth noting that in the UK, proposals to establish devolved legislatures were endorsed by the electorate in referendums in all three constituent nations, thus making them politically difficult to be abolished.
[27] In this thesis, as in the academic literature, (territorial) independence, separation and secession are used synonymously.

is just as strong as the nineteenth century bias against martial divorce'. In the twenty first century, scepticism and inimicality towards secession remains just as strong and is often seen by governments as a radical and unpopular option to be largely avoided or conceded only as a remedy of last resort. Anderson (2013: 344) notes, for instance, that secession is viewed negatively and writes of the 'chaos, schism, fragmentation and instability' that states often envision regarding ceding territory to national minorities. Granting sub-state minorities territorial independence is therefore an institutional response which remains highly contested, in addition to being conceptually underdeveloped and theoretically incomplete.

The discussion of secession presented here draws upon literatures relating to both the academic and legal discussion of secession. This booming literature is testament to the different theories which seek to examine the normative challenges secession poses, but also to the different routes, processes, justifications and consequences of secessionist politics.[28] Notwithstanding this extensive literature, there is not, as yet, consensus among scholars on an exact definition of secession. Some academics and legal theorists posit permissive definitions which in Sartorian terms conceptually stretch the phenomena under study (Anderson 2013; Dahlitz 2003; Haverland 2000; Radan 2008). Others strictly define secession, narrowing its application to only a few cases (Crawford 2006; Hechter 1992; Kohen 2006).[29]

Kohen (2006: 2) writes that the increase in UN membership from 51 at its inception in 1945 to 191 in 2006 is essentially rooted in two state disintegration processes: decolonisation and secession.[30] Although for some scholars this two-fold explanation stands true, others, such as Radan (2008) and Anderson (2013), consider decolonisation a process of secession rather than a separate, distinct phenomenon. For Radan and Anderson, decolonisation, akin to secession, ensues from a transfer of sovereignty from one power to another (in this instance, from the colonial power to the colonised territory) and the creation of a new state. It is this transfer of sovereignty, they conclude, that in effect creates a new state. Secession, thus, is interpreted as an inclusive concept encompassing processes of decolonisation.

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[28] The normative debate on secession is further developed in Chapter Three.
[29] On permissive and restrictive definitions of secession, see Pavković 2015.
[30] At the time of writing, current UN membership stands at 193 countries. The most recent state to join was South Sudan in 2011.

Both Radan and Anderson widen the application of secession as a descriptive term, yet this permissive approach is endorsed by other scholars who extend further still the scope of what secession is. Haverland (2000) and Dahlitz (2003) contend that secession need not entail the establishment of a new state, as seceding groups can 'join or become part of another sovereign state' (Dahlitz, 2003: 6). In essence, Haverland and Dahlitz enlarge the concept of secession by including irredentism, a separate phenomenon which involves an ethnic group joining with the same ethnic group in another territory, as a type of secession. This theoretical position, however, is not extensively endorsed. Horowitz (2011: 156), disapproves of this conflation, astutely observing that 'irredentism involves subtracting from one state and adding to another state, new or already existing; secession involves subtracting alone.'

In contrast to the permissive approach discussed above, other scholars define secession in such restrictive terms that only a few cases are considered as 'pure' secessionist acts. Crawford (2006: 375), for instance, argues that the break-up of a state can only be termed secession when a state is created 'by the use or threat of force without the consent of the former sovereign'. Mutually agreed separations, such as that between Norway and Sweden in 1905, would consequently not count as secession. Indeed, Bangladesh, which seceded from Pakistan in 1971 after a violent struggle, is, following Crawford's criterion, the only 'successful' case of secession (ibid: 391). On the other hand, Hechter (1992: 277) proposes an equally narrow definition of secession, but, in diametric contrast to Crawford, believes pure secession only occurs 'when a highly effective state permits a secessionist territory to withdraw from its embrace'. Intriguingly, then, for Hechter, Bangladesh fails to qualify as secession owing to the ineffectiveness of the Pakistani state; Norway's secession from Sweden in 1905 is, however, considered a successful secession (ibid).

Before progressing to the working definition of secession used in this thesis, it is helpful to consider the legal position of secession in the international and national systems. There is general consensus in the academic literature that international law is hesitant to regulate the creation of new states via secession and to actually define exactly what secession is (Anderson 2013; Buchanan 2003; Crawford 2006; Kohen 2006; Mancini 2008; Pavković 2015). Crawford (2006: 390) cautiously notes that secession 'is neither legal nor illegal in international law', reiterated by Anderson (2013: 343), who highlights that secession remains a 'moot point' in the international arena. Outside of the context of decolonisation or unjust annexation, international law is devoid of an explicit definition of secession. The

guiding document with regards to secession in international law is the UN *Declaration on Friendly Relations*. Article One, after being revised in 1995, states that the UN continues:

> To reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognise the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realise their inalienable right of self-determination. This shall not be construed as authorising or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples (United Nations 1995).

Self-determination is thus conceived as a legal right applied to all peoples, not merely a political right or limited to those under colonial rule. In view of the UN declaration, secession is thus seen by some scholars (Cassese 1995; Raiç 2002) as legally permissible, albeit under very specific circumstances. Under international law, secessionist groups 'must be the victim of discrimination' by the host state before they can legally secede (Pavković and Radan, 2007: 238). In domestic systems, however, where a right to secession can be constitutionally enshrined, secessionist groups, provided they meet the stipulated procedural requirements, can seek to secede in the absence of discriminatory practices.

Most national constitutions do not grant an unambiguous constitutional right to secede. There are very few empirical examples of a constitutional right to secede. Ethiopia and St Kitts and Nevis are notable exceptions.[31] Article 39 of the Ethiopian Constitution enshrines an unconditional right of secession for minorities, provided that certain procedural prerequisites such as a majority vote in a referendum are achieved (see Bihonegin 2015). Similarly, the Constitution of St Kitts and Nevis entrenches a secessionist clause, but differs from Ethiopia, in that only one constituent part of the state – Nevis – can secede. In order to secede, the Island of Nevis must have a two third majority of parliamentarians in favour of a secessionist referendum, as well as a two thirds majority by the electorate in the vote itself. In 1998, a referendum on the secession of Nevis was held but failed to meet the required two third majority in favour (see Veenendaal 2015).

The case of Canada is also important in debates on the constitutionalisation of secession. Whereas the cases above have an explicit right of secession, Canada is a less conclusive example. In Quebec, two separate referenda have been held and lost on Quebec

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[31] Historically, the Constitutions of the former USSR and the former Socialist Federal Republic of Yugoslavia entrenched secessionist clauses.

sovereignty (1980 and 1995).[32] Following the second referendum, the Supreme Court of Canada, under instruction from the federal government, deliberated on the future possibility of a unilateral secession by Quebec. In 1998, the Court delivered its now famous *Reference*, which, despite denying Quebec a unilateral right to secede, delineated procedural steps which concede to all provinces the right to territorial independence, provided a 'clear' majority of the electorate vote in favour of a 'clear' referendum question on secession (Supreme Court of Canada 1998).

Here, I have outlined some examples of a constitutionalised right to secede, but it is important to note that most states refrain from detailing provisions and procedures concerning secession. In lieu of enshrining a right of secession, many states actually accentuate the indivisibility of the state; Article Two of the Spanish Constitution is a lucid example. There is thus significant debate and discussion regarding a precise definition of secession. Taking into consideration the plethoric amount of scholarship surrounding the conceptualisation of secession, the working definition in this thesis takes secession as *the process by which a specific part of a given territory withdraws from an already existing state to establish a separate, independent and sovereign state.* From this definition, it is worthwhile illuminating three important features:

1. Secession is a process normally preceded by a referendum, plebiscitary elections, and/or parliamentary vote.
2. Secession involves the withdrawal of a part of the territory with the aim to establishing a separate state; decolonisation and irredentism are phenomena that, whilst intricately linked to secession, are conceptually different.
3. Secession can be politically negotiated, constitutionally sanctioned or unilaterally declared.

The discussion of secession is particularly important given that in Spain and the UK there are active secessionist movements which champion territorial independence for their respective territories. A referendum on Scottish independence was held in 2014, the result of an agreement between the UK and Scottish governments to work together to facilitate the holding of a referendum and respect its outcome. Yet, as will be developed in Chapter Four, despite the rejection of independence in the 2014 referendum, the independence issue is far

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[32] In 1980, circa 40% voted in favour of secession. In 1995, the result was much closer, just over 49% voted to secede.

from settled. Historically in Spain, it has been the Basque rather than the Catalan independence movement that has dominated headlines and academic research. In recent years, however, the Catalan independence movement and its annual demonstrations in favour of independence and the right to vote in a referendum, have gained significant prominence. Since 2014, successive Catalan governments have attempted to hold official referenda on independence, notwithstanding the refusal of the Spanish state to legislate or even engage with the issue. Attempts to hold a referendum, most notably in 2014 and 2017, were struck down as 'unconstitutional' by the Spanish TC, but as is the case in Scotland, support for independence remains historically high.

2.5 Conclusion

The accommodation of ethnonational diversity is an issue that has challenged and continues to challenge plurinational democracies. In recent years, as demands for accommodation have increased, the issue has acquired growing salience, both in the real world and academia. In this chapter I sought to clarify some of the key concepts operationalised in this study. I began with a discussion of nationalism, discussing a number of key terms before examining the concepts of majority and minority nationalism and plurinationalism. How states and majority communities interact with minorities has become an increasing area of focus in an era of heightened interest in accommodation, but majority nationalisms continue to be imbued by a legitimacy that is often denied to their minority counterparts. Contrary to the argument that minority nationalist movements are backward and illiberal, it is clear, and particularly with reference to the Scottish and Catalan movements, that these movements do not threaten fundamental democratic values. Basic freedoms, peace, individual rights and mutual respect are some of the guiding principles of many minority nationalist movements, underlining the pacific and democratic nature of their national projects.

The discussion on democracy demonstrated the multifaceted nature of democracy, defined in both narrow and broad terms. Additionally, I have discussed how since the early twentieth century, democratic states have been challenged, both in theory and practice, with regards to the accommodation of ethnonational diversity and how democratic theories have evolved, at least to a certain extent, to take into account the increasing importance of accommodating rather than eradicating cultural, ethnic, linguistic and religious diversity.

The four strategies laid out on the continuum in figure one spotlight the range of responses available to plurinational states to manage ethnonational diversity. The discussion heretofore has shown that each strategy responds to such a complex issue in a variety of ways. Essentially, there are two attitudes a government may take regarding diversity: a positive stance, whereby there is clear recognition and accommodation of ethnonational diversity, or a negative approach, including the negation, suppression and eradication of minority peoples' sense of difference. Governments which perversely see heterogeneity as a threat to the state often elect illiberal and baleful policies to eliminate cultural and ethnic differences. On the other hand, states at ease with the diverse makeup of their population seek to accommodate such diversity through institutional apparatus, or, in very few cases, facilitate the secession of a constituent part of the territory. As has been shown, however, secession is, more often than not, considered a means of last resort.

In the next chapter, I present the theoretical framework underpinning this study.

3. Chapter Three: Theoretical Framework

3.1 Introduction

Having discussed and defined the concepts of nationalism, democracy, territorial autonomy and secession in the previous chapter, I now turn to examining the interplay among these concepts in the context of the debate on accommodating diversity in plurinational democratic states. As has been shown in Chapter Two, plurinational states have a range of options to accommodate and manage diversity. Yet, despite the conferral of self-government institutions, secessionism continues to feature high on the political agenda of certain national minorities and is thus a challenging issue for central governments to manage. This thesis, therefore, is primarily interested in how the plurinational states of the UK and Spain have managed demands from their national minorities for enhanced autonomy and secession, the benefits and shortcomings of the approaches employed hitherto, primarily focused on the models of autonomy rolled out for both Scotland and Catalonia, and how these models could be expanded and improved with regards to other institutional means to better respond to the autonomy-enhancing and secessionist demands from national minorities. In order to do so, a detailed understanding of how these concepts interact at a normative and institutional level is necessary.

As discussed in Chapter Two, there is an ongoing debate among political theorists regarding democratic principles (individualistic and communitarian) and the growing reality of ethnonational pluralism. This discussion runs parallel to, and often intertwined with, the debate on diversity and democracy, more specifically and relevant for this thesis, the challenges diversity poses to the deepening of democracy in plurinational states. This chapter, therefore, begins by examining the theoretical discussion concerning the reconciliation of democracy and nationalism, primarily the theory of liberal nationalism. Historically, political philosophers, scientists and theorists have viewed democracy and nationalism as competing, not complementary forces, involved in 'a tug of war between reason and passion' (Gellner, 1971: 149). In recent years, however, an intellectual debate has developed among those scholars who have taken exception at the monist interpretation of liberalism and have forged a new, more sensitive approach – liberal nationalism. Liberal nationalism, despite being a mostly intellectual endeavour, has seen some of its main concerns translated into political reality through the theory of multinational federalism.

Following an examination of liberal nationalism, I therefore, analyse the theory of multinational federalism, underlining its strengths in relation to accommodating diversity while giving equal consideration to some of its shortcomings, including a detailed analysis of the issue of secession in plurinational states.

The third section of this chapter discusses several theories of power-sharing. Neither of the cases under study in this thesis are considered examples of power-sharing systems, albeit consociationalism was institutionalised in Northern Ireland as part of the Good Friday Agreement (GFA) signed in 1998. Analysing how power-sharing methods have been used in other states to accommodate and manage diversity may prove a useful endeavour in developing some key lessons for the UK and Spain, particularly in how these states manage demands for enhanced autonomy and secession, while deepening democracy and promoting and fulfilling the requisites of 'plurinational justice' (see Kymlicka, 2001a: Ch 5). The penultimate section of this chapter outlines the overall design of the theoretical framework, in particular how this research seeks to build upon the existing theory of multinational federalism to ensure the development of a more coherent and accommodative model of autonomy.

3.2 Liberal Nationalism: From Oxymoron to Political Reality?

Liberal nationalism has become the principal theory to reconcile the two commonly held mutually antagonistic phenomena: liberalism and nationalism. The predominant view regarding these two concepts has been one of hostility, whereby the 'inclusive' nature of liberal democratic principles is contrasted with an understanding of nationalism as an 'exclusive' doctrine (Helbling, 2009: 1). Kedourie (1966: 109) considered liberalism and nationalism as 'antagonistic principles', whereas more recent scholarship has been less scathing, seeing them as necessary but 'uneasy companions' (Kelly, 2015: 348). For Nodia (1992: 3-4), liberal democracy 'has become a term linked to adjectives like "good", "civilised", "progressive", "rational" and so on, while nationalism is associated with "backwardness", "immaturity", "barbarism", "irrationality" and the like'. Arguing against the academic grain, Nodia posits nationalism and liberal democracy as sharing an intrinsic, intimate connection: 'the idea of nationalism is impossible – indeed unthinkable – without the idea of democracy…the two are joined in a sort of complicated marriage, unable to live without each other, but coexisting in an almost permanent state of tension' (ibid: 4).

For Nodia, what is irreconcilable is not, as so many others have argued, the joining together of liberal democratic principles and nationalism, but the separation of these concepts. He argues that nationalism is an essential component of democracy and given that both are anchored in ideas of collective identity and sovereignty, they are mutually reinforcing rather than contradictory phenomena. This is a similar position taken by those theorists who have sought to broaden the traditionally restrictive interpretation of liberalism as a doctrine in favour of individual, as opposed to group, autonomy. For Patten (1999: 4), 'liberalism is, first a foremost a doctrine of individual freedom or autonomy' and it is this tenet that in the last few decades has been the focus of much scholarly debate (Haas 1997; Kymlicka 1995; 2001; Margalit and Raz 1990; Miller 1995; Requejo 2005; Spinner 1994; Tamir 1993; Tully 1995; Young 1990).

Political theorists examining the relation between democracy and nationalism often begin in the nineteenth century, citing debates between eminent philosophers such as Lord Acton, Jeremy Bentham, John Stuart Mill and Alexis de Tocqueville. Although the debate on challenges of accommodating diversity can be identified in political thought of centuries past, the unparalleled levels of deep diversity found in countries throughout the modern world present a significant challenge for liberal democracies and democratic theory. Consequently, the debate on diversity, and in particular the themes of identity, difference, culture and self-determination, have in recent decades become a veritable growth industry within political science. The conventional principles of liberalism have been dubbed 'too restrictive' from both a normative and institutional viewpoint in managing the cultural pluralism and the deep diversity characteristic of the twenty first century (Gagnon, 2010: 32).

Scholars, such as Alain Gagnon (2010) Dimitros Karmis and Wayne Norman (2005), Will Kymlicka (1995), Ferran Requejo (2005) and James Tully (1995) have identified an incongruence between the traditional tenets of liberal theory and the reality of liberal politics in democratic societies. Traditional understandings of liberalism, in equating homogeneity with political stability and focusing on individual autonomy at the expense of collective rights, thus require 'updating', brought in line with the plural, diverse and heterogeneous reality of the twenty first century (Gagnon, 2010: 32). This extant gulf between liberal theory and political reality has been the subject of a large corpus of research which has examined the capacity of liberalism to manage diversity and protect and promote cultural differences. Liberal nationalism has, therefore, come to represent a more contemporary polycentric

approach to the diversity debate, a theory which reconciles nationalism and democracy, combines individual rights with collective group rights and promotes equal respect, tolerance and acceptance for the cultures and welfare of other ethnonational groups.

Yael Tamir is widely credited with expanding the debate on minority rights by combining liberalism and nationalism in an encompassing theory. According to Tamir (1993: 14), liberal nationalism is an attempt 'to "translate" nationalist arguments into liberal language', providing a theory that would 'capture what is essential to both schools of thought' (ibid: 35). Essentially, what liberal nationalists sought to do was institutionalise 'a politics of recognition' (Taylor 1994) and provide a principled case for the inclusion of minority rights, including respect for and accommodation of national cultures and languages.

Walzer (1994), in response to Taylor's discussion on the politics of recognition, illuminated two ways of interpreting democracy: liberalism I and liberalism II. Liberalism I is the traditional liberal stance with a strong universal commitment to individual rights, a sense of non-discriminatory equality and absolute neutrality on the part of the state. Liberalism II, on the other hand, builds on some of the same principles as liberalism I, but with a stronger focus on a commitment to the survival and flourishing of a particular culture. In liberalism II, the idea of a neutral state is debunked and self-government for national minorities is considered a fundamental component. Although liberal nationalism itself does not essentially draw upon Walzer's distinction between the two different forms of liberalism, the principal claims made by liberal nationalists are consonant with those scholars promoting a liberalism II approach.

Tamir (1993: 9) succinctly defines liberal nationalism as 'predicated on the idea that all nations should enjoy equal rights', whereby the combination of specific cultures with the universality of human rights, results in a pluralistic, open, and tolerant societal environment. She (ibid) further notes that liberal nationalism 'derives its universal structure from the theory of individual rights found at its core', concluding that, 'if national rights rest on the value that individuals attach to their membership in a nation, then all nations are entitled to equal respect'. Liberal nationalism, then, upholds some of the integral components of liberalism I – individual autonomy and the universality of human rights – but goes much further in advancing collective group rights in order to ensure the distinct cultures, identities and languages of ethnonational minorities are recognised, respected and accommodated, that is, advancing the main components of liberalism II. Whereas in the traditional interpretation

of liberalism the focus is primarily on the individual, liberal nationalism sees people as both individuals and members of a wider community. Tamir (ibid: 13) writes that liberal nationalism seeks to find 'a midway position able to encompass the nationalist belief that individuals are the inevitable products of their culture, as well as the liberal conviction that individuals can be the authors of their own lives'. In short, liberal nationalism revolves around the themes of minority rights, identity, cultural membership and self-determination, providing 'a set of guidelines for how liberal democracies should accommodate those groups which see themselves as 'nations' and which seek rights of national recognition and self-government' (Kymlicka, 2001a: 41).

For Kymlicka (ibid: 39), writing in the early 2000s, the debate on liberal nationalism was such that there already appeared to be 'an emerging consensus' on the importance of respecting and protecting minority rights, cultural and national pluralism, and self-government. He (ibid: 39-40) summarises the theory of liberal nationalism in five points:

1. It does not impose a form of national identity on any person.
2. It allows for the public expression of ethnonational diversity which may include opinions which question the official culture or organisation of the state.
3. Membership of the national community is not defined by ethnicity, race or religion. Instead, it is open, tolerant and anyone who wishes to join is free to do so.
4. It endorses a thin conception of national identity to allow for the existence of multiple identities.
5. It is non-aggressive in that it is respectful towards diversity and does not seek to undermine the self-government institutions of other national groups.

From the five elements chronicled above, respect for and recognition of ethnonational differences and support for self-government are central issues to the debate on liberal nationalism. The principal demand of liberal nationalism is the promotion and protection of national cultures and languages. In outlining this approach, liberal nationalists have illuminated tensions between traditional tenets of liberalism and political reality. Three principal notions with which liberal nationalists have taken exception – the purported neutrality of the state, the dismissal of cultural membership and the disparaging opinion of self-determination – are discussed below.

The issue of neutrality, intrinsically linked to the debate on nation-building, has featured prominently in the debates raised by liberal nationalists. The idea purported by

liberalism I – that the state acts as a 'neutral mediator' or 'honest broker of individual interests' (Tamir, 1993: 141) – has been derided by liberal nationalist scholars as an 'illusion' (ibid: 145), a 'myth' (Requejo, 2011a: 16) and 'manifestly false' (Kymlicka, 2001a: 23). Proponents of liberalism I argue that the state should adopt a 'hands-off approach' (Carens, 2000: 8) and remain 'neutral with reference to language, history, literature [and] calendar' (Walzer, 1994: 100-101). The recognition of cultural particularities are deemed inappropriate and to undermine the liberal commitment to equal citizenship and individual autonomy. Culture, then, is to be treated in a similar fashion to religion, something which citizens can practice in their private lives, but which is not the concern of the state.

Liberal nationalists, contrary to this view, argue that liberal democracies *cannot* be neutral. Having a system of equal rights does not ensure universality across the state, but serves to imbue the cultural choices of the national majority with higher value than minorities. In this way, neutrality towards minority nations maintains a system of inequality, whereby the majority group is able to 'fashion the state in their own image', including the choice of language, flags, symbols and public holidays (Patten, 2014: 1). Walzer (1994: 100-101), for instance, argues that the USA is a prime example of a 'culturally neutral' state because there is no constitutionally recognised official language. Kymlicka (2001a: 24-25), however, cogently demonstrates this to be untrue, arguing that while there is no constitutional commitment to an official language, the US government promotes English as a common language; immigrants in certain age categories are required to learn English and employment in governmental positions requires applicants to speak English. English is the de facto *lingua franca* of the USA. The laissez-faire approach to the cultures of national minorities is, from the viewpoint of liberal nationalists, untenable. It implicitly values the majority culture, meaning that those minorities who do not identify with the majority culture do not have the same opportunities to express their own cultural beliefs (Tamir, 1993: 145). Consequently, liberal nationalists advocate the promotion of all national cultures found within the borders of a state.

Very few would deny that liberalism as a political theory has not paid enough attention to the importance of culture and cultural belonging for citizens. It is a truism that culture has, more often than not, featured in such debates as a secondary issue, considered, as was noted above, a private matter and not for discussion or display in the public sphere. It has been argued, however, that operating on the liberal assumption that democracies were quite simply nation-states whereby the political community was coterminous with the cultural

community, liberal theorists have failed to fully explore the significance of culture and individual membership of a cultural community (Máiz, 2004: 65-66).

For liberal nationalists, culture is a crucial component in an individual's life, fundamental to their development as both rational, autonomous individuals and as members of a wider community. Margalit and Raz (1990) describe membership of a cultural community as integral to a person's wellbeing, underlining that it provides a sense of belonging and identity which furthers the liberal concern for individual freedom. This is reiterated by Kymlicka (2001a: 47-48), who sees culture as an essential element for self-definition and self-respect. Kymlicka (ibid), thus makes the argument that given culture provides a social context for individuals, with space to express and develop their own identities, which is in turn recognised and respected by the state, it ought to receive public recognition by the state and be included as a central tenet in liberal democratic theory. In short, concern for culture and identity are consonant with the traditional liberal principles of freedom and equality.

According to Taylor, misrecognition of (cultural) identity is harmful to the self-respect of individuals. He (1994: 52) notes, 'it becomes very important that we be recognised for what we are. If this is denied or set at naught by those who surround us, it is extremely difficult to maintain a horizon of meaning by which to identify ourselves'. For liberal nationalists, then, diversity itself is considered a valuable asset worth protecting and promoting in liberal states. Not only does diversity enrich societies and different ways of life, but moreover it is a precondition to the development of individual freedom that is at the heart of the liberalism debate; protecting minority cultures is consistent with liberal values. Tamir also endorses this line of argumentation. She believes that collective group rights are essential in providing cultural background in which individuals are free to thrive and exercise agency as autonomous beings. Emphasising 'the importance of belonging, membership and cultural affiliation', Tamir (1993: 6) interprets an individual's cultural environment as a necessary condition for such individuals to become rational, self-governing human beings.

The central tenet of liberal nationalism as discussed at the beginning of this section is that nationalism is not always to be understood as something 'bad' and as such ought to be accommodated within a liberal democratic framework. For Tamir, nationalism is not always about political ends, although these are prevalent and important, but also cultural ones. In this sense, the importance of culture and identity for individuals who are embedded within

a specific cultural context, necessitates self-determination in order to ensure that individuals, both as autonomous agents and group members, are able to freely express, celebrate, promote and protect their culture and national identity. National self-determination is described as a process through which 'individuals seek to give public expression to their national identity' (ibid: 90), and is justified by Tamir (ibid: 73-74) in six points:

1. Membership in a nation is an integral component of personal identity.
2. Individuals seek to preserve their national identity and so it is justifiable to grant them rights to be able to do so.
3. Individuals should be afforded the opportunity to freely express their national identities in both public and private spheres.
4. A shared public space in which the identities of all individuals are accepted allows such individuals to develop in an arena free from oppression, repression or stigma.
5. Having a communal domain and public institutions to represent the cultural or national community of the individuals gives expression and meaning to their sense of identity.
6. The national group needs to be recognised as an autonomous source by members of the group itself as well as other non-members.

Liberal nationalists treat national identity as key to the autonomy, self-respect, self-worth and well-being of an individual. Self-governance, therefore, is hailed by liberal nationalists as a fundamental right of individuals (as representatives of a national community) if they are to achieve the above. If membership of a national community is essential for individuals, this in turn justifies their claims to self-government. It is here that a clear tension with classic liberalism can be identified. Liberalism I is fully comfortable with the idea that individuals have a right to govern themselves. Liberal nationalists, nonetheless, extend this argument highlighting that individuals can only be free if they control their own lives and destinies, and given that their national identity is linked to a wider cultural community, self-determination must be equally available for collectives. As Kymlicka (1995: 151) attests, granting national minorities self-determination is not illiberal and is in fact 'a plausible extension of our existing democratic traditions'.

Self-determination, as championed by liberal nationalists, takes the form of political arrangements, including a space within which decisions concerning the welfare and well-being of the national collective are taken by individuals identifying with that collective.

Essentially, this means unfettered control for the minority group in certain ambits, free from the interference or unbridled domination of the majority group with whom they share a state. Such political arrangements may take the form of 'national institutions', 'autonomous communities' 'or the establishment of federal or confederal states' (Tamir, 1993: 75). In providing spheres of autonomy to minority groups, minorities are given accommodation, protection and recognition, all of which are required to preserve their cultural and national distinctiveness. In addition, these structures are important in engendering a sense of trust, fairness and equal respect among the different groups resident within the state (Kymlicka 1995). States and nations, however, do not have an absolute right to secession. Tamir (1993: 150) stresses that whereas not every nation is guaranteed a separate state, they can be guaranteed a political space within which they constitute a majority and have control over specific political functions.

Liberal nationalists, although to varying degrees, see the institutionalisation of territorial and/or non-territorial autonomy as the solution to ensure that minorities are included within the apparatus of the liberal democratic state. According to Kymlicka (1995: 3), such political arrangements 'typically take the form of devolving political power to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland or territory'. To prevent minorities from being alienated from the public sphere, which occurs because states cannot be neutral, and to ensure that cultural and national identities of minority groups are promoted and protected (essential for the promotion of individual autonomy), liberal nationalists thus promote the institutionalisation of autonomous structures for national minorities. These forms of territorial autonomy ensure limited self-rule for national minorities, including significant control over important policy areas, often linked to the national and cultural status of the collective. Tamir (1993: 151), accentuating her earlier point that not all nations can have their own independent states, proposes 'modest solutions such as local autonomies [or] federative or confederative arrangements' to ensure that all nations have equal national rights. Kymlicka (2000: 189), develops this further by promoting 'multinational federalism' as the best tool to protect minorities, giving them governmental control over a specific territory in which they form a majority.[33]

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[33] The theory of multinational federalism is developed later in this chapter.

3.2.1 The Shortcomings of the Liberal Nationalist Approach

The task undertaken by Tamir and others – to rehabilitate nationalism within a liberal framework – was no mean feat. Liberal nationalism, however, is not without its critics (Ignatieff 1993; Gaebler 1995; Greenfield 1994; Levinson 1995; Patten 1999; Vincent 1997). Yet, while these criticisms often focus on specific skeins of thought within the theory, most critics acknowledge the difficulty and ingenuity of the project as a whole. Liberal nationalism is, according to these scholars, theoretically compelling, but is generally undermined by insufficient empirical evidence.

Most studies of liberal nationalism, including the seminal work by Tamir, have been philosophical and normative endeavours rather than empirical studies. Their empirical relevance has thus been called into question, with many critics of the theory lamenting the lack of real-life solutions to combat the issues raised by the theory. Tamir (1993: 117) herself acknowledged the lack of coherence with modern politics at the time of writing, noting that 'recent versions of nationalism', which around 1993 involved violent nationalist clashes in Eastern Europe in the wake of the dissolution of the Soviet Union and the genocide campaigns wreaked upon Bosnia and Rwanda, 'seem to lend little credence to the liberal nationalist position'. She (ibid) continued, 'a cursory glance at the surrounding reality could easily lead to the conclusion that liberal nationalism is a rather esoteric approach'. It is unsurprising, therefore, that scholars have questioned the validity of the theory when the practical reality of nationalism at the time seemed to undermine some of liberal nationalism's main tenets.

An additional critique, although very much intimately linked with the abovementioned, relates to the scholars who have driven the liberal nationalist project. Burgess (2006: 130), for example, writes of the 'Canadian School of political thought' that has engaged with issues of, *inter alia*, liberalism and nationalism. He identifies key figures to include Alain Gagnon, Will Kymlicka, Charles Taylor, James Tully, alongside others much more specifically associated with the liberal nationalist project, including David Miller and Yael Tamir. While contributions from the abovementioned authors have indisputably helped advance theories of liberalism vis-à-vis issues of diversity, identity and cultural pluralism, and indeed have 'set the agenda for normative reflection' on many of these issues, they have often failed to engage with political reality (Choudhry, 2008: 142). In the Canadian context, for instance, where the lion's share of these theoretical approaches

have been developed, there is no shortage of theoretical discussions regarding Canadian multinationalism and more specifically the myriad of issues concerning Quebec, such as recognition, accommodation and the thorny issue of secession. Yet, as pointed out by Keil (2013: 38-44), there is a clear identifiable lacuna of research which adequately engages with the reality of the Canadian sphere; debates have tended to remain normative. McRoberts (2001b: 694) nicely encapsulates this dilemma noting, that 'multinationalism has become no less than an important and influential Canadian school of political thought. Yet, contemporary political life in Canada shows little trace of these ideas'. The same indictment could easily be applied to the theories of liberal nationalism and multinational federalism. Despite their normative value, they often 'face considerable difficulties in practice' (McGarry and O'Leary, 2007: 190).

In addition, while liberal nationalists are committed to some form of autonomy for minorities, and indeed scholars such as Kymlicka are very vocal regarding the accommodation of minorities, they say very little about the practicalities of including minorities in the political system. Stepan (1999), for instance, argues that territorial autonomy and the overrepresentation of minorities in central institutions are necessary institutional responses to the accommodation of minorities. For Stepan, liberal nationalism is correct to seek to marry individual rights and collective rights in a plurinational polity, but he emphasises the importance of ensuring individual rights are protected and minorities are given significant levels of autonomy in order to protect and promote their culture, as well as contribute to the decision-making processes of the central state.

Before discussing some of the other proposed institutional responses to managing ethnonational diversity, I will first examine the theory of multinational federalism. Multinational federalism encompasses many of the concerns of liberal nationalists into the institutional organisation of the state, with particular focus on the use of territorial autonomy to accommodate the demands of minority groups in multinational states.

3.2.2 Squaring the Liberal Nationalist Circle? The Theory of Multinational Federalism

The intellectual debate on accommodating diversity, managing difference and sustaining and deepening democracy has expanded discussions on models of political

organisation in plurinational states. For liberal nationalists, such a model must ensure the recognition and accommodation of diversity, the institutionalisation of self-government and the acceptance and promotion of a fluid interpretation of identity. Multinational federalism, as discussed by a range of scholars, most of whom are associated with the Burgess-identified 'Canadian school of political thought', represents an institutional blueprint that, although not flawless, translates many liberal national concerns into feasible institutional mechanisms.

Norman (2006: 87-88) defines multinational federalism as a model of political organisation whose intention is 'to accommodate the desire of national minorities for self-government, principally by creating a province (or provinces) in which one or more minority groups can constitute a clear majority of citizens and in which they can exercise a number of sovereign powers'. Despite the name, political systems that employ multinational federalism 'are not all federations in the technical sense, but they all embody a model of the state in which national minorities are federated to the state through some form of territorial autonomy' (Kymlicka, 2002: 30). In this sense, the UK and Spain are clear examples since varying forms of territorial autonomy have been conferred upon the distinct national communities within these polities. It is important, however, to differentiate multinational federal political systems from their mononational counterparts, given that in the latter the division of the state into regional units does not correspond to any concerns related to ethnonational pluralism or demands from minority groups for internal self-determination (Kymlicka, 2001a: 97-101). Furthermore, while multinational states implicitly recognise the existence of a *demoi,* in mononational states power is dispersed among a singular *demos,* the majority of whom subscribe to a single overarching concept of national identity, that of the state (Seymour and Gagnon, 2012: 2).

The right of self-determination is at the centre of the liberal nationalist debate. However, while all liberal nationalists support the principle of internal self-determination, whereby national minorities are given some form of institutionalised autonomy, not all scholars advocate the inclusion of a right to external self-determination, that is, secession.[34] Moreover, even when a right to secession is advocated it is generally not expressed as a universal right. Tamir (1993: 150), for example, argues that while all nations should be

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[34] It is worth noting, however, that while liberal nationalists advocate autonomy and self-government over secession as a mechanism to accommodate national minorities, when this fails, and there is no democratic and workable alternative, secession must not be inhibited by the state (see Kymlicka 2001a; Norman 2006).

entitled to some form of political autonomy, 'it cannot be ensured that each nation will have its own state'. Similarly, Nielsen (1998: 120), another scholar who champions an unqualified right to self-government for nations (or in Nielsen's parlance 'encompassing cultures'), writes that 'the doctrine that every nation should have its own state is both impractical and dangerous'. Not all national minorities, however, advocate external self-determination (Sorens 2012). As Norman (2006: 74) contests, 'secession is rarely the preferred form of political autonomy for national minorities in democratic states'. Consequently, multinational federalism is promoted as a preferable and workable alternative to territorial independence, whereby nations are justly recognised, are given a number of autonomous powers and through the establishment of shared rule mechanisms are able to influence decisions made at the centre.

As will be developed in the following section, one of the key problems with multinational federalism is not only developing it to resemble a fully-fledged theory, but also to overcome the general descriptive nature of the term. Notwithstanding this critique, several scholars have successfully identified some of the principal elements of multinational federalism. Kymlicka (2001a: Ch 6) illuminates the importance of recognising the ethnonational plurality of the state, institutionalising self-government for national minorities and the promotion of asymmetrical arrangements to ensure the just recognition of the plurinationality of the state in legal, institutional and societal spheres. In a similar vein, Gagnon (2001), Norman (2001) and Patten (2001), posit that recognition of diversity in the public sphere, including the possibility of multiple, overlapping identities and self-governance for minority groups, are critical normative values to undergird multinational federations. Gagnon (2010: 1-3), argues, for instance, that ensuring the above as well as an asymmetrical design of the state, bolsters political stability and strengthens democracy within the plurinational state. Similarly, Requejo (2005: 45-46) has illuminated the importance of asymmetry in plurinational states, arguing that the absence of asymmetrical features undermines any juridical or constitutional recognition of difference. He believes that asymmetry is crucial and demonstrative of a plurinational state's commitment to a politics of recognition, and thus respect for the different peoples, languages, cultures and religions that exist within the state. Indeed, in a more recent publication, Requejo (2015: 163) points out that asymmetry is the norm among plurinational states in the twenty first century, 'there are', he contends 'no cases of clearly symmetrical plurinational federations' (see also Zuber 2011).

Multinational federal political systems recognise that the constituent nations that form part of the state have both a right to sustain their distinct cultures as well as a right to self-government. In this way, the model of multinational federalism in accommodating, promoting and recognising diversity, in institutionalising plurinationality and in providing self-government institutions to minority groups can implement many of the fundamental principles identified by liberal nationalists (Máiz, 2004: 75). Multinational federalism is seen as being able to contribute to and even achieve the task undertaken by liberal nationalists – to reconcile the phenomena of nationalism and liberalism – and according to Kymlicka (2002: 31) is able to tame, domesticate and pacify sub-state nationalist forces. Burgess (2006: 129), despite tempering the language used by Kymlicka, generally agrees with this assertion, noting that while multinational federalism is not a panacea to all problems encountered by plurinational states (a point I will return to shortly), 'it alone displays the hallmark of a constitutional commitment … to channel and canalise [nationalism] in forms of peaceful, deliberative discourse where claims can be put on the table, recognised, examined, discussed, negotiated and ultimately answered'. Máiz (2004: 64) argues along the same lines, suggesting that multinational federalism, in committing itself to promoting peace and stability, individual and groups rights, democracy, economic prosperity and equality, thus 'supports the possibility of [a] peaceful, politically complex but economically cohesive and culturally enriching coexistence'.

Nevertheless, while multinational federalism has received increased academic attention in recent years (Burgess and Pinder 2007; Gagnon 2010; Keil 2013; Requejo 2005; Seymour and Gagnon 2012), the term remains both 'descriptive and contested' (Keil, 2013: 29). In addition to this, despite the theory's commitment to promoting diversity, recognising difference, protecting minorities and thus deepening democracy, it is not a panacea to the many intractable challenges that evolve in plurinational states.

3.2.3 The Problems of Multinational Federalism

Multinational federalism constructs states using many of the theoretical foundations developed by liberal nationalists related to issues of pluralism, tolerance, protection and respect. Very few would deny that multinational federalism is a cleverly designed institutional approach to accommodating diversity, managing different nationalities and recognising and legally protecting minorities. The discussions pertaining to liberal

nationalism that developed in the 1990s and more recently those on multinational federalism, have, however, been overwhelmingly descriptive. Nevertheless, scholars such as Michael Burgess, Alain Gagnon, Soeren Keil, Wayne Norman and Ferran Requejo have sought to further develop the theory of multinational federalism and imbue it with analytical value. These scholars have drawn upon numerous examples of plurinational states including, *inter alia*, Belgium, Bosnia, Canada and Spain in order to demonstrate what multinational federalism and federation means. However, despite the valiant efforts of such esteemed political scientists, multinational federalism largely remains a descriptive term. For Burgess (2012b: 42), the concept of multinational federalism is 'highly problematic', because although 'we know what some of its properties are…it remains unclear and uncertain just how far we can take this concept in order to translate it into practical reality'. Keil's work on Bosnia (2010; 2013) has attempted to further develop our understanding regarding the empirical reality of multinational federalism. He argues that while it is a truism that multinational federalism 'remains a mainly descriptive term', there are certain features immanent to a multinational federal political system that can be identified and help deepen our understanding of the theory in general (Keil, 2013: 43). Keil (2010: 78-79) identifies such features as:

1. Federalism in plurinational states is undergirded by liberal values concerned with preserving diversity, ethnonational justice, equality of opportunities and trust between different national groups and the state.
2. Multinational federalism is a voluntary organisation.
3. Federalism and democracy are mutually reinforcing in a multinational federation.
4. Multinational federalism's concern with recognition, autonomy and participation should be reinforced using elements of consociationalism.
5. A multinational federation must be inclusive. This means providing institutional apparatus for minorities as well as promoting a commitment to and identification with the state as a whole.

The features detailed above demonstrate the intimate connection between many of the normative principles discussed by liberal nationalists and the theory of multinational federalism. Among the genus of political models, multinational federal political systems stand out for their commitment to accommodating diversity, developing democracy and furthermore empowering political collectives. According to Burgess (2015a: 182), multinational federation is an important political model because it seeks to 'confront the sort

of challenges that are extremely difficult for political systems to process peacefully'. However, while multinational federal political systems do exist, the viability of the concept of multinational federalism remains under the spotlight. This is because, as pointed out by McRoberts (2001b: 711), 'while many states are multinational in their composition very few of them actually function as multinational states'. Indeed, Burgess (2015a: 183) draws upon examples such as Malaysia, Nigeria, Russia and Spain to illustrate the many 'conceptual and theoretical pitfalls and problems' inherent to the terms 'multinational federation' and 'multinational democracy'.

3.2.3.1 Managing Secession

An issue, which in the parlance of Burgess would straddle both theoretical and empirical pitfalls, is the question of secession. Liberal nationalists advocate using territorial autonomy to accommodate the self-determination demands of national minorities, providing apparatus to enable them to not merely survive, but flourish, protect and promote their own interests and sense of self. Through using territorial autonomy, which as the previous chapter attests comes in various guises, liberal nationalists believe that minority groups can properly function and develop within the already defined parameters of existing states. However, while liberal nationalists support a decentralised design for plurinational states, there is ongoing debate among such theorists and scholars regarding secession.

Secession is an indisputable challenge in plurinational states and there seems to be general agreement that most, if not all, plurinational federal political systems 'live in the shadow of secession' (Keil and Anderson, 2018: 96). Indeed, according to Pavković and Radan (2007: 14), all attempts (both failed and successful) at secession in the last century have taken place in plurinational states. As aforementioned, not all federal political systems encounter the issue of secession, particularly because many of the core problems found in these plurinational states are different from their mononational counterparts. For liberal nationalists, plurinational states should be designed in such a way that the very idea of secession is not only discouraged, but seen as unnecessary (Máiz, 2004: 74-75). This emanates from the one of the central tenets of liberal nationalism that minority nations are able to achieve just recognition and accommodation within a properly designed and functioning plurinational state so that little has to be gained from pursuing secession. For Kymlicka (2000: 215):

Relatively little would change if Flanders, Scotland or Quebec were to become independent states. In traditional nation-states, where all decisions are made in forums where the dominant group forms a majority, and where all public institutions throughout the territory of the state operate in the majority language, secession would involve radical changes. It would entail dramatic changes in the distribution of power between majority and minority, and in the language of schools, media, courts, government services, and in national symbols. In multinational federations, however, the self-governing national minority already has its language used as the main language of public institutions, it already has its symbols adopted at the sub-state level, and already is the dominant group in its self-governing territory. As a result, national minorities gain comparatively less by seceding from a multinational federation than they would be seceding from a traditional nation-state. There is relatively little that an independent Flanders or Quebec could do which they cannot do now as self-governing regions within Belgium or Canada.

The point articulated by Kymlicka above relates to the issues of citizenship and loyalty in plurinational states. Given the different peoples resident within a plurinational polity, the architecture of the state must not only ensure that the minority identities of its citizenry are protected, recognised and respected, but moreover, that some form of allegiance or loyalty, concomitant with the identity of the state is also fostered (Máiz, 2000: 43).[35] For Karmis and Norman (2005: 17), nurturing the different identities and loyalties of the citizens to both their regional units and the federal state as a whole is critical to ensure that multinational federalism is not a mere staging post to territorial independence. However, while there is broad agreement amongst liberal nationalists that multinational federations are preferable to granting each minority group an independent state, there is ongoing debate regarding the moral justification of a right to secede in liberal democracies and whether such a right should be constitutionalised.

While it is a truism that liberal nationalists advocate territorial autonomy to accommodate minority nationalists and their self-determination demands, some scholars have broadened these debates to include discussions on external self-determination. Territorial autonomy, argue liberal nationalists, should be designed in such a way as to discourage secessionism, but this, contend some, cannot always be guaranteed. Kymlicka (2002: 31) writes, for instance, that plurinational states cannot assume that the institutionalisation of some form of self-government for minority groups will guarantee that plurinational federal political systems 'will stay together in perpetuity'. Indeed, Kymlicka (2001a: 113) has identified one of the principal paradoxes of multinational federalism: 'the

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[35] For a more detailed discussion on the issue of citizenship and loyalty in plurinational states see Keil (2013: 47-48).

very success of [multinational] federalism in accommodating self-government may simply encourage national minorities to seek secession', continuing that 'secession becomes more conceivable, and a more salient option, even with the best designed federal institutions'.[36]

While Kymlicka is relatively open concerning the 'dangers' of self-government apparatus within a plurinational federal political system being used to gain independence, most scholars, even those in favour of constitutionalising a right to secession, believe that a properly designed plurinational system should be constructed in such a way as to dissuade would-be secessionists. Norman (2006: 175) notes, however, that while such plurinational political systems should be designed to discourage secessionism, 'when this is not successful', the state in question should allow 'for the possibility of secession in accordance with norms of democracy, justice and rule of law'. Nonetheless, this is not a widely held view among all scholars associated with the liberal nationalist brand. As Gagnon (2015: 148-149) puts it, 'even for scholars who are sensitive to the issues generated by contexts of deep diversity, there is a general reluctance to endorse a fully-fledged multinational approach founded on an external right of self-determination'.

In the philosophical debates that have occurred since the 1990s, theories of secession have generally been categorised under two headings: 'remedial right theories' and 'primary right theories'. In the former category, are situated scholars such as Allen Buchanan (1991; 1995; 1998; 2003; 2013) and Anthony Birch (1984) whose 'just cause' theories of secession take a cautious and constrained approach towards the issue. For these scholars, there is no *a priori* right to secession. Secession may be mutually negotiated between the secessionist territory and the state, but any right to secede from a 'just' state can only be defended if related to a series of conditions which focus on injustice suffered by the seceding territory at the hands of the parent state. Secession is a remedy of last resort.

Primary right theorists, on the other hand, consider secession as a fundamental right belonging to specific groups. There are two principal variants of primary right theories: the ascriptivist (nationalist) theory and the associative (plebiscitary/choice) theory. The ascriptivist camp, which justifies the right of secession based on certain features of an encompassing group (for instance, a nation), is associated with several liberal nationalist scholars, such as Avishai Margalit and Joseph Raz (1990), David Miller (1995; 1997) and Kai Nielsen (1993; 1998). For these philosophers, nations, owing to their legitimacy as

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[36] The 'paradox of autonomy' will be discussed in the next section.

political subjects, are important in providing context for the identities of those who make up the collective, and are thus endowed with a right of secession. Those ascribing to an ascriptivist interpretation of secession, however, argue that while under the auspices of this theory all nations are entitled to their own state, not all nations are required to exercise this right; autonomy is often enough for a nation's desire to exercise its right to self-determination. As such, while those ascribing to an ascriptivist interpretation of secession advocate the institutionalisation of a general right to secession, they do not believe that all groups entitled to such a right would necessarily choose to secede, nor that such a decision should be taken lightly; certain conditions and qualifications are attached to the primary right.[37]

The second group, those ascribing to the associative theory of secession, endorse a voluntary justification for secession. These scholars, which include Harry Beran (1984; 1987; 1998), David Copp (1998), Daniel Philpott (1995; 1998) and Christopher Wellman (1995; 2005), view the state as a voluntary association of which citizens are free to enter and thus free to leave. Associative theories of secession differ from the aforementioned remedial and ascriptive theories because the seceding territories do not have to demonstrate that they are the victims of any injustice (as in the remedial rights theory) nor do they have to have a special claim to the territory they inhabit or be required to share common culture, history and language with their fellow secessionists (as in the ascriptive theory). Instead, a territorially concentrated group need only demonstrate that a majority of the members of a specific geographically located collective are in favour of secession, either through a referendum, plebiscitary elections or a decision taken in a representative institution. As with those advocating an ascriptive right to secede, associative theorists also adjoin certain caveats to the theory, such that the seceding territory is able to perform the previous political functions carried out by the state or that the previous state's ability to continue to function is not undermined by the secession.

Having given a brief overview of the principal theories of secession that dominate the academic literature, it is important to situate these theories in the debate on liberal nationalism, multinational federalism as well as the wider debate of this thesis on the accommodation of diversity in plurinational democracies. Earlier in this chapter, I detailed

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[37] Examples of such conditions include, but are not limited to, the minimisation of harm to third parties (including the parent state); the new state must be politically and economically viable and new minorities created as a result of the secession must not suffer at the hands of the new majority.

the differences between liberalism I and liberalism II, whereby the former focuses on a commitment to individual rights while the latter extends this focus to include consideration of collective freedoms. Requejo and Sanjaume (2015) extend and consolidate the established typology of secessionist theories detailed above, illuminating the theories which fall under the liberalism I and liberalism II categories. In addition, the authors draw attention to more recent theories of secession by other liberal nationalists whose discussions on secession have bridged the main tenets of liberalism I and II.

According to Requejo and Sanjaume (ibid: 110), remedial right theories are herded under liberalism I since they display the hallmarks of individualism, universalism and statism. They point out, for example, that despite Buchanan's acknowledgement of the importance of nations, his requirement that the burden of proof lies with minorities illustrates the bias of the theory in favour of the state. Ascriptive and associative theories, on the other hand, are seen as developing and endorsing some of the principles underlined by liberalism II. While neither ascriptive or associative theories are without their problems, the understanding that individual and collective rights are mutually reinforcing as well as, in the case of ascriptive theories, the acknowledgement of the importance of culture and identity, align them with those endorsing a liberalism II position.

Since the initial debate begun by Buchanan in the 1990s, more recent theories of secession primarily concerned with plurinational democracies have emerged. These consider issues such as 'ethnocultural justice and minority self-government as crucial elements of state legitimacy' and are thus included 'in the list of just grievances legitimising secession' (Perez and Sanjaume, 2013: 6). These theorists, which include Alan Patten (2002) and Michel Seymour (2007), blend arguments from both remedial right theories and primary right theories, and thus liberalism I and II, viewing secession as a remedy of last resort, but simultaneously widening the justifications to defend a secessionist approach, sensitive to the importance of respect, recognition and accommodation of diversity in plurinational democracies.

Michel Seymour (2007) subscribes to the ascriptive understanding of nationhood, arguing that the importance of nations in providing a context for identities and self-development in turn renders them entitled to a special right of self-determination. For Seymour (ibid: 396), all nations should have a general primary right to internal self-determination, that is, 'the right to develop itself economically, socially and culturally and to determine its own political status within the encompassing state'. However, while

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Seymour, in contrast to Buchanan, believes that nations are unique and essential to the development of a person's culture and individual well-being, he concurs with Buchanan that secession is a remedial right, to be pursued only if a certain group has suffered injustice. In line with his support for plurinational democracies and thus liberalism II, Seymour (ibid: 411) broadens the original injustices identified by Buchanan (such as infringement of human rights or unjust annexation) to include the accommodation of national diversity; minority nations have a right to secede if the parent state 'fails to grant them internal self-determination'.

Alan Patten (2002) also offers a middle ground approach between remedial and primary right, particularly associative, secessionist theories. Patten's approach fundamentally disagrees with the associative theory detailed above, contending that 'we cannot conclude that a democratic mandate won by a national minority generates a right to secede' (ibid: 566). He posits that secession cannot take place from a just (in Patten's parlance, 'perfect') state because no democratic conditions have been violated. Instead, his criterion to justify secession follows those set out by Buchanan, with particular focus on the infringement of minimal justice, as well as the 'failure-of-recognition' clause proposed by Patten. He opines that in plurinational states, in which citizens often endorse a bifurcated sense of identity, the democratic state must seek to prioritise and accommodate these different identities, including the conferral of self-governing powers. The failure of the state 'to introduce meaningful constitutional arrangements that recognise the distinct national identity of (some) members of the secessionist group', would thus justify this group's claim to secession (ibid). In a similar vein to Seymour, Patten's theory concerns plurinational states, in which different and at times competing notions of identity exist. To illustrate his point, he even draws upon both cases under study in this thesis, demonstrating that different conceptions of identity are a fact of life in plurinational states and thus secessionist theories must take such facts into consideration (ibid: 564).

3.2.3.2 The Paradox of Autonomy

As alluded to earlier, one of the prominent paradoxes of multinational federalism is that 'the very same institutions that appear to be able to calm secession, reduce or eliminate the possibility of conflict and manage diversity, might actually work in the opposite intended direction' (Anderson, 2010: 131). This 'paradox of autonomy' has generated considerable

research in the academic literature (see Anderson 2004; 2010; Cederman et al 2015; Erk and Anderson 2010; Lustick et al 2004; McGarry and O'Leary 2007; Saideman et al 2002), but the debate remains inconclusive.[38] With scholars on both side of the debate able to draw upon ample empirical evidence to substantiate the various secession-inducing and secession-preventing hypotheses, the paradox remains 'one of the central conundrums of federal theory' (Cameron, 2010: 115).

On one side of the debate are situated a group of scholars who posit that autonomy alleviates ethnic divisions, mitigates (violent) conflict, removes contentious issues from the political agenda, appeases peripheral nationalists and thus maintains the territorial integrity of the state (Bermeo 2002; Brancati 2009; Ghai 2000a; Gurr 2000; Hechter 2000; Kaufman 1996; Lustick et al 2004; Stepan 1999; Wolff 2009a). Drawing upon plurinational, pluricultural and plurilingual states such as Belgium, Canada, India and Switzerland these scholars posit that autonomy structures have provided minorities with extensive self-government, helping to alleviate ethnonational grievances between minority and majority communities and have abated, although not completely prevented, secessionism. Building on the success of these cases, proponents of autonomy thus herald autonomy as an effective tool of conflict resolution, crucial to securing peace and establishing and consolidating democracy in countries throughout the world, such as Bosnia, as well as ongoing conversations in countries like Myanmar.

On the other side, however, are a number of academics who caution against this optimism. In their view, autonomy freezes ethnic identities, fosters opportunities for conflict, whets the appetite of would-be secessionists and ultimately provides institutions that make secession much easier to achieve (Brubaker 1996; Bunce 1999; Cornell 2002; Dorff 1994; Hale 2004; Roeder 2010; Snyder 2000). The historical case of the former Yugoslavia as well as the cases of Colombia, Ethiopia, Nigeria and Sudan lend credence to the perverse effects of autonomy as espoused by these authors.[39] Moreover, the cases under study in this thesis demonstrate that rather than abate secessionism in the UK and Spain, autonomous structures may have contributed to bolstering confidence in going it alone.

The inconclusive nature of the paradox alongside the cascade of opposing results generated by research of the puzzle have shown that there appears to be no single formula

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[38] In the academic literature, the paradox is more commonly known as 'the paradox of federalism' (Erk and Anderson 2010).

[39] For more on this, see the discussion on the paradox of autonomy in Keil and Anderson (2018: 95-99).

to accommodate diversity, manage difference and ensure stability of the political system. Relevant to this thesis, however, is a discussion about under what conditions autonomy works well not only to prevent secession, but to provide institutional apparatus to accommodate, empower and recognise national minorities.

Erk and Anderson (2010: 6) identify several dimensions which they believe could 'tip the federal balance in the secession-inducing or secession-preventing direction', including 'the will and capacity' of sub-state units to secede and 'the overall design of the federal system'. On the former, the authors note that whereas a lack of self-rule increases the will to secede but hinders capacity, under federal arrangements the capacity to secede increases (because of extensive self-governing powers and structures) but owing to such accommodation, the political will to do so is often markedly reduced. Institutional design is also important and relates to factors such as boundaries, number of federal units, the division of competences, representation of minorities in central institutions and the inclusion of secession clauses in the constitution. Erk and Anderson argue that the division of the federal state into multiple units, as opposed to just two or three, the design of the electoral system (proportional over majoritarian) and the role of the judiciary in constitutional matters affect the success of autonomy in inducing or preventing secession.

McGarry and O'Leary (2009: 20) share a similar line of argumentation and further the debate by identifying certain features that they believe 'are conducive to the success of plurinational federations'. Such features include the inclusion of minorities at the centre through shared rule mechanisms, the division of the state into more than two federal units and the development of power-sharing, namely consociational, institutions and devices (ibid). In this regard, McGarry and O'Leary posit that states must move beyond self-rule mechanisms and instead institutionalise shared rule as well as power-sharing devices to ensure better accommodation of minorities within the state. This, as will be further developed in the proceeding section, is particularly pertinent in an examination of the UK and Spain which have focused on the development of self-rule at the expense of other shared rule mechanisms.

The discussions thus far, with a focus on liberal nationalism and multinational federalism, has underlined the importance ascribed to the accommodation of diversity in plurinational states. This, as has been argued, is not merely important in relation to providing institutional apparatus to decrease the potential attractiveness of territorial independence, but is equally important in meeting the requisites of plurinational justice, including a model

of autonomy that empowers rather than contains minorities. In this vein, increasing the presence of national minorities in central state institutions and engendering a more inclusive style of government are hailed as important mechanisms imbued with the ability to satisfy minority and majority concerns vis-à-vis accommodation and abating the threat of secession for the later. A central premise of this thesis, therefore, is that plurinational states must move beyond self-rule structures – albeit, these are a necessary starting block – to institutionalise a more effective and appropriate set of institutional measures, modelled on power-sharing systems. Such moves would work to further deepen and entrench democracy, foster inter-group cooperation and cohesion and prevent territorial disintegration.

The proceeding section of this chapter analyses a range of power-sharing theories that are used to address the many contentious issues that pervade divided societies, paying particular attention to consociationalism given its pedigree in debates on stabilising divided societies. The rationale behind this is twofold. In drawing upon power-sharing theories, some of which are accompanied by a range of real-life examples, we are able to move the debate beyond abstract discussions and add to the analytical value of these theoretical endeavours. Second, liberal nationalists have often failed to fully explore the inclusion of minorities in the architecture of central government. This is not to deny the importance that some scholars have assigned to developing effective methods of shared rule for minority groups, as identified by Kymlicka and others above. However, in analysing other theories and mechanisms used to address diversity issues and manage competing nation-building projects, it may be possible to counter some of the identified shortcomings of multinational federalism, paying particular attention to the secession issue. There is a certain element of truth in Kymlicka's (2000: 207) assertion that it is wrong to measure the success of plurinational states in accommodating and recognising diversity by the absence of secessionist movements. However, it is also true that 'the prevalence of secessionist movements suggests that contemporary states have not developed effective means for accommodating national minorities' (Kymlicka, 2001a: 92).

3.3 Theories of Power-Sharing

So far in this chapter I have examined the theories of liberal nationalism and multinational federalism as well as some of the thorny issues inherent in adopting a multinational federal approach, such as managing secessionism and the paradox of

autonomy. The liberal nationalist approach provides an interesting argument for the marriage of the concepts of liberalism and nationalism, underlining Isiah Berlin's (1980: 355) prophetic statement that 'no political movement today, at any rate outside the western world, seems likely to succeed unless it allies itself to nationalist sentiments'. However, while liberal nationalists have predominantly focused on territorial autonomy, it is important to widen the debate and examine other institutional approaches used to accommodate minorities within plurinational contexts. Indeed, some scholars have already argued that territorial autonomy in combination with power-sharing arrangements, which involves ethnonational groups having influence over decisions made at the central level, are more effective in accommodating diversity, alleviating grievances and helping to increase their sense of self and security within the parameters of the extant plurinational state (Cederman et al 2015; Cordell and Wolff 2016; Hartzell and Hoddie 2003; Wolff 2009a).

Power-sharing, contends Esman (2004: 178), 'is an inherently accommodative set of attitudes, processes, and institutions, in which the art of governance becomes a matter of bargaining, conciliating, and compromising the aspirations and grievances of its ethnic communities'. There are a number of different theories under the heading 'power-sharing', including, consociationalism, centripetalism, power-dividing and complex power-sharing. These theories, while they differ in their prescriptions, share a similar aim: 'to craft institutions which facilitate the (re)building of trust between groups and in the institutions by which they govern themselves and which consolidate democracy and stability within a divided society' (Yakinthou and Wolff, 2012: 6). This commitment to minority inclusion and constructive management has made power-sharing 'the international communities' preferred remedy for building peace and democracy' (Rothchild and Roeder, 2005: 3).

3.3.1 Consociationalism

Consociationalism is a power-sharing strategy that ensures the representation and participation of all major societal groups in government.[40] It is most closely associated with the work of Arend Lijphart (1968; 1969; 1977; 2002; 2004) and more recently John McGarry and Brendan O'Leary (2004; 2006; 2016). Consociationalism is the most widely applied

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[40] There is a debate between what has been termed 'corporate consociationalism' and 'liberal consociationalism'. The nuances of the debate are not important for the discussion here, although it is worth noting that the main scholars discussed here – Arend Lijphart, John McGarry and Brendan O'Leary – identify themselves as liberal consociationalists. For more information on the debate see McCulloch (2014).

power-sharing model, found in numerous places, *inter alia,* Belgium, Bosnia, Burundi, Northern Ireland and Switzerland. In being so widely applied, it is also, therefore, the most widely criticised. Its proponents, however, argue that such critiques do not detract from the efficacy of consociationalism in managing ethnic tensions and resolving political disputes. McGarry and O'Leary (2006: 43) write, for instance, that the success of consociationalism is such that it is 'one of the most influential theories in comparative politics', while for Wolff (2011: 37), it remains the most appealing approach because it 'is a truly … democratic strategy of conflict management in divided societies'.

Lijphart's initial engagement with the concept of consociational democracy drew upon the pillarised political system of his native country, the Netherlands. The Dutch system, divided along ideological and religious lines – Catholic, Protestant, Socialist and Liberal – was interpreted by Lijphart (1968: 112) as a system designed to accommodate different groups, ensuring a segmented but stable democracy. In subsequent works, including his oeuvre, *Democracy in Plural Societies: A Comparative Exploration*, Lijphart extended the consociational approach beyond the Netherlands and engaged with more fragmented societies, including Belgium, Cyprus, Lebanon, Malaysia and Northern Ireland. Lijphart's consociational theory is undergirded by two principal characteristics: grand coalition and segmental autonomy, and two secondary attributes: proportionality and minority veto. Together, these elements provide a model to ensure 'the best kind of democracy that can realistically be expected' in deeply divided societies (Lijphart, 1977: 48).

One of the primary foci of the consociational model is elite cooperation, whereby representatives from each societal segment share executive and decision-making power in grand coalitions at the centre (ibid: 25-26). In deeply divided societies, often characterised by feelings of animosity, fear, mistrust and suspicion, cooperation at the elite level is considered key to ensure a collaborative, consensual and trustworthy democratic environment. Moreover, in involving all societal groups at the centre, consociational democracy guarantees all groups a stake in the political decision-making apparatus, thus preventing the perils of majoritarianism and dampening secessionist aspirations (McGarry and O'Leary, 2016: 251).

The second attribute of consociationalism refers to one of the primary tools championed by liberal nationalists, 'self-rule', or in Lijphart's parlance, 'segmental autonomy'. Autonomy may take the shape of both territorial and non-territorial forms and should be designed to ensure that each minority group has a significant measure of control

over its internal affairs, thus enabling them to institutionalise and secure their sense of distinctiveness (Lijphart, 1977: 42). In giving minority groups power to make policies in those areas that they consider critical for their own self-preservation, 'the contentiousness of politics at the centre' is lowered, stability maintained and opportunities for intercommunal conflict markedly reduced (Yakinthou and Wolff, 2012: 5).

Proportionality is the third characteristic of a consociational democracy. This ensures that the groups present in the executive are proportionally represented not only in parliament and government, but also in other key public institutions such as the civil service, judiciary, police and military. In addition, whilst Lijphart supports proportionality at an institutional level, he also advocates for the proportionality principle to be applied to both public resources and budgetary expenditure (Lijphart, 1977: 38). Moreover, consociationalists favour a proportional voting system to ensure than the share of seats a party receives is commensurate with the share of support given by the electorate. There is debate among consociationalists over which electoral system is best, Lijphart (2004), for instance, suggests the adoption of a proportional list system, whereas O'Leary (2005) favours a proportional preferential system, such as the Single Transferrable Vote.[41]

Finally, consociationalism affords minority elites a veto power to protect their most vital interests from being adversely affected by executive decisions. The veto is described by Lijphart (1977: 37) as a 'potential weapon' that gives minorities 'a complete guarantee of political protection'. Lijphart acknowledges that the mutual veto is open to criticism, given that it may be employed to obstruct democratic procedures and political deadlock may ensue. He argues, however, that such critiques must be tempered by the fact that possession of the veto is often enough to give minorities a sense of security and thus prevent its use. Additionally, Lijphart points out that it is a mutual veto; it can also be turned against a minority who use it.

Notwithstanding the enthusiasm and popularity of the consociation model, it is one of the most critiqued theories, often by scholars in the centripetal camp who despite sharing the same concerns as consociationalists, advocate alternative mechanisms to manage ethnonational divisions. Donald Horowitz, the most famous proponent of the centripetalist approach, is an indefatigable critic of consociational democracy. He believes that the theory's reliance on elite cooperation is 'extremely dubious', while the overall approach is

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[41] For more on electoral design and power-sharing systems see Reilly (2002) and Wolff (2005).

'motivationally inadequate' (Horowitz, 2002: 20-21).[42] Lijphart (2002: 40), himself, provides a neat summary of many of the critiques of his consociationalist theory:

1. It is not entirely democratic.
2. Its ability to work in practice is flawed.
3. It fails because it does not provide incentives to ensure moderation in the behaviour of societal groups.
4. Its focus on autonomy does not remove the secessionist issue from the agenda and could even precipitate a slippery slope to secession and/or partition.
5. It reinforces rather than weakens differences, including the reification of ethnic, linguistic and/or religious identities.
6. It is a model created in the west more suited to European and North American societies than divided multiethnic states in other parts of the world.

Many of these critiques are rebuked by Lijphart in the chapter cited above (ibid: 41-46) and have been equally rebuffed by other consociational scholars (see O'Leary 2005: 8-12). While it is beyond the brief of this chapter to analyse the intricacies of such critiques, it is worth noting that the most common response by consociationalists is that consociational democracy, although not without its flaws, is the most realistic response to ensuring democratic politics in a divided society. Societies torn apart by such conflict have to be rebuilt and through advocating elite cooperation and engendering a consensual and collaborative environment, consociational democracy is touted as *the* conflict-resolving strategy capable of doing this. As detailed in Chapter Two, governments, whether of an authoritarian or democratic hue, have numerous tools at their disposal when it comes to managing ethnonational diversity. For consociationalists, then, the institutionalisation of a consociational democracy prevents the use of undemocratic alternatives, including sustained conflict, genocide, forced expulsion or imposed partition. As O'Leary (2005: 9) contends, the choice is often not between consociational arrangements or a majoritarian democracy, but between 'consociational democracy and no (worthwhile) democracy at all'.

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[42] For a full list of Horowitz' critiques of consociationalism see Horowitz (1985; 1991; 2002). See also Reilly (2001).

3.3.2 Other Theories of Power-Sharing

Consociationalism, given its popularity and success in several countries in all corners of the world, is often held up as the prototypical model of power-sharing. Other theories, nonetheless, have been developed by scholars as a reaction to the focus on consociationalism and while they share the same concerns – managing diversity, preventing further conflict and stabilising the political system – they offer alternative strategies for how these aims are to be achieved. In this section, I focus on three alternative theories of power-sharing: centripetalism, which eschews focus on elite-representation and instead encourages cooperation among ethnic communities; power-dividing, which, akin to centripetalism, favours weakening ethnic pillarisation and promotes cross-community support by replacing ethnic divisions with economic and cultural interests, and finally, complex power-sharing, which is a hybrid model of power-sharing that promotes moving focus beyond one specific strategy and advocates combining different mechanisms from the abovementioned theories.

Centripetalism rejects the elite driven approach advocated by consociationalists and instead seeks to 'depoliticise ethnicity' in order to ensure a stable, cooperative, accommodative and moderate political system in which no community enjoys a privileged status (Reilly, 2016: 280).[43] Donald Horowitz (1985; 1991; 1993; 2002) and Benjamin Reilly (2001; 2002; 2006; 2016) are the scholars most closely associated with the centripetalist approach. These scholars support moving focus away from the periphery and towards the centre (thus reducing the salience of ethnonational differences) and incentivising politicians into endorsing broader, centrist and more moderate policy platforms. The former is achieved through the organisation of political parties along multiethnic as opposed to solely ethnic lines as well as the formation of pre-election, multiethnic coalitions, while the latter comes as a result of a preferential, majoritarian electoral system.

The power-dividing approach, advocated by Donald Rothchild and Philip Roeder (2005; see also Roeder 2005; 2012 and Rothchild 2008), is presented as an alternative approach to both consociationalism and centripetalism.[44] These scholars posit that power-sharing approaches are unequivocally essential in securing short-term peace and stability in divided societies, but owing to their focus on ethnicity, whether as a characteristic of differentiation (consociationalism) or as a less salient but still important factor

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[43] Centripetalism is also known as the integration(ist), integrative or incentives approach.
[44] This is also known as the multiple majorities approach (Roeder 2012).

(centripetalism), fail to secure an enduring, long-term strategy. The power-dividing approach is thus presented as 'a strategy that avoids the monopolism of any single mode of representation', whereby no ethnonational identity is privileged above another and power is dispersed both horizontally and vertically so that it is not concentrated in the hands of the few (Roeder, 2012: 68). Power-dividing does not support the institutional recognition or privileging of any ethnonational groups and instead advocates extensive human rights bills to protect all individuals irrespective of ethnic origin, mother-tongue or religion. The creation of different civil society and private spheres so that no one ethnonational group dominates (i.e. creating 'multiple majorities') and the institutionalisation of a presidential and bicameral system so as to ensure an effective set of checks and balances on the government, is considered essential.

So far, I have examined three separate yet overlapping approaches to power-sharing in ethnically diverse societies. In more recent years, however, several scholars have pointed out that power-sharing models need not be limited to one overarching approach (Kettley et al 2001; O'Leary 2005; Weller 2008; Weller and Metzger 2008; Wolff 2007; 2009a; 2009b; Wolff and Cordell 2016). Instead, power-sharing models should be more 'complex', that is, involve a range of varying approaches in order to achieve the best arrangements for the societal groups involved. Weller (2008: xiii-xiv) defines complex power-sharing as:

> A solution where there is a complex layering of public authority, both horizontally and vertically. This will include autonomous structures. This is matched by the application of consociationalist techniques such as governmental power-sharing, guaranteed parliamentary representation for the minority, veto rights for ethnic communities or ethno-territorial entities, the granting of minority rights and agreements on the transfer of economic resources. In addition, there is an element of international involvement in the negotiation and implementation of the settlement, and in post-conflict governance.

The complex power-sharing approach builds upon the limitations of other power-sharing strategies by using a broad range of conflict ameliorating mechanisms. The scholarly orthodoxy has tended to remain focused on the consociation-centripetalism dichotomy, yet as the power-dividing and complex power-sharing methods show, there are other arrangements available to respond to, sometimes more effectively, the challenges posed by ethnic conflict and political stability.

In sum, there are several theories of power-sharing which akin to the liberal nationalist approach and theory of multinational federalism, seek to manage, promote and protect

diversity by democratic means in divided societies. One of the striking features of power-sharing approaches is the emphasis on some form of territorial self-governance as a solution to the self-determination demands of minority groups. While this is also at the heart of the liberal nationalist approach, and thus is a fundamental feature of multinational federalism, the continued existence of secessionist groups in plurinational states alongside the intensification of demands for territorial independence has led to the questioning of the effectiveness of territorial autonomy on its own to provide a viable solution to the self-determination aspirations and self-governance demands of minorities. It is becoming increasingly evident, therefore, as the theory of complex power-sharing illustrates, that to achieve a stable, just and democratic political system, bolstered by an accommodative and empowering model of autonomy, territorial autonomy should be combined with other management mechanisms such as power-sharing arrangements. This would ensure minority groups in plurinational contexts are not only (institutionally) recognised and accommodated, but moreover can meaningfully participate in the decision-making and political processes of central institutions.

3.4 Forging a Coherent Model of Autonomy

In a similar vein to a number of studies examining the existence and development of minority nations in plurinational states in the twenty first century, this research project started with a basic line of enquiry: to what extent can plurinational states accommodate their internal diversity? In recent decades, the locus of power has shifted away from national states both upwards to supranational bodies and downwards to sub-state units (Keating 2008). Minority nations, however, in spite of their increasing presence and prominence, currently 'live in an age of great uncertainty' (Gagnon, 2014: 94). This uncertainty is a result of 'the fate of minority nations always brought into question by their predicament, namely how to coexist with other minority nations and/or how to coexist with the majority nation in one state' (Burgess, 2015a: 181). Scotland and Catalonia are cases in point.

In only a short number of years, the political landscapes of Scotland and Catalonia have been radically altered. Since the near-death experience of the union in 2014, the UK has continued to experience an existential crisis about the future direction of the three-hundred-year-old union. Impelled to articulate a positive vision of the historic political partnership, pro-union supporters only narrowly managed to secure a majority vote against

secession. Despite need and desire for a significant period of constitutional calm, the 2016 vote to leave the EU has reignited constitutional debate and poses a further threat to the union's already continuing frailty. In Catalonia, constitutional turbulence has permeated relations between the Spanish and Catalan orders of government for more than a decade. The stalemate over holding a referendum, the intransigent approach taken by the Spanish state and ultimately the unilateral route pursued by the Catalan government, have polarised and impeded effective dialogue on constitutional debate. As a result of such developments, both Scotland and Catalonia, as well as their host states, are navigating unchartered constitutional waters. In light of this, it has become more imperative than ever before to look beyond extant models of autonomy to muster more effective, efficient, insightful and imaginative normative and institutional solutions to the accommodation of national minorities within plurinational states.

This thesis, therefore, taking into account both normative and institutional considerations, discusses the development of a model tailored to the specific nuances of the Scottish and Catalan cases. This would not only require a firm commitment to territorial autonomy, but would concomitantly involve support for the accommodation, empowerment and recognition of national minorities. As the following chapters will show, recent developments in Scotland and Catalonia necessitate further thinking on this issue but simultaneously present a fortuitous opportunity to redress some of the limitations of extant autonomy models. In both cases, minority nations complain of a democratic deficit, the paucity of partnership vis-à-vis treatment as co-equal members of the state, the lack of commitment to further decentralisation and central governments' intransigence and/or unwillingness to discuss, negotiate and respect the self-determining aspirations of national minorities. At the same time, it is equally important to address some of the principal concerns of the majority community, particularly those related to the tyranny of the minority and the lack of commitment and loyalty from the minority nations towards maintaining the stability and integrity of the state.

On the normative level, the analysis contributes to the evolving intellectual debate about the accommodation and empowerment of minority nations in plurinational states. Previous research on territorial autonomy has tended to focus on institutional arrangements, that is the empirical reality of constitutional design, rather than the normative ideas that undergird such a system. It is a truism that analysis of institutions and the organisation of powers are valuable avenues of research, but at the same time, normative ideas, principles

and values must also be examined in order to fully comprehend the operation of plurinational federal political systems. It is for this reason, as was discussed in Chapter Two, that scholars such as Burgess (2006; 2012a) have insisted on unpacking the meaning of federalism and federation as terminologically intertwined yet separate concepts. This thesis thus follows suit, examining the institutional reality of constitutional design (such as autonomy, constitutions or power-sharing arrangements), as well as devoting attention to the numerous principles that buttress the plurinational, multilevel political system. In this vein, analysis of what may be termed a plurinational culture, that is, the values and principles that undergird and guide majority-minority relations, is crucial.

The development of a plurinational political culture and commitment to the principles and values that underpin it is but one approach in the constitutional toolkit to accommodate ethnonational diversity in plurinational contexts. While the analysis in the proceeding chapters seeks to underline the importance of engaging in a more plurinationally sensitive way of thinking, due consideration of the institutional practices of the cases is also important. The implementation of a truly plurinational federal model, as discussed earlier, is considered key to ensure the empowerment of minority nations, eliminate the institutionalised dominance of majority communities while equally protecting the territorial integrity of the extant state. Autonomy is indisputably a powerful tool in the management of diverse and divided societies, but in silos it has failed to fully empower minority nations or maintain stability in the overarching state. It is imperative, therefore, that autonomy is considered and ultimately used in conjunction with other management mechanisms, as discussed in this theoretical framework, to ensure a more coherent, effective and flexible model for the accommodation of national minorities in heterogeneous plurinational states, including the UK and Spain.

The theoretical framework that has been developed in this chapter will be used to analyse the two cases of the UK and Spain, specifically focusing on Scotland and Catalonia. First, I examine the plurinational credentials of the UK and Spain, with particular reference to the historical dimension of debates on diversity in these states and the competing nationalist projects within them. From this discussion, the theoretical debate on accommodating and respecting diversity – as advanced by liberal nationalist scholars – will then be considered, including analysis of how the UK and Spain have sought to accommodate the diversity of their states within a liberal democratic framework. Here, focus is on the main institutional tool endorsed by liberal nationalists: territorial autonomy. In both

cases, varying territorial arrangements have been rolled out over different periods of time in an attempt to accommodate the self-determination aspirations and demands of minority groups, as well as impede the secessionist tendencies held by some members of the national community. As will be developed, however, autonomy has not pacified all members of groups calling for secession and, in line with the paradox of autonomy discussed above, may have even contributed to increasing and intensifying the demands of pro-secessionist parties in both cases. To better understand the nuances of each case, each chapter unpacks the different autonomy arrangements in both the UK and Spain in relation to Scotland and Catalonia and analyses what exactly has or has not worked in relation to these self-governance tools and secessionism. Finally, drawing upon the discussion on other methods used to manage competing nationalist projects and accommodate diversity, each chapter concludes with a discussion on potential future scenarios for territorial politics in these states as well as possible routes for reform to build on and improve existing arrangements. As this framework has shown, autonomy is but one tool in a congeries of mechanisms advocated to deal with diversity. It is important therefore, to examine the current flexibility of the autonomy settlements in each case and explore mechanisms other than those that have been used to address ongoing issues related to the accommodation of national minorities in plurinational states.

3.5 Conclusion

I began this chapter analysing the theory of liberal nationalism. This theory, advocated by a number of scholars, many of whom developed their research with reference to Canada, sought, and successfully so, to move beyond some of the central and most restrictive tenets of traditional liberal thought and instead bring its principal assertions in line with the reality of a world that is becoming more diverse. It is undeniable that liberalism endorses, first and foremost, a doctrine of individualism, but the explosion of cultural, ethnic, linguistic, national and religious diversity that has taken place in recent decades has intensified demands from such groups for some form of accommodation and recognition of their ethnonational diversity. The theory of liberal nationalism, in spite of its shortcomings, has helped translate many ethnonational concerns into liberal parlance. In addition, through advocating the use of autonomy to protect and promote ethnonational differences, liberal

nationalism has moved the liberalism debate from a limited, individualist and statist understanding of diversity to a more open, tolerant, respectful and sensitive conception of ethnonational pluralism.

Multinational federalism is promoted by some liberal nationalists as the best model to translate many of the concerns and proposals of liberal nationalists into institutional reality. As Requejo (2015: 169) contends, 'plurinational democracies…by definition involve tensions between different national collectivities', and so the use of multinational federalism is considered the most apt in providing minorities with self-government institutions while keeping them firmly within the parameters of existing plurinational states. Developing a theory of multinational federalism has been no mean feat and while there has been increased interest in identifying some of its principal traits and demonstrating how these can be institutionalised into modern-day plurinational democracies, lamentably a gap remains between the theory and political reality of plurinational democracies. This must not lead to the conclusion that multinational federalism, or plurinational states in general, are unworkable, but serves to underline the work that remains to be done to ensure the full accommodation, protection and recognition of national minorities in plurinational democracies.

It is clear, then, that despite the support for territorial autonomy emanating from the liberal nationalist school, it alone cannot address the many issues innate to plurinational contexts. Thus, institutional measures used to accommodate minority groups must go beyond the measures of autonomy discussed heretofore. Section three of this chapter, therefore, drew upon discussions related to power-sharing mechanisms, with specific focus on consociationalism. Much like the theory of multinational federalism, power-sharing theories are concerned with addressing issues of diversity and managing competing nation-building projects within divided societies. Emphasis, however, is not solely on autonomy, but on the inclusion of minorities in the architecture of government and developing a more consensual approach to politics that facilitates partnership between and among majority and minority communities.

Building upon the conceptual and theoretical discussions in Chapters Two and Three, the next chapter focuses on the first empirical case study: Scotland.

4. Chapter Four: Scotland

'[The United Kingdom]…is a strange union, full of historical paradoxes, curious conventions and bizarre practices' (Burgess, 1995: 182-183).

'History never stands still…The evolution of our constitution has been continuous over the last 300 years…and it will continue to evolve over the next 300 years, too' (Interview with Labour MSP 3).

4.1 Introduction

Scotland's constitutional journey has undergone intense transformation in recent years. This is evidenced in the re-establishment of the nation's Parliament in 1999, the rise of the SNP to the party of government in 2007 and the holding of an independence referendum in 2014. The inception of union in 1707 initiated a long-standing policy of accommodating the national distinctiveness of Scotland, including the development of various autarchic institutions and the acceptance and recognition of a multilayered conception of identity, all of which have contributed to sustaining a distinct sense of Scottishness and a degree of political separateness from the rest of the UK (Mitchell 1996). This sense of political separation was given institutional status in 1999 with the re-establishment of a law-making parliament in Edinburgh, dominated in its first two sessions by the pro-union Labour Party. The election of an SNP minority government in 2007 brought constitutional issues to the fore of the political debate both in Edinburgh and London and initiated a new phase in the history of the Scottish Parliament and the nation's constitutional trajectory. More than ten years later, the SNP remains in government and Scotland's future constitutional status, notwithstanding the rejection of independence in 2014, remains fluid.

This chapter examines the development of territorial politics in Scotland, paying particular attention to the model of autonomy rolled out in Scotland since 1999. Of particular

interest is the SNP's time in office and how the autonomy-enhancing and independence-seeking demands and strategy of the SNP have been managed within the extant autonomy framework. The chapter begins with a detailed historical overview of the evolution of Scottish demands for self-determination, including how successive UK governments have dealt with these demands in the context of the UK's traditional policy of accommodation. Next, it provides a detailed summary of the development of politics vis-à-vis the 'Scottish question' over the period in which the SNP has formed the party of government in Holyrood. Viewing the accommodation of Scottish demands for self-determination primarily through the prism of self-rule, section four examines the devolution arrangements rolled out since 1999 and analyses their efficacy in accommodating the UK's plurinational diversity and managing secessionist demands. Drawing upon the distinct and contested visions of the various political actors in Scotland, the chapter then turns to examining the future terrain of constitutional politics vis-à-vis Scotland and the UK. In line with the theoretical framework set out in Chapter Three and the analysis in the previous section, section six examines what else may be done in order to move beyond the limited focus on self-rule, particularly in the context of achieving a more coherent and accommodative model of autonomy.

4.2 The Context of Political Partnership 1707-2007

At the opening of the Scottish Parliament on 12 May 1999, after a 292-year hiatus, SNP veteran Winnie Ewing declared, 'the Scottish Parliament adjourned on the 25 March 1707 is hereby reconvened.' By this date in 1707, Scottish parliamentarians had approved the ratification of a number of articles which voted the Scottish legislature out of existence. In line with *The Union with Scotland Act 1706* passed by the English Parliament, the latter legislature transmuted into the new British Parliament. Scotland was no longer a sovereign, independent state, but together with England and Wales, formed part of the new Kingdom of Great Britain (McLean and McMillan 2005).

The union of 1707 sought to incorporate rather than assimilate the Scottish population. A new sovereign state was created, but while change was effected at the centre, the distinct and separate pre-existing cultural nations of Scotland and England continued to exist. As Paterson (1994: 4) attests, the institutional and cultural specificity afforded to Scotland as a consequence of the Act of Union fell short of the requisites of independent statehood but demonstrated that Scotland was 'far more than a mere province.' The tripartite system of

church, law and education, which was retained in the aftermath of 1707, is often illuminated as the latent marker of the existence of Scottish distinctiveness post-1707. This 'holy trinity' demonstrated that while the union united the Kingdoms of Scotland and England politically, there was significant room for the Scottish nation, culture and identity to exist and flourish.

The existence and development of autarchic Scottish institutions in effect created what Kellas (1989) termed 'the Scottish political system'. The relative ease at which the state dealt with distinct Scottish institutions, culture and nationalism, led to the entrenchment of distinctiveness and as such the perpetuation of Scotland and Scottishness (Mitchell, 2014: 10). Unlike majority nationalism in Spain, the ideology of union has never sought to foist uniformity across the constituent nations. Instead, it fostered an amicable environment and political framework in which the duality of national consciousness, that is being both Scottish and British, could exist (Smout, 1986: 238).

From the mid to late nineteenth century, territorial politics became an increasingly troublesome issue on the British political agenda.[45] A congeries of different nationalist organisations emerged, such as the National Association for the Vindication of Scottish Rights and the Scottish Home Rule Association, championing varying (constitutional) reforms, including, but not limited to, a devolved Scottish legislature (Mitchell, 2014: 90). 'Home Rule all round' was the slogan under which Scottish and Welsh Liberals coalesced in support of the creation of Scottish, Welsh and even English regional parliaments and assemblies. It is important to note, however, that while there was increasing pressure from the peripheral nations for some sort of regional devolution, talk of securing a parliament as a stepping stone to independent statehood was all but absent. In fact, as Cameron (2010: 77) notes, while Scottish home rule was championed as 'due recognition of Scottish "feeling" or identity', it was equally advanced as the best remedy to strengthen the union and maintain the supremacy of the UK Parliament.

The SNP was established in 1934 as a result of the merger of two previously established political parties: The National Party of Scotland and the Scottish Party.[46] While the former was more left-leaning and composed of gradualists and fundamentalists, the latter was a more right-leaning organisation fully committed to devolution and sceptical of full

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[45] This was primarily a result of the increasingly vociferous discussions on Irish home rule (see Kendle 1989).
[46] The National Party of Scotland was established in 1928; the Scottish Party in 1932.

independence (Finlay, 2009: 22-23).[47] In the wake of the establishment of the SNP, the party was caught between a constitutional rock and a political hard place: was the organisation to present itself as a pressure group committed solely to the issue of Scottish self-governance, or was it to become a fully-fledged political party which would engage with socio-economic policies as well as the constitutional issue? In the end, the latter position prevailed, but the party's policy on devolution was far from clear. An independent Scottish state was the *raison d'être* of the SNP, but even this was interpreted fluidly (Hepburn 2009). Some understood support for self-government to mean the establishment of a devolved Scottish legislature within the UK, while for others it was exclusive support for independence.

Until 1970, the SNP failed to gain any seats at a general election, albeit the party managed to score some by-election successes, including the election of Winnie Ewing in 1967 to represent Hamilton, what had been Labour's safest seat in Scotland (Mitchell 2017). From the 1970s on, the electoral strength of the SNP continued to grow (the party won 11 seats at the October 1974 general election) which not only posed a serious challenge to Labour's electoral hegemony in Scotland, but brought the Scottish question and the issue of home rule to the fore of British politics. Reliant on SNP support as a result of electoral arithmetic, in 1978 the minority Labour government under the leadership of James Callaghan legislated to hold a referendum in Scotland (and Wales) on the establishment of a devolved legislature. In Scotland, just over 51% voted in favour of a Scottish Parliament, but a last minute amendment to the legislation calling for a qualified majority (40%) of registered voters to vote 'yes' for the referendum to pass erected what would come to be an intractable hurdle for devolution supporters. In the aftermath of the referendum, the SNP tabled a vote of no confidence in the Labour government. In the subsequent general election, Margaret Thatcher was elected PM and the Scotland Act repealed.

Thatcher endorsed a vociferous anti-devolutionist stance which not only dismissed decentralisation, but represented a reinterpretation of the 'old-style pluralist unionism' that had historically undergirded the Conservatives' traditional approach to territorial politics (Mitchell, 2014: 170). Thatcher presented herself as an instinctive unionist, but displayed very little understanding or regard for the plurinational nature of the UK or for the historical

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[47] Fundamentalists support a 'big bang' approach to independence, championing independent statehood and nothing else. Gradualists, on the other hand, promote devolution as a 'stepping stone' to independence. One interviewee posited that this debate has become largely marginalised within the party itself since 'we are all gradualists now', but pointed out that 'the fundamentalist thread continues to run through us [the SNP]' (Interview with SNP MSP 6).

recognition and accommodation of Scottish political aspirations (Kidd 2008). In her memoirs, for instance, she argued that while:

> They the Scots have the undoubted right to national self-determination…what the Scots (nor indeed the English) cannot do…is to insist upon their own terms for remaining in the union, regardless of the views of the others. If the rest of the United Kingdom does not favour devolved government, then the Scottish nation may seek to persuade the rest of us of its virtues…but it cannot claim devolution as a right of nationhood inside the union (Thatcher, 1993: 624).

The Scots, conceded Thatcher, had a right independence, but did not have the right to demand constitutional accommodation short of secession; there was no halfway house between the constitutional status quo and secession. Thatcher's successor, John Major, despite appearing much more cognisant of and sensitive to territorial politics and respecting Scottish distinctiveness, subscribed to the same interpretation. In a 1993 government White Paper on Scotland, Major, by then PM, made this clear noting that 'no nation could be held irrevocably in a union against its will', but while the Scots were entitled to push for independence, constitutional change in the form of a devolved legislature was off the table (Scottish Office, 1993: 5)

Thatcher and Major's overtly hostile attitudes towards devolution not only failed to chime with the increasingly pro-devolution Scottish electorate or political elite but jarred with the Scottish interpretation of the union as a renegotiable pact (Keating, 2009: 19). This was further evidenced in the publication of *A Claim of Right for Scotland* by the Campaign for a Scottish Assembly (CSA) in 1988, which dismissed the sovereignty of parliament as promulgated in the extant constitutional order and instead proclaimed Scottish popular sovereignty as its foundational principle (Dudley Edwards, 1989: 18).[48] The *Claim of Right* asserted that 'within the United Kingdom the Scots are a minority which cannot ever feel secure under a constitution which, in effect, renders the treaty of union a contradiction in terms, because it makes no provisions for the safeguarding of any rights or guarantees' (ibid: 19). It proposed the creation of a Constitutional Convention, composed of political parties and civil society organisations, to devise a blueprint for a Scottish legislature (ibid: 44).

The *Claim of Right* was supported by 58 of Scotland's 72 MPs, seven of its eight MEPs, 59 of the 65 local authorities, as well as a number of civil society organisations,

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[48] *The Claim of Right* was the third such Claim which had been published in Scotland. The others being in 1689 and 1842.

including trade unions and ecclesiastical bodies (Mitchell, 2014: 236). The *Claim of Right* and ensuing Scottish Constitutional Convention (SCC) were dismissed by the Conservative government, but this merely ostracised the party in Scotland and in effect created a policy around which opposition parties in Scotland could effectively coalesce (Stewart, 2009: 212).[49] The SCC held its first meeting on 30 March 1989 and in November 1990 published *Towards Scotland's Parliament*, a first draft of proposals for the establishment of a Scottish Parliament (SCC 1990).

In 1995, the SCC published its final report *Scotland's Parliament, Scotland's Right* and presented it to the Scottish people as a blueprint for the establishment of a Scottish Parliament. The report proposed the creation of a Parliament with 129 MSPs elected using the Additional Member System (AMS) with responsibility for a wide array of competences and tax-varying powers (SCC 1995). The Conservative Party dismissed the proposals, but they were endorsed by Labour, the Liberal Democrats and the SNP. In the 1997 general election, Major, once again, pursued an anti-devolution stance, but the Conservatives spectacularly lost the election and returned no MPs from either Scotland or Wales.

The New Labour government elected in 1997 held referenda in Scotland and Wales on devolution, with majorities in both territories returning affirmative votes in favour of the establishment of devolved legislatures.[50] Tony Blair was a phlegmatic devolutionist, but the New Labour approach to devolution built upon the 'tartanisation' of the Party that had occurred as a direct consequence of the growing popularity of the SNP in the 1970s (Geekie and Levy 1989). The New Labour approach stood in contradistinction to the previous Conservative governments' strategies. The union, considered inviolate and sacred to Thatcher and Major, was not to be abandoned, but adapted.

Devolution, however, 'was not necessarily about responding to demands for Scottish autonomy' (Interview with former Labour MP 1). Instead, it was predicated upon 'a combination of economics, electoral calculations and perceptions of political advantage', designed to strengthen the union and cement Labour's electoral dominance (Dorey, 2008:

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[49] The SNP after initial hesitance also ruled out participation in the Convention. It believed the Labour Party would dominate and thus the independence issue would become marginalised.

[50] In Scotland a two-pronged referendum took place in which 74.3% supported the establishment of a parliament, while 63.5% voted in favour of it having tax-varying powers. The referendum on Welsh devolution was held on the same day, 50.3% voted in favour a Welsh Assembly, although the Assembly, unlike the Scottish Parliament, had no legislative or tax-varying powers. In Northern Ireland, a referendum was held in 1998 on the Good Friday Agreement (GFA). 71% voted in favour of the GFA and the re-establishment of Stormont, Northern Ireland's devolved assembly.

203). In a similar vein, a Conservative interviewee attested that 'devolution is and remains a unionist device not a nationalist device. It is designed to make the union stronger not to break it apart' (Interview with Conservative MSP). A similar argument was advanced by Nationalist interviewees who argued that while devolution may well be a 'stepping stone' to independence, it was institutionalised to maintain Labour's dominance in Scotland: 'Westminster would never instinctively want to devolve powers…they saw it [devolution] simply as a way of buying off secessionists' (Interview with SNP MSP 1). George Robertson's oft-cited, yet improvident remark that devolution would 'kill nationalism stone dead' underlines this notion (Watt 2011).

Blair, as was highlighted above, was sceptical at worst and lukewarm at best with regards to devolution and in a similar fashion to Thatcher and Major never explicitly denied the right of independence to Scotland. In his memoirs, he underlined his reluctance to devolution arguing that:

> It is a dangerous game to play. You can never be sure where nationalist sentiment ends and separatist sentiment begins. I supported the UK, distrusted nationalism as a concept, and looked at the history books and worried whether we could get it through. However, though not passionate about it, I thought it inevitable. Just as the nation-state was having to combine with others in pushing power upwards in multinational organisations to meet global challenges, so there would be inexorable pressure to devolve power downwards to where people felt greater connection. We didn't want Scotland to feel the choice was status quo or separation. And it was a central part of our programme for Scotland (Blair, 2010: 251).

Blair differed from both Thatcher and Major in that he believed there was a halfway house between the status quo and independence and considered devolution essential to ensure the continuation of the union. The implementation of devolution legislation indisputably marked a significant shift from the previous approaches of the Conservative administrations, but while shrouded in the language of decentralisation, democratisation and modernisation, it was ultimately concerned with ensuring Labour dominance in the periphery and institutionalising the centralised organisation of decentralised structures.

As demonstrated above, the growing salience of the SNP from the 1970s onward introduced an important dynamic into the Scottish and British party systems that persists until today. As Hepburn (2011: 1) notes, 'Stateless nationalist and regionalist parties (SNRPs)', such as the SNP, 'have become a permanent feature of the European political landscape' (see also Lynch 2009), precipitating processes of reform in state-wide parties to

adapt to the new devolved polity context. In the UK, all three state-wide parties – Labour, the Conservatives and the Liberal Democrats – have had to adapt in terms of party organisation and policymaking, to name just two, in order to better fit and manage the new institutional reality of devolved legislatures with politically active SNRPs (see Convery 2016; Detterbeck and Hepburn 2018; Fabre 2008; Fabre and Swenden 2011; Hopkin 2009; Hopkin and Bradbury 2006; Swenden and Toubeau 2013). This territorialisation of state-wide parties has engendered a number of changes and challenges for the UK's state-wide parties, albeit predictions of the demise of state-wide political representation are premature. As Detterbeck and Hepburn (2018: 135) note, [state-wide] parties must now adapt and respond to several loci of decision-making at different territorial levels, to compete with nationalist and regionalist parties, and to accommodate the territorial interests of the regional electorate'.

Figure Three: Scottish Parliament Seats 1999-2016
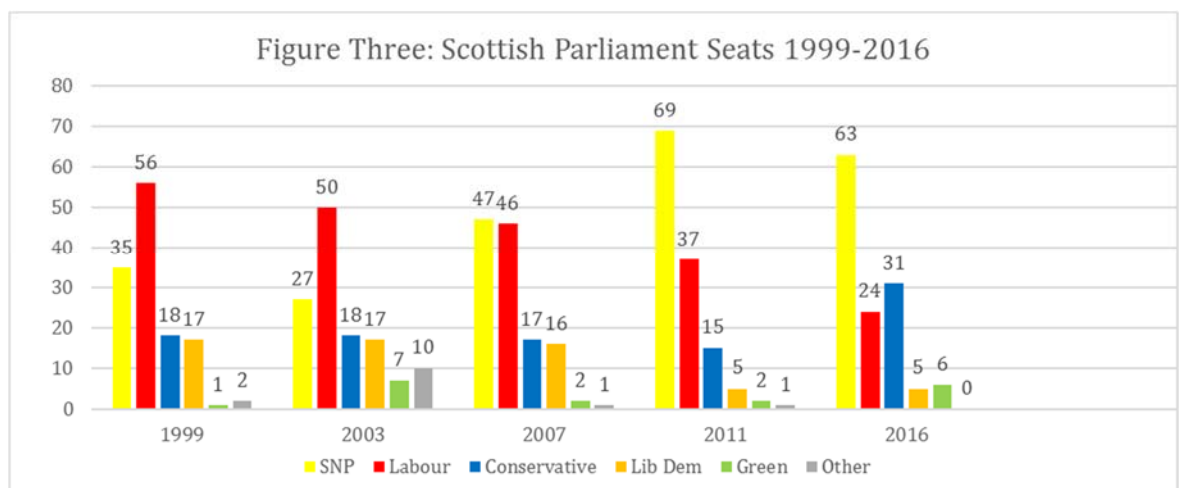
Source: Own elaboration based on Audickas et al (2017).

The first election to the Scottish Parliament, held on 6 May 1999, saw Labour maintain its status as Scotland's largest party. With a total of 56 seats (see figure three), Labour was unable to form a majority government and entered into coalition with the Liberal Democrats. Following the 2003 election, Labour was once again returned as the largest party, albeit 6 seats fewer than in 1999 and re-entered coalition with the Liberal Democrats. During both terms, the SNP remained the largest opposition party, although in 2003 the party returned only 27 MSPs, eight fewer than in 1999. In terms of legislation, both sessions of Parliament showed continuity with Labour policies in Westminster (Keating and Cairney 2009), but the Scottish Executive did exercise its new found political autonomy and introduced flagship

policies, including free personal care for the elderly, the abolition of up-front tuition fees for Scottish-domiciled and non-British EU students and the smoking ban.

The initial experience of devolution in Scotland (and Wales) was 'relatively quiet' owing to the political congruence between the devolved administrations in Holyrood and Cardiff Bay and the central government in Westminster (Trench, 2008: 15). This resulted in a significant level of 'organisational cohesion' and 'programmatic congruence', and thus reduced opportunity for conflict between the centre and the periphery (McEwen et al, 2012: 323). While in Wales there was an almost immediate conversation about an increase in the powers and competences of the Welsh Assembly, there was relatively little debate about constitutional issues in Holyrood. The 2003 election campaign featured some chatter on constitutional issues, but it was the re-election of Alex Salmond as SNP leader in 2004 and his election as First Minister in 2007 that brought the topic to the fore.

The next section further charts the development of territorial politics in Scotland beginning with the SNP's election to office in 2007.

4.3 2007 – 2018 Chartering New Territory

4.3.1 2007 -2011: Challenging Devolution, Challenging the Union

The third election to the Scottish Parliament on 3 May 2007 was a historic event in the history of Scottish politics. For the first time in over half a century, albeit by the narrowest of margins, Labour lost its crown as Scotland's governing party. The SNP, a party 'often ridiculed, patronised and caricatured by opponents', was transformed from a fringe party of protest to *the* party of government (Hassan, 2009: 1). Talks to form a coalition with the Liberal Democrats ultimately failed and the SNP subsequently formed a minority government, securing the support of the Scottish Greens on a confidence and supply basis (Lynch, 2009: 623). The SNP's election to office, however, did not result from or precipitate a surge in support for secession, but instead 'coincided with an unusually low level of support for independence' (Curtice et al, 2009: 58). The SNP's electoral campaign committed the party to independence and the holding of a referendum, but was more focused on 'emphasising its ability to provide Scotland with effective (devolved) government' (ibid: 6).

In August 2007, only months after taking office, the Scottish Executive (2007) published *Choosing Scotland's Future: A National Conversation*, a White Paper on independence.[51] The White Paper presented the SNP's case for independence, yet this was framed within a wider discussion on how the existing devolution settlement could be advanced. Tellingly, the SNP-led government, cognisant of the minority support for independence, dedicated more space to discussing the devolution of further powers than it did independence. The SNP, however, remained committed to increasing support for independence and launched the National Conversation to do so. The National Conversation served as an open consultation with the Scottish public carried out via online discussion forums and a number of public consultation meetings, with the primary objective to build support for independence (Harvey and Lynch 2012).

In reaction to the SNP's electoral victory and increased focus on constitutional politics, pro-union forces in the Scottish Parliament, backed by the UK government, supported the establishment of a commission to review the devolution settlement and achieve, in the words of Scottish Labour's then leader, Wendy Alexander (2007), 'a more balanced home rule package.' The Commission on Scottish Devolution (CSD - also referred to as the Calman Commission), with a total of 15 members from political parties, academia, business and community organisations, was established in 2008. It was tasked:

> To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom (CSD, 2009: 3).

Calman stood in direct contrast to the SNP's National Conversation, given its 'terms of reference…were explicitly unionist' (Mullen, 2009: 38). There was no discussion of the independence issue, nor was there any explicit engagement with the general public. The Commission's final report, – *Serving Scotland Better: Scotland and the UK in the 21st Century* – published in 2009, recommended a number of revisions to the existing devolution framework, including the devolution of responsibility for airguns, speed and drink-driving limits; administrative responsibility for elections, and increased involvement for Scottish ministers related to BBC and Crown Estate appointments. The report emphasised the importance of a collaborative working relationship between the devolved administrations

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[51] The SNP renamed the Scottish Executive to the Scottish Government in September 2007.

and central government and called for improved interparliamentary (IPR) and intergovernmental relations (IGR), as well as changes to the structures of the Joint Ministerial Committee (JMC). The boldest recommendations of Calman related to finance. The Commission ruled out the devolution of Value Added Tax (VAT) and National Insurance but recommended the partial devolution of income tax which would see the creation of a new Scottish Rate of Income Tax.[52] In addition, the Commission recommended the devolution of a number of smaller taxes: air passenger duty, aggregates levy, landfill tax and stamp duty land tax, as well as granting Holyrood significant borrowing powers.

The Calman proposals signified an expansion of the powers of the Scottish Parliament and a move beyond the initial settlement of devolution envisioned in the late 1990s. It sought to strengthen the financial accountability of the Parliament as well as improve the operation of devolution. While Calman sought to achieve the aforementioned tasks, it equally sought to engender a new devolution settlement that would challenge support for the SNP and independence. The Scottish government, despite describing the remit of Calman as 'too narrow' and the devolution of further competences as 'modest', supported several of these recommendations (Scottish Government 2009). It welcomed the devolution of a number of taxes and borrowing powers but was critical of the commission's limited recommendations on income tax. The Scottish government favoured full fiscal autonomy – whereby Scotland would be responsible for all tax raising and spending within its borders – but this was explicitly rejected by Calman (CSD 2009).

The pro-union parties rallied round the recommendations of the Calman Commission and included a commitment to them in the electoral manifestoes for the 2010 general election (Mitchell and Van der Zwet, 2010: 715). No party achieved an outright majority in the election, resulting in a coalition government between the Conservatives and Liberal Democrats. The coalition government committed itself to implementing the Calman proposals and David Cameron, the first PM to lead a Conservative government since Major, promoted a new respect agenda with regards to the relationship between the UK government and the devolved administrations (Randall and Seawright, 2012: 109). In contrast to the intransigent unionism of previous Conservative PMs, Cameron pursued a 'pragmatic unionism' approach: a strategy that respected the divergence and distinctiveness of the devolved nations while committed to keeping them within the parameters of the union (ibid).

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[52] Under European law, Member States are unable to have different levels of VAT in a single state.

Calman's recommendations were translated into the *Scotland Act 2012*, but by the time it reached the statute book it had been overtaken by a series of electoral and political events, not least the election of a majority SNP government in the 2011 Scottish Parliament election.

4.3.2 2011-2016: From Rhetoric to Referendum

In 2011, the SNP managed to achieve what the electoral system for the Scottish Parliament had been designed to eschew: a majority government. With a total of 69 seats, 53 of which had come from the First Past The Post (FPTP) constituency vote, the SNP became Scotland's first, and to date only, majority government. As in 2007, the electoral triumph of the SNP was not accompanied by a swing in favour of independence: 'the SNP won its majority for that most mundane of electoral reasons: most voters thought that the party would do a better job in office than its rivals' (Johns et al, 2013: 58). The Party had been successful in its aim of demonstrating competence in government, but its efforts to build support for independence had so far proved less successful.

A referendum on independence had been a central plank of the SNP's election manifesto, yet while there was much consensus that the prospect of a referendum was inevitable, the route to achieve this was significantly disputed. The Scottish government argued that the existing powers of the Scotland Act imbued the Scottish Parliament with the power to hold a non-binding referendum (Scottish Government 2012). The UK government, on the other hand, contested this view and argued that only the UK Parliament was able to legislate on a referendum (Scotland Office 2012).

In line with the history of British political culture, which has tended to eschew taking contentious matters to court, the issue was amicably resolved through political channels and the Edinburgh Agreement, signed on 15 October 2012 by the British and Scottish governments.[53] The Agreement confirmed that a referendum would take place under a Section 30 Order of the *Scotland Act 1998* which would entail a temporary transfer of legislative competence to the Scottish Parliament to hold a referendum.[54] The Agreement contained a sunset clause stating the vote must be held before 31 December 2014 and feature only one question on independence. A multi-option referendum was rejected by the UK

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[53] This will be examined in further detail in section four.
[54] Section 30 of the Scotland Act allows the powers of the Scottish Parliament to be extended by delegated legislation.

government; there was to be no offer of further territorial reform.

Further to the stipulation that only one question was to feature on the ballot, the question was to be approved by the independent Electoral Commission, the referendum was to be conducted in line with the principles of the *Political Parties, Elections and Referendums Act 2000* and the franchise to be extended to 16 and 17-year olds if the Scottish Parliament chose to do so. The following year, the Scottish Parliament passed the *Scottish Independence Referendum (Franchise) Act 2013* and the *Scottish Independence Referendum Act 2013*, which together detailed the framework through which the referendum was to be conducted. The franchise was extended to 16 and 17-year olds, the date of the vote fixed for 18 September 2014 and voters would be given a binary question: *Should Scotland be an independent country?*

As discussed earlier, initial quarrels between the governments over the competence to hold a referendum were amicably settled through political agreement. Defending his decision to facilitate the holding of a referendum, Cameron admitted that it was indisputably a risk, but the costs of not doing so were deemed much worse. He commented:

> I felt, as the prime minister of the UK, I had a choice. I could either say to them "well you can't have your referendum, it is for us to decide whether you should have one." I think that would have led to an almighty and disastrous battle between the Westminster Parliament and the UK government and the Scottish government and the Scottish first minister (Cameron, quoted in Watt 2014).

In consonance with his 'pragmatic unionism' approach, the PM suggested he had a moral responsibility to enable the vote to go ahead. While it is evident that this rested on the presumption that voters would overwhelmingly reject independence, and thus an easy campaign for the 'No' side, Cameron's approach was applauded by both sides.[55] Additionally, Cameron became 'an unlikely hero' for other secessionist movements, specifically Catalonia (Cetrà 2014). It became evident, however, that Cameron's pragmatism had clear limits. The insistence that the referendum should feature only one question underlined the majority opinion among the pro-union parties that further devolution should not be conceded to Scotland in return for a 'no' vote.

In November 2013, the Scottish government published a 600-page White Paper: *Scotland's Future: Your Guide to an Independent Scotland*, the first detailed blueprint of

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[55] This was corroborated in interviews.

the SNP's vision of an independent Scottish state (Scottish Government 2013). Interestingly, the SNP vision of an independent Scotland was, in the words of Keating (2015b: 78), 'an attenuated form of independence', given that the blueprint 'retained much of the infrastructure of the union'. Indeed, in a series of speeches prior to the referendum, the then First Minister Alex Salmond, sought to soften the hard image of independence by pointing out that Scotland and the UK were joined in 'six unions' (political, social, monetary, monarchical, defence and European), yet the SNP only wanted to exit the political one (Salmond 2013). In the event of independence, Scotland would retain membership of the other five unions.

Notwithstanding initial opposition to enhance devolution, increasing support for independence, as underlined by opinion polls, forced the hands of the pro-union forces to offer more devolution in the event of a no vote. The pro-union parties, therefore, campaigned on the basis that a 'no' vote would set in train a process whereby the powers and competences of Holyrood would be extended. 'The Vow', an agreement among the three leaders of the Labour, Conservative and Liberal Democrat parties, confirmed this shift in policy. Published on the front page of the *Daily Record* only two days before the referendum, the three unionist parties pledged to deliver 'extensive new powers' to Holyrood in the event of a 'No' vote.[56] It was no longer a choice between independence or the status quo, but independence and further devolution.

On 18 September 2014, following a dynamic and engaging campaign, on a turnout of nearly 85%, voters in Scotland by a margin of 55% rejected the SNP's constitutional vision of independence. Speaking in front of Downing Street on the morning after the vote David Cameron announced the establishment of the Smith Commission – under the chairmanship of Lord Smith of Kelvin – 'to oversee the process to take forward the devolution commitments with powers over tax, spending and welfare all agreed by November and draft legislation published by January' (Cameron 2014).

The Smith Commission involved the input of all five parties represented in the Scottish Parliament. Yet, while the pro-independence SNP and Greens put forward proposals in favour of devolving full powers over tax, borrowing powers and welfare to the Scottish Parliament, the pro-union parties were much more modest. There was, however, a general consensus among all parties that Holyrood should be given enhanced tax powers (Kenealy

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[56] 'The Vow' came as a result of a YouGov poll on 6 September 2017 predicting a two-point lead in favour of independence.

and Parry 2017). On 27 November 2014, in line with the tight schedule outlined by the PM, the Smith Commission delivered its report and recommended that: the Scottish Parliament collect all income tax levied on salaries in Scotland with discretion to alter the rates and thresholds; receive additional borrowing powers; be granted limited devolution over several social security benefits (including attendance allowance, disability living allowance and housing benefit); receive new powers to allow the Scottish Parliament to create new benefits in devolved areas as well as supplement the rates of UK benefits; an extension of the franchise to 16 and 17 year olds in Scotland; make the Scottish Parliament a permanent institution; put the Sewel Convention on statutory footing; encourage greater intergovernmental cooperation and increase the role of Scottish ministers in European policy making (The Smith Commission 2014). The Smith recommendations served as the basis of the *Scotland Act 2016* and for the UK government amounted to making Scotland 'one of the most powerful devolved parliaments in the world' (BBC News 2016).

The 2015 general election resulted in the replacement of the Conservative-Liberal Democrat coalition with a majority Conservative government. The election came less than a year after Scotland's independence referendum and during the passage through parliament of the *Scotland Act 2016*. Paradoxically, the SNP, the party that lost the referendum, emerged as victors in the 2015 election. Under the leadership of Nicola Sturgeon, who replaced Alex Salmond in the aftermath of his resignation in 2014, SNP membership surged to make it the third biggest party in the UK and, in the aftermath of the 2015 election, the third biggest party in the House of Commons, winning 56 of Scotland's 59 seats. In the 2016 Scottish Parliament election the SNP hoped to repeat its electoral success, yet was two seats short of a majority.

4.3.3 2016 and Beyond: A New Period of Constitutional Turbulence

In the 2016 Scottish Parliament election, for the third time, the SNP was re-elected to government, albeit two seats short of a majority. For the first time in the Parliament's history, the Scottish Conservatives secured more seats than Labour, while the Scottish Greens increased its number of MSPs to six, just one short of its 2003 record of seven (Anderson 2016a). The loss of six seats meant the SNP had lost its parliamentary majority, but the success of the Greens ensured a pro-independence majority of MSPs (69 of 129) was still present in the Parliament. Unlike the 2007 and 2011 electoral campaigns, the SNP did not

include an explicit commitment to a referendum on independence in its manifesto, but argued in favour of another referendum in the event of 'clear and sustained evidence' of an increase in support for independence or 'a significant and material change' in circumstances, such as the UK's withdrawal from the EU against the wishes of Scottish voters (SNP, 2016: 24).

In the run up to the EU referendum successive polls predicted an unambiguous vote for Remain in Scotland, while increasing support for Leave elsewhere in the UK. The EU referendum campaign unfolded differently in the four nations of the UK. In Scotland, the absence of any major political party in favour of Leave resulted in a pro-EU dominated campaign (McHarg and Mitchell, 2017: 512), while in England and Wales Euroscepticism was the order of the day (Henderson et al 2016). Part of the pro-EU sentiment in Scotland is rooted in the independence movement's framing of the independence debate which favours an independent Scotland firmly anchored within the parameters of the EU (Anderson and Keil 2016). In England and Wales, however, predominant public opinion endorses a diametrically opposing view: the EU is seen to limit sovereignty. In the words of Curtice (2017: 49), 'whereas in England and Wales membership of the EU has often been portrayed as a constraint on the sovereignty of the UK, in Scotland it has been presented as helping to facilitate the realisation of Scotland's sovereignty.'

In December 2015, the *EU Referendum Act 2015* was given royal assent. The bill, as laid out in the Conservatives' manifesto, legislated for an 'in-out' referendum on whether the UK should remain a member of the EU. Given the pro-EU position of the Scottish government, as well as poll results which predicted a significant majority in Scotland in favour of Remain, Nicola Sturgeon proposed a double majority rule which would require all four nations of the UK to vote Leave for the result to take effect. In Westminster, the SNP tabled an amendment to the referendum bill to include this proposal, but it was flatly rejected. The rejection of the double majority rule, as will be discussed, is a result of the unitary interpretation of the constitution still prevalent in Westminster despite the ongoing process of political decentralisation or the fact that the UK is not and never has been a typical unitary state. McCorkindale (2016: 357), for example, argues that while the UK government's position on the double majority rule was 'unsurprising and constitutionally justifiable', it undermined the plurinational union-state character of the UK. Cameron, much like his Conservative predecessors, seemed to be thinking in unitary not plurinational terms.

Table Three: 2016 EU Referendum Results

	Leave	Remain	Turnout
UK	51.9%	48.1%	72.2%
England	53.4%	46.6%	73%
Northern Ireland	44.2%	55.8%	62.7%
Scotland	38%	62%	67.2%
Wales	52.5%	47.5%	71.7%

Source: Own elaboration, based on data from Uberoi (2016).

On 23 June 2016, on a turnout of circa 72%, just under 52% of voters elected to end the UK's 43-year-old relationship with the EU (see table three). Yet, while it was clear that a majority, however slim, had belied poll predictions and voted Leave, the varying results from the UK's four nations resulted in an almost immediate debate regarding the validity of the result and the future constitutional landscape of the UK. Voters in Scotland and Northern Ireland voted unambiguously to remain, while in England and Wales, thin majorities voted to leave. The results of the EU referendum illuminated the image of a divided state. What is more, the fact that Scotland would leave the EU as a consequence of votes cast elsewhere in the UK, reignited debates on Scotland's future constitutional status.

Having campaigned for Remain, David Cameron resigned as PM and was replaced by former Home Secretary, Theresa May. In several speeches after becoming PM, May sought to placate the devolved governments by assuring that they would play a full and engaging role in the process of withdrawing from the EU (May 2016a). Consequently, the UK government established a new JMC on EU negotiations (JMC (EN) to bring together ministers from the UK and devolved governments. Meetings of the JMC (EN), as well as the actual JMC itself, however, have proved more controversial than constructive, including complaints that the views and concerns of the devolved administrations are still superseded by the priorities of the UK government (Interview with SNP MP).[57] Academic analysis of JMC structures substantiate the frustrations of the devolved governments. McEwen and Petersohn (2015: 196) contend that the JMC's role as a 'forum for communication and shared learning, not decision-making', limits opportunities for the devolved administrations to influence government policy. Moreover, the UK government predominantly chairs and sets the agenda for such meetings, thus, for Fletcher and Zahn (2017: 108), 'it is hard to see how such a structure could deliver a genuinely inclusive debate that shapes and informs the

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[57] This will be further developed in section four.

Brexit roadmap for the UK, taking account of the differing interests and voting patterns of the devolved nations'.[58]

In 2016, the Scottish government published two White Papers in response to the decision to leave the EU. The first, *Scotland: A European Nation*, published in November 2016, was written for an international audience, detailing Scotland's historical relationship and engagement with the EU as well as its position towards withdrawal negotiations. The following month, the government published *Scotland's Place in Europe*, which set out a number of options for Scotland's future: the UK retaining single market membership, bespoke arrangements for Scotland and further devolution of powers to the Scottish Parliament (Scottish Government 2016). The Scottish government posited the White Paper as a compromise solution and was followed by an announcement that it would take calls for a second independence referendum off the table in return for a soft exit from the EU, that is, retaining membership of the European Single Market (BBC News 2017a). Theresa May vowed to examine the proposals of the devolved governments in detail but her intention to withdraw from the Single Market impeded any potential progress in securing a compromised solution. As a result, and backed by the Scottish Parliament by a margin of 69 to 59 in March 2017, the Scottish government called for the power to hold a second independence referendum. This was not flatly rejected by the UK government, but the PM stated that 'now is not the time' for such conversations (BBC News 2017c).

Further to the dispute between the governments on the shape and form of the UK's withdrawal from the EU, there was vehement disagreement over the UK government's decision to trigger Article 50 – the formal process to initiate the UK's withdrawal – without the consent of the devolved administrations. The UK government argued that the reserved nature of foreign affairs rendered moot any obligation to consult the devolved nations. The devolved administrations, on the other hand, challenged this unitary and centralist vision and argued that since EU legislation was embedded within the frameworks of the devolved settlements and withdrawal from the EU would substantially affect the competences of the devolved governments, the UK government was obliged under the Sewel Convention to request the consent of the devolved legislatures. The issue was discussed in the UK Supreme Court (UKSC) ruling on *Miller V Secretary of State for Exiting the European Union*, whereby the judges concluded that while political conventions such as Sewel played an

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[58] This point was also corroborated in interviews.

important role in the British political system, this did not amount to a legal obligation on the part of the UK government to seek the consent of the devolved parliaments to trigger Article 50 (UKSC 2017).

Another area of contention between the devolved and UK governments relates to the reallocation of powers post-withdrawal. Article 11 of the UK government's original European Union (Withdrawal) bill introduced the new status of 'retained EU law' which would ensure that all powers returning from the EU, whether devolved competences or not, would revert to Westminster control, with the possibility that at a later date some of these powers could be devolved. The devolved governments vehemently opposed what they saw as a 'naked power grab' and believed Clause 11 would amount to a significant rolling back of devolution (BBC News 2017d). Given that Scotland, for example, is a retaining model of devolution, whereby all matters are devolved unless explicitly reserved to the UK Parliament, there was evident merit in the Scottish government's argument. Anderson and Gallagher (2018: 37) argue that while the UK government may well 'be tempted to arrogate to itself the powers currently exercised by Brussels', such a move 'would breach the constitutional conventions regarding the devolution agreements' and further jeopardise the already fragile union. In a similar vein to the UKSC's ruling on the triggering of Article 50, the UK government, contrary to the decentralising logic of devolution and plurinational nature of the state, seemed to be endorsing a unitary and centralising approach to EU withdrawal. Amendments to the bill ensued in order to placate the devolved administrations' concerns over the repatriation of powers, but while these, including a commitment that those powers repatriated to Westminster instead of Holyrood or Cardiff Bay could be devolved to Scotland and Wales after a seven-year period, placated the Welsh government which eventually consented to the bill, the Scottish government did not follow suit.

In April 2017, in an attempt to increase her majority and strengthen her government's hand in Brexit negotiations, the PM called a snap general election. The election outcome, whereby the Conservatives lost 13 seats and were thus stripped of their parliamentary majority, confounded pollsters, politicians and the public alike, and resulted in a controversial confidence and supply arrangement with Northern Ireland's Democratic Unionist Party (DUP) (Tonge 2017). In Scotland, the SNP remained the country's largest party in Westminster, but lost 21 seats. What is more, and exceeding expectations, it was the Conservatives that appeared to win the election in Scotland, winning 12 seats from the SNP. Territorial politics, as a result, remains high on the political agenda.

The next section provides empirical analysis on the merits and limitations of the Scottish autonomy model.

4.4 Examining the Merits and Limitations of Scottish Devolution

The development of constitutional politics and the evolution of devolution in Scotland over the last decade begs the question: *is devolution limited in its ability to accommodate Scottish demands related to autonomy and secession?* The previous section demonstrated that since the SNP has been in power there have been very few instances of constitutional calm. Instead, a prolonged period of constitutional turbulence has permeated the Scottish political system and despite a referendum with the potential to settle the matter, Scotland's future constitutional status remains in flux. This section thus examines the abovementioned question and divides the analysis into two sections: the merits and limitations of devolution.

4.4.1 The Merits of Devolution

Devolution to Scotland, as well as to Northern Ireland and Wales, precipitated a cascade of changes to the political and electoral landscapes of three of the four component nations of the UK. While some of these changes were intended, a number were less so and have been thrown up as a result of the evolving process of devolution. As detailed in Chapter Two, different forms of territorial autonomy – devolution included – are employed by central governments in order to address a number of issues related to demands for recognition and empowerment of minority nations within plurinational states. Devolution, in this respect, met a pent-up desire for political decentralisation in Scotland, facilitating the institutional expression of Scottish distinctiveness and providing a legislature in which public policy could be tailored to national needs (Interview with SNP MSP 9).

Overall, there is a general consensus, among academics, politicians and the public alike, that devolution has worked well for Scotland. The pro-union Calman Commission, established almost ten years after the inception of devolution, asserted that it had been a 'real success' (CSD, 2009: 5), while the SNP in its independence White Paper sought to build on the success of devolution to make the case for secession (Scottish Government 2013). Yet, while for pro-union representatives the establishment of the Scottish Parliament has proved

successful because it continues 'to hold the union together' (Interview with Conservative MSP), pro-independence supporters view it and any devolution of further powers as a mere 'stepping stone to independence' (Interview with SNP MSP 7).

4.4.1.1 The Easy to Adapt Constitution

The UK is one of only few countries in the world that lacks a codified constitution. Much of its constitutional practice is written, but it is not collated in one single document and instead has developed through parliamentary legislation and political conventions. In recent years, there has been increased discussion on the merits and drawback of codifying the UK's constitution, but so far, no consensus has been reached (Bogdanor 2009).

The UK's uncodified constitution means that it eschews 'the prima facie rigidity of codified constitutions' and this has been one of the principal strengths of the UK's autonomy arrangements (Brouillet and Mullen, 2018: 50). The substantive symbolic recognition and institutional arrangements afforded to Scotland even before devolution in 1999, including administrative devolution and the establishment of the rather powerful Scottish Office, developed with relative ease as a result of the UK's lack of a codified constitution and willingness to cater for Scottish distinctiveness. As McEwen and Lecours (2008: 239) note, 'states without a codified constitution may find it easier to adopt discourses and symbolic practices which can emphasise the multinational character of the state and give recognition to the national minorities within it.' The UK is a case in point.

The flexibility of the UK constitution vis-à-vis devolution is evident in the various Scotland Acts which have devolved further powers to the Scottish Parliament. These Acts have enhanced the legislative and fiscal architecture of the Scottish Parliament and were passed in Westminster without any requirement for special legal procedures for amendment. This rather smooth process contrasts with the experiences of other political systems – both mononational and plurinational, unitary and federal – whereby constitutional change is a much more cumbersome and complicated process (Benz and Knüpling 2012). The UK, on the other hand, avoids much of the intractable difficulties, angst and momentousness that normally surrounds constitutional reform.

Constitutional change or amendments are enacted through ordinary legislation to the extent that 'laws changing the constitution are undistinguishable from any other law passed

by Parliament in everyday politics' (Behnke and Benz, 2009: 226). The paucity of institutional and/or legal hurdles to enact territorial reform has enabled successive UK governments to quickly react to the highly dynamic circumstances of devolution and attempt to secure a stable, albeit dynamic, equilibrium as relates to territorial politics. The success of the UK's ability and willingness to adjust the devolution settlements to manage the mobilisation of countervailing powers in the devolved political systems is further illuminated when compared to the experiences of other countries. Some interviewees, for example, drew upon the Spanish case – whereby territorial reform has proved a highly controversial and complicated topic – to illuminate the strength of UK devolution in being able to manage and evolve with the dynamic circumstances of political reality (Interviews with Conservative and SNP MSPs).

The tendency to take a more dynamic approach towards territorial reform has meant that UK governments have tended to avoid large scale constitutional reviews. It is a truism that a number of devolution commissions have taken place since the inception of devolution, but these have developed in silos, focusing on only one specific devolved territory (Kenealy and Parry, 2017: 2). In lieu of large-scale constitutional reviews, territorial reform has evolved in the shape of incremental adaptation resulting in a more fluid approach to territorial settlements (Anderson and Gallagher, 2018: 40). In the words of Tierney (2017: 148), the UK's constitutional model:

> Has worked very well over several centuries, allowing the UK body politic to adapt itself smoothly to new developments such as the creation and amendment of the devolution settlements for Scotland, Wales and Northern Ireland since 1998, and the conclusion of the Edinburgh Agreement paving the way for the independence referendum.

The Edinburgh Agreement, which provided that power be transferred to the Scottish Parliament to hold an independence referendum, is lucid evidence of the flexibility of the constitution in dealing with evolving dynamics in the political system. There was, as already noted, disagreement between the Scottish and UK governments over the legal power to hold a referendum, but the UK's constitutional flexibility enabled it to avoid any difficult, prolonged and potentially destabilising debates as well as any legal challenge in the courts. Comparing the UK's approach with Canada, one Conservative MSP argued that while the

Canadian Secession Reference[59] is often held up as a benchmark in debates on secession in democratic countries, the Edinburgh Agreement went much further than the Canadian example:

> If you compare the Edinburgh Agreement with what the Supreme Court of Canada says in its famous Quebec Secession Reference ruling in the 1990s, the UK is much more generous than even Canada. What the Supreme Court of Canada said was if there was a Quebec secession referendum that resulted in what we would call a yes vote, that would trigger an obligation on Canada to negotiate, it would not trigger an obligation on Canada to let Quebec go. We said, the UK said, if Scotland votes yes, then Scotland becomes an independent state. Not if Scotland votes yes, we will talk about it (Interview with Conservative MSP).

The cooperation of both the Scottish and UK governments was ensured in the Edinburgh Agreement and guaranteed a clear legal framework for the referendum. This, notes Casanas Adam (2017a: 83), 'resulted in a fair and democratic process that was accepted by both sides' and underlined the flexible nature of devolution, particularly in managing potentially destabilising issues within a multilevel system.

The flexible and dynamic approach taken with regards to devolution can be both a merit and challenge. On the one hand, it is symptomatic of a paucity of strategic thinking which, rather than reinforcing the bonds that tie the union together, erodes such connections.[60] On the other hand, the elasticity of the UK approach to autonomy has enabled the facilitation of a model that has created a powerful autonomous parliament while at the same time pursuing an agenda that is able to take evolving circumstances into account. Territorial reform, for good reason, is often difficult to secure. States, particularly those which play host to minority nations, must ensure a stable equilibrium between rigidity and flexibility, yet this is often difficult to achieve (Benz 2013). The UK, on the other hand, and in line with the thesis advanced by Carl Friedrich as discussed in Chapter Two, has tended to take a non-static view of territorial politics and as such has proved successful, much more so than other plurinational countries like Canada and Spain, in recognising, accommodating and celebrating its plurinational makeup (see Basta 2017; McEwen and Lecours 2008). In viewing the politics of devolution as a process, successive UK governments have been able

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[59] The Reference declared that no province has a unilateral right to secede from the Canadian federation, but the secession of a province is possible within Canadian constitutional law if a clear question on secession is supported by a clear majority of voters. In the event, there would be a constitutional obligation on the federal government to enter into good faith negotiations with the seceding province (Rocher and Verrelli 2003).
[60] I will return to this point later in the chapter.

to quickly react to political events as well as engender debate and discussion on further reform without the momentousness and controversy found in other cases.

4.4.1.2 Low Level Litigation

The flexibility of the UK's constitution and processes of territorial reform tend to avoid the hyperactivity and sensitivity of mega constitutional moments as found in other cases. Linked to this, a subsequent strength of the UK's devolution arrangements is the fact that the legal system has played a minimal role in resolving disputes between the different levels of government. In lieu of reliance on judicial adjudication, UK elites have tended to resolve disputes via political agreements.

While the UK has been reluctant to use courts to settle constitutional disputes, legal proceedings vis-à-vis constitutional issues are an increasingly present characteristic of most plurinational and multilevel political systems (Aroney and Kincaid 2017). As argued by Tierney (2004: 247) 'the courtroom has become in recent years an even stronger focal point for constitutional disputes in contemporary democracies and it is before the courts that some of the most highly charged constitutional disputes have been played out in plurinational states.' In other plurinational states, including, Bosnia, Canada and Spain, courts have become key and at times controversial players in debates on territorial reform. In the UK, this has not been the case.

Courts have played a role in policing disputes and challenges to devolved legislation, but these have mainly centred on arguments related to human rights as opposed to disputes between different orders of government on the allocation of powers and competences (Thomson and Gordon, 2017: 349). The lack of reliance on legal proceedings, for one Conservative interviewee, is rooted in the fact that the UK's 'constitutional business is based on building consensus' rather than legal challenges (Interview with Conservative MSP). This is also a result of the uncharacteristically detailed allocation of powers in the *Scotland Act 1998* which thus decreased the potential for disputes between the Scottish and UK governments. This 'retaining model of devolution', which saw all powers devolved to Scotland unless otherwise stated, was 'a deliberate attempt to eliminate doubts [over which order of government controlled which power] and thus limited the possibilities for litigation'

(Brouillet and Mullen, 2018: 63).[61] The UKSC, as a result, has played a largely minimal role regarding devolution disputes.

As well as a clear delineation of powers, the relatively straight-forward process to amend legislation pertaining to the devolved settlements has also avoided reliance upon the courts. As is observed in most federal political systems, courts often play an important function in interpreting the constitution as well as facilitating its amendment (Benz and Knüpling 2012). Experiences from plurinational states show, however, that such a role can generate problems of legitimacy for courts, whereby the balance of power as a result of court decisions often tips in favour of the central level of government (Tierney, 2004: 252). In the UK, however, a cooperative parliament is all that is required to amend existing legislation and thus the courts have not, as of yet, played a prominent role in adjusting the devolution settlements.

A lucid example of the UK's ability to avoid controversial litigation pertains to the 2012 Edinburgh Agreement. As was noted earlier, there was disagreement amongst academics and politicians alike over the ability of the Scottish Parliament to hold a referendum on independence. While the Scottish government believed it already had the competence to hold a non-binding referendum, this was disputed by the UK government which argued that the constitution was a reserved matter and therefore not within the legislative competence of Holyrood. This could have resulted in a major legal showdown between the different orders of government, but instead was amicably settled through political channels. The Agreement avoided any possible legal challenge and represented a patent example of the UK's constitutional flexibility and pragmatism in 'keeping the constitution out of the courts and within the political system' (Casanas Adam, 2017a: 93). In so doing, legal disputes over competence allocation are reduced and potentially controversial litigation eschewed.

The lack of legal recourse in the UK has avoided much of the acrimony generated by litigation in other plurinational states. It is important to note, however, that while it is a truism that in terms of challenges to the devolved settlement, the experience of the UK has been rather smooth, challenges to Scottish criminal proceedings have proved controversial and have even led to the SNP questioning the composition and legitimacy of the English-dominated UKSC (McCorkindale et al 2017). This has also been the case in other minority

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[61] The literature also refers to a 'reserved powers model'.

nations, most recently in Spain, where decisions of the Constitutional Court have called into question its role as an 'impartial arbiter' (Casanas Adam, 2017b: 400). In addition, although over the last 20 years there has been very little controversy as relates to the courts and the devolution settlements, the already fraught complications of withdrawal from the EU has shown that, in the absence of proper functioning and effective IGR, or indeed, a willingness among governments to find an amicable solution, it may well be that recourse to the courts becomes a familiar feature of the British political system.

4.4.1.3 'A Powerhouse Parliament'

The *Scotland Act 2016*, enacted in the aftermath of the independence referendum, would, according to the UK government, result in the Scottish Parliament becoming a 'powerhouse parliament', that is, 'one of the most powerful devolved parliaments in the world' (BBC News 2016). While there remains significant speculation on whether the increase in powers and responsibilities of the Scottish Parliament is deserving of 'powerhouse' status (see McHarg 2016), there is no doubt that the *Scotland Act 2016*, as well as its precursor in 2012, significantly enhanced the autonomous responsibilities of the Parliament, particularly in the areas of taxation and welfare. This strong focus on autonomy has proved to be a significant asset to the Scottish devolution settlement: providing an electoral arena and platform in which the internal self-determination demands of Scotland can be expressed and in which legislation can be enacted and tailored to meeting Scottish specific demands and problems. This sense of support for devolution is not just shared by politicians of all political hues, but is equally shared among large swathes of the Scottish population. The Scottish Social Attitudes Survey, for instance, has consistently shown that those interviewed overwhelmingly support the Scottish Parliament and devolution settlement, albeit opinion differs as to what powers the parliament should or should not have. As the 2017 Scottish Social Attitudes Report makes clear, very few people believe that the Scottish Parliament and Government should have less influence and control over Scottish affairs to the extent that 'the proportion of people saying the Scottish Government should have most influence over the way Scotland is run has not dropped below 63% since this question was first asked in 1999' (Scottish Government, 2017: 20).

As will be discussed later, the lack of shared rule arrangements to accompany and offset the self-rule provisions in the UK's devolution settlements risks unravelling the union

as well as impinging on the ability and efficiency of the different orders of government to work together with regards to the shared competences between the parliaments. There seems to be, however, cross-party consensus that the focus on self-rule was a necessary provision in the initial devolution settlements in 1998. A number of interviewees commented, for example, that while there was now an apparent need to improve IGR as relates to concurrent policies such as taxation and welfare, devolution in the late 1990s met the demands of the Scottish electorate, civil society and political elite for a parliament with significant legislative autonomy. It was pointed out that Holyrood's legislative powers had enabled the parliament to deliver 'Scottish solutions to Scottish problems' (Interview with SNP MSP 6), mitigate against policies it disagreed with such as the Bedroom Tax (Interview with SNP MSP 5) and increase the standing and reputation of the institution itself (Interview with SNP MSP 7). This has worked 'to create a political centre for Scotland which turned out to be both competent and confident and growing in confidence' (Interview with Green MSP 1), as well as 'create an alternative centre of power that has electoral credibility' (Interview with SNP MSP 1).

The strong focus on autonomy has engendered a myriad of challenges for the Scottish and UK governments as well as for the future of the union itself, but equally has ensured the creation of a powerful political centre in Holyrood. In addition to these political guarantees, recent moves in the aftermath of the independence referendum to secure legal guarantees for the Parliament, including recognising the permanence of the legislature and government have further enhanced Scotland's autonomy status (Himsworth 2016).[62] Comparative analysis has also underlined this point. The Regional Authority Index (RAI), developed by Hooghe et al (2016), measures the levels of self-rule and shared rule in federal and decentralised systems.[63] In 2010, Scotland scored 14 out of a maximum 18 in terms of self-rule and had clearly come a long way in comparison with its pre-devolution score which was only one out of 18. The new powers devolved as part of the Scotland Acts in 2012 and 2016 have further increased the autonomy of the Scottish Parliament and according to McEwen (2016: 236) increases Scotland's score to 16. McEwen's analysis demonstrates that while

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[62] It is important to point out that despite the rhetoric surrounding the legal guarantees of Clauses One and Two of the *Scotland Act 2016,* the legal interpretation of these clauses remains questionable (see Mullen 2016). In fact, as was made clear in the UKSC ruling on *Miller V Secretary of State for Exiting the European Union,* the Sewel Convention, notwithstanding the intention to put it on statutory footing, remains a political not legal device.

[63] Self-rule is measured according to: institutional depth and policy scope, fiscal autonomy, borrowing capacity and the level of independence of legislature and executive (Hooghe et al, 2016: 25). Findings on the shared rule scale will be discussed in the next section.

Scotland's autonomy remains behind the Canadian provinces, Swiss Cantons and the federacies of the Åland and Faroe Islands, it has more power, and in some cases significantly so, than sub-state entities in other decentralised polities like Spain and Italy as well as the Länder, provinces, regions and states of the Argentinian, Australian, Austrian, Belgian, Brazilian, German and Mexican federations. Scotland, despite the UK not being a fully-fledged federation, is 'one of the most autonomous devolved systems in the world' (ibid: 237).

4.4.2 The Limitations of Devolution

As detailed above, devolution is imbued with an inherent flexibility that has benefited the evolution of the decentralised system since its institutionalisation in the late 1990s. The original devolution settlements have been under continuous review and while very little changed in Scotland from 1999 to 2007, the election of the SNP to government reignited what has come to be an enduring debate on enhancing Scotland's constitutional status. Notwithstanding the successes and benefits of Scottish devolution, a number of challenging limitations can also be identified.

4.4.2.1 The Piecemeal Approach

In 1998, William Hague (1998), the then leader of the Conservative Party, accused Tony Blair's New Labour government of embarking 'on a journey of constitutional upheaval without a route map.' The tranche of constitutional reforms pursued under New Labour met stern opposition and the government was often portrayed as a group of constitutional vandals. As was noted above, the ease at which the architecture of the UK's constitution can be amended is considered a strength of the UK's constitutional framework, ensuring that settlements are in effect consistently under review and easily modified when deemed necessary. On the other hand, the lack of formality and difficulty in enacting such reform has led to a piecemeal and incoherent package of reforms. To quote Flinders (2009: 385), successive UK governments have suffered and continue to suffer from a bout of 'constitutional anomie', that is, 'the introduction of reforms in a manner bereft of any underlying logic or explicit principles, combined with the inability to adopt a strategic approach that is sensitive to the interrelated nature of any constitutional configuration.' The

absence of a wider strategy in relation to devolution was one of the biggest criticisms levelled at the Blair government as relates to constitutional reform and is a patent limitation of the UK's autonomy arrangements. The absence of an agreed and definitive destination in Scotland's constitutional journey thus renders it conceivable that the establishment of an independent Scottish state is just as likely an outcome of the devolution project as the continuation of the union (Interview with SNP MSP 7).

Given the discussion of Friedrich's thesis in Chapter Two that constitutional politics should be fluid not static, it is hard to argue against a flexible approach to constitutional arrangements. But, the lack of finality as a result of the paucity of any long-term thinking on the accumulative impact of devolution seems to have aggravated rather than abated territorial tensions in Scotland. For one interviewee, devolution created 'an insatiable monster' that whet the appetite rather than quench the thirst for the devolution of more powers (Interview with Liberal Democrat MSP 1). Indeed, while devolution was hailed a unionist project, designed to embolden not weaken the union (Interview with Conservative MSP), the disjointed approach of reforms, coupled with a lack of vision, has 'weakened the [UK's] hard-core centre' and thus has jeopardised not strengthened the union (Interview with Green MSP 1).

The Labour Party, having introduced devolution, is responsible for the ad-hoc nature in which devolutionary politics has been developed by the centre. The Conservatives, however, despite vehemently criticising this piecemeal approach, have peddled a similar strategy since winning office in 2010. One Labour Party official observed that since the introduction of devolution nearly 20 years ago, neither Labour nor Conservative governments have made any really attempt 'to try and consolidate how the cohesive picture would exist' regarding territorial politics as a whole throughout the entire state (Interview with former Labour MP 2). Another official concurred with this point and argued that debate in Westminster on devolution is based on reactionary politics 'as opposed to actually thinking this is the right thing for Scotland' (Interview with former Labour MP 1). The existence of 'the Vow' and the tight schedule afforded to the Smith Commission evidence this point. Further powers were conceded to Scotland based on short term thinking, bereft of any wider constitutional consideration. In fact, while there is an argument that the pro-union parties' willingness to devolve more powers may have helped to – at least in the short-term – save the union, the lack of proper consultation paradoxically endangers it in the long-term.

The successive strategy of devolving power to buy off secessionists and stop independence, made easy by the absence of intractable procedures that require governments to secure compliance with amendment processes beyond a mere vote in parliament, has not abated secessionist demands in Scotland. In actual fact, this, compounded with the lack of consensus on the final destination of Scotland's devolution journey, has enabled pro-independence supporters to frame devolution as a mere staging post to independent statehood: 'the history of devolution and moving power from the central government down has not inhibited the drive for Scottish independence, it has very clearly strengthened it' (Interview with Green MSP 1).

The disjointed approach taken by successive UK governments has focused solely on self-rule and as a result has not abated demands for independence. Indeed, in line with the paradox of autonomy discussed in Chapter Three, this focus on self-rule may have merely exacerbated and thus heightened demands for further autonomy and secession. During the 2014 referendum campaign, pro-union parties emphasised the importance of the 'shared unions' between Scotland and the rest of the UK, drawing attention to the economic, political and social unions as integral to the functioning of both entities. Successive UK governments, however, have struggled to convey a coherent message of what the union is for (Interview with former Labour MP 1). This lack of vision ensues from the piecemeal manner in which territorial change is managed in the UK, whereby no single 'politics of devolution' can be identified (Interview with former Labour MP 2). Instead, there exists a series of bespoke arrangements through which power has been devolved to different territories, void of a broader conversation on the accumulative impact of devolution on the territorial governance of the UK as a whole. This, for instance, was considered crucial in order to meet the varying needs and historical demands of the separate devolved nations, but as pointed out in a report by the House of Lords Select Committee on the Constitution, the reactive nature of devolutionary politics has failed to view territorial politics through 'the lens of the union' and as such:

> There is no evidence of strategic thinking in the past about the development of devolution. There has been no guiding strategy or framework of principles to ensure that devolution develops in a coherent or consistent manner and in ways which do not harm the union (Select Committee on the Constitution, 2016: 30).

This lack of thinking is also evident in the approach pursued by the UK government vis-à-vis Brexit and the devolved nations, whereby the views of the devolved

administrations, rather than being taken into consideration as the viewpoints of democratically elected governments, are instead perceived as an 'irritation' (Interview with Green MSP 1). There is an argument to say that Theresa May's rhetoric after being chosen as PM to seek to find consensus among the nations and thus pursue a UK-approach to Brexit sought to correct some of the anomalies thrown up by devolution and the lack of holistic thinking about the union and how it is held together, but even this is a tenuous assertion. The approach advocated by May while it adopts the nomenclature of a UK-based approach, is in fact, a predominantly English approach which draws upon 'a particular and controversial interpretation of the UK constitution' (Blick, 2016: 1). This not merely disregards the understanding of the union from the devolved territories, but misunderstands, or indeed, chooses to ignore, the developments of territorial politics over the last 20 years. The weak development of an understanding of devolution, the purpose of the union and the plurinational reality of the UK state in Westminster and Whitehall thus necessitate deeper thinking as well as a change in mind-set which moves beyond unitary thinking reminiscent of the pre-devolution period. The UK state has changed dramatically in the last 20 years and as a consequence of EU withdrawal will be transformed further. The challenge, then, is to ensure a much more coherent and plurinational vision which does not seek to impose a particular constitutional order on its constituent components, as is apparent today.

4.4.2.2 The Absence of Shared Rule

The initial devolution settlements rolled out in 1999, as well as the subsequent amendments to the devolved acts, which have seen the competences and powers of the devolved parliaments and assemblies increase, have moved the UK in a more federal direction. Yet, while the federal features of the UK have been enhanced by moving power away from the centre and towards the various peripheries, it is far from becoming a fully-fledged federation. The lack of fundamental federal elements – the absence of a constitutional document dividing sovereignty between the different levels, the lack of formal mechanisms to ensure the sharing of power between the nations and central governments, the lopsided nature of devolution and the lack of enthusiasm among political elites – have thus far impeded any formal move towards federation (McEwen 2016).

As was discussed in Chapter Two, federalism implies an equilibrium between two elements, 'self-rule' and 'shared rule'. Devolution in the UK, however, has entirely ignored

the latter, resulting in a heavily decentralised periphery with very few formal mechanisms for cooperation or collaboration at the centre. Devolution has focused on building out, that is, decentralising power towards the periphery, but has failed to simultaneously build in: there is no formalised approach to ensure the inclusion and representation of the peripheral territories in central government decision-making processes.

The congruence of political parties in government at the inception of devolution initially provided a benign environment for working relationships between the different levels of government. The SNP consistently advocated reform of the UK's intergovernmental machinery, but upon taking office continued the previous informal approach to IGR (Cairney 2012). The Brexit debate, or more concretely, the need for strategic coordination and deliberation between the UK government and the devolved nations in the aftermath of withdrawal, has reignited focus on the inefficiency of the UK's IGR. More pressing, however, is the challenges that already exist as a consequence of the devolution of taxation and social security powers to the Scottish Parliament. Scottish devolution has moved beyond the binary divide of devolved and reserved powers, but no formal shared rule procedures have been developed to accompany this significant development.

Shared rule may refer to a number of arrangements, but 'scholars largely agree on the general meaning of shared rule as participation of lower-level units in higher-level decision making', typically a territorially representative second chamber or through IGR (Mueller, 2013: 84). Such mechanisms, however, are largely absent in the UK, in part a result of the focus on self-rule for the constituent nations, as well as the nature of devolved arrangements; powers were either devolved or reserved, they were not shared. Using Hooghe et al's (2016) RAI, it is possible to locate Scotland and its shared rule capacity in a comparative framework.[64] From a maximum of 14, the RAI scored Scotland 6.5 (ibid: 417). Although, according to the RAI this is comparable with other minority nations such as Quebec, it is comparatively behind the federalised cantons of Switzerland, the Länder in Germany and the ACs in Spain. McEwen (2016: 237), however, questions the 6.5 score for Scotland and instead alters this to only 2.5, noting that the maximum of 4 points awarded to Scotland in

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[64] The measures used by Hooghe et al (2016: 26) to examine shared rule range across five dimensions: the extent to which sub-state governments can influence the policy process of national legislation (second chamber); the extent to which authority is shared between different levels of government in the intergovernmental arena; fiscal control; borrowing co-determination and the role of sub-state governments or electorates in determining constitutional reform.

the ambit of constitutional change, suggests 'that regional governments could require referenda or exercise veto rights over constitutional change' which, she notes, is not legally guaranteed since such rights have emerged 'by convention rather than statute'. Indeed, the UKSC's judgement on Sewel further substantiates McEwen's assertion. Shared rule, thus, remains very weak.

The UK's constitutional architecture, however, in spite of the recommendations of the Smith (and Calman) Commission, which in line with advocating the new category of shared powers underlined the need for radical improvements to the largely informal network of IGR, has yet to formally institutionalise any efficient shared rule procedures. This, note McEwen and Petersohn (2015: 192-193), 'is especially problematic' because the most recent devolved powers as relates to taxation and social security not only increase the responsibilities of the Scottish Parliament, but concomitantly increases its 'dependence on central government decisions in related policy fields which remain reserved.' Effective channels and mechanisms to facilitate communication and cooperation between the Scottish and UK governments are now more important than they have been hitherto, yet no significant progress has been made to improve them.

The absence of a constitutionally guaranteed voice at the centre for Scotland is thus a significant limitation of Scotland's devolution arrangements. The establishment of a devolved legislature provided an arena to enhance the voice and power of the Scottish nation and illuminated the UK's commitment to accommodating and recognising its plurinational diversity. Yet, while recognising distinctiveness and granting political autonomy have been successful planks of the UK's accommodation strategy, the same commitment has not been mirrored in Westminster. The Scottish voice was increased at the periphery, but not at the centre. The issue of a Scottish voice at the centre was raised during debates on devolution in 1997 and in response to a question by former Liberal Democrat Leader, Charles Kennedy on the issue of securing a Scottish voice at the centre, the then Secretary of State for Scotland, Donald Dewar stated, 'in the important areas of foreign affairs, defence, economic affairs and in particular fiscal affairs, there will still be a need for a Scottish voice in the administration of the day in UK terms' (HC Deb, 31 July 1997, c462). No provisions beyond the Scottish Office and Secretary of State for Scotland, however, were envisaged.

McEwen and Lecours (2008: 225) contend that 'voice at the centre may be enhanced by the creation of a ministerial or bureaucratic position designed to speak on behalf of the national minority and articulate its collective policy and political preferences.' Enhancement

of minority voice may also include reserved representation of parliamentary seats, a territorially representative second chamber or the institutionalisation of power-sharing mechanisms, such as consociationalism. The UK is notable for the absence of the latter two mechanisms,[65] but did seek to enhance Scotland's voice through the establishment of the Scottish Office in 1885, headed by the Secretary of Scotland (upgraded to Secretary of State in 1926) and a civil service for Scottish affairs (Mitchell, 2014: 31).

The Secretary of State for Scotland is in effect Scotland's voice in the cabinet, but again, as was pointed out by a number of interviewees, his lone voice is impotent against a majority of non-Scottish MPs (Interviews with SNP MSPs). One SNP member observed that the incumbent Secretary of State for Scotland, 'represents a politics ethos that is really pretty marginal in Scotland' and thus questioned whether one Conservative MP was able to be Scotland's voice in cabinet, when the majority of other Scottish MPs hailed from different parties (Interview with SNP MSP 9). A Conservative parliamentarian did not entirely agree with this opinion but thought it necessary to reform central government infrastructure to ensure better representation of Scottish interests (Interview with Conservative MSP). Devolution, therefore, may have created significant space to increase Scotland's voice at the periphery, but the same cannot be said at the centre. There is no doubt that Scotland's parliamentary voice is heard in Westminster through the 59 MPs representing Scottish constituencies, but in terms of influencing the legislative and policy making processes, its influence remains rather marginal.

Standing arrangements to ensure the involvement of the devolved nations in the consideration of reserved matters in Westminster were discussed before the inception of devolution. Interestingly, the White Papers on devolution to Scotland and Wales did not mention any forums to achieve the above, but these were included in the formal 'Memorandum of Understanding' between the governments which established JMCs to be attended by Ministers from the UK government and the devolved administrations (Hazell, 2000: 150). A plenary JMC – chaired by the PM – and sub-committees were established, including a committee for domestic issues and a committee for European affairs. The JMCs, however, quickly fell into disuse. Labour politicians in power in Cardiff, Edinburgh and London dealt with issues on an informal basis and as such no JMC, save the European sub-

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[65] House of Lords reform has featured on successive UK governments' reform agendas for several decades, yet reconstitution of the House of Lords as a territorially representative second chamber has been rarely discussed. It was, however, a manifesto pledge of the Labour Party in the 2015 general election.

committee, was held between 2003 and 2007. In 2008, the JMC was reconvened in part because of pressure from the newly elected SNP government to reinstate formal mechanisms of intergovernmental coordination but has tended to meet only once a year. The JMC may have 'grown to become the central piece of political machinery in underpinning the devolution settlement' (ibid), yet for parliamentarians familiar with these meetings, it has proven to be little more than 'a talking shop' (Interview with SNP MSP 5), a space for 'grandstanding' (Interview with Liberal Democrat MSP 2) and 'in urgent need of reform' (Interview with Labour MSP 2).

The effectiveness of the JMC, as well as the lack of guaranteed constitutional voice for Scotland, has been further called into question in the aftermath of the referendum on the UK's membership of the EU. As was discussed earlier, a new JMC on EU negotiations – JMC (EN) – was established and although it has met much more frequently in comparison to other JMC sub-committees, the intergovernmental forum remains the subject of much criticism. Interviewees repeated some of the well-rehearsed critiques of the JMC and pointed out that although the JMC (EN) was new, the structures remained the same: the UK government sets the agenda, chairs the meeting and dominates proceedings. One Green MSP argued that the JMC (EN) seemed to be as ineffective and futile as other JMCs and demonstrated the UK government's disregard for listening to and accommodating the concerns of the devolved nations: 'if the UK government was serious about listening to the devolved nations and about preserving the unity of its state – which all UK government are – if it was serious about that then the JMC would have been reformed a long time ago' (Interview with Green MSP 1).

Bilateral arrangements do exist between the governments and according to interviewees work much better than quadrilateral forums such as the JMC. Nevertheless, given that the JMC is the formal mechanism to facilitate dialogue and coordination between the UK government and the devolved administrations, the infrequency of its meetings, the dominance of the UK government, and the lack of willingness on all sides to foster a cooperative intergovernmental forum serve to undermine rather than bolster devolution arrangements. The extant JMC infrastructure is inadequate to foster a sense of partnership and cooperation among the devolved nations and central government and while it may be designed as a forum of consultation not co-decision, it even struggles to achieve this.

4.4.2.3 The Lack of a Plurinational Culture

The above discussion illuminates how the absence of shared rule is a significant limitation of the Scottish devolution settlement. Devolution was designed to effect change at the periphery and not the centre, but in failing to consider how Whitehall and Westminster must also change as a consequence of devolution, successive UK governments have been unable to fully manage the strong and dynamic centrifugal political forces that have emerged or been reenergised by devolution. Resultantly, no overarching strategic vision of the UK's constitutional journey has emerged, nor has the government's intergovernmental machinery been reconfigured to manage centrifugal pressures as well as centre-periphery relations.

Yet, while the absence of shared rule structures represents a significant challenge and limitation to the Scottish settlement, there was consensus amongst interviewees that reform could not be completely tangible, it would also require change around 'amorphous' aspects of politics (Interview with Conservative MSP), including how the UK government treats and deals with the devolved administrations in terms of 'language, tone and approach' (Interview with former Labour MP 2).[66]

The existence of plurinational democracies necessitates the development of what may be termed a plurinational culture, which would reinforce the main tenets of the theory of multinational federalism. The UK is an indisputable plurinational state and shares some characteristics with those detailed in Chapter Three to describe plurinational federal political systems. But, while recognition and asymmetry are essential components, the development of a plurinational culture must go beyond this. This would involve a more inclusive and cooperative approach towards politics and decision-making, the pursuit of plurinational justice and the entrenchment of values such as equality, mutual respect, trust and partnership. In the UK, however, while there is some evidence of plurinational awareness and willingness to work politically to resolve problems, this has not necessarily translated into the development or entrenchment of a plurinational culture in which the rhetoric, actions, policies and decision-making processes of the central government are characterised by the abovementioned factors.

For one SNP interviewee, a lot of tension between the Scottish and UK governments relates to 'rhetoric…it is not always about substance. I think it is also about how the UK

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[66] This will be developed in further detail in Section six.

government treats Scotland' (Interview with SNP MSP 8). For a Green MSP, the mantra 'might is right' dictated Westminster's relationships with the devolved nations (Interview with Green MSP 2). He continued that the disregard for the Scottish vote to remain in the immediate aftermath of the referendum, coupled with the unitary approach taken by the UK government to negotiations and the lack of clarity over the repatriation of powers demonstrated this to be true. The voice of the Scottish minority is drowned out and ignored by the majoritarian approach of the UK government and its commitment to an 'English-oriented Brexit' (ibid).

While it is unsurprising that pro-independence parliamentarians criticised existing structures and arrangements, pro-union representatives also discussed this issue. A Conservative MSP gave a clear example:

> The recent announcement by the DWP [Department for Works and Pensions] that half the job centres in Glasgow will close is a good example…that announcement should *not* have been made without consulting the Scottish government first. Job centres are reserved, they are not shared, but nonetheless when you know that the Scottish government is likely to create a new Scottish social security agency, when you know that bits of welfare are being devolved, when you know that the future of welfare provision in Scotland is fluid because of the things you signed up to in the Smith Commission Agreement and in the Scotland Act [2016], then do not act unilaterally (Interview with Conservative MSP; my emphasis).

There is consensus, then, that another limitation of the devolution settlement is the absence, or slow pace of change in mentality in Westminster and Whitehall. As the example given above demonstrates, despite the decentralised structures that have dispersed power away from the central government, a rather centralised and unitary approach continues to inform central government thinking. This majoritarian thinking, which contrasts with the liberal nationalist approach detailed in the theoretical framework, is evident in the government's approach to the results of the EU withdrawal referendum; Scotland's vote to remain is considered inconsequential against the dominant English vote for Leave. This further draws attention to the hierarchical nature of devolution; it remains a UK-led project which still fails to fully accommodate the distinctiveness of Scotland, or provide mechanisms for Scottish influence over central government decision-making processes.

4.4.3 Summary

A number of conclusions can be drawn from this analysis of Scotland's devolved arrangements. First, devolution has proved flexible in accommodating the demands of those who support further autonomy. The issue of secession, for instance, was successfully managed through the establishment of a solid, transparent and legal framework. The flexibility of the UK's constitutional arrangements, as well as the predominantly accommodative approach exercised by UK governments towards Scottish distinctiveness, was underscored in the 2012 Edinburgh Agreement which saw both the Scottish and UK governments work together to facilitate the holding of a referendum on Scottish independence. While it remains unclear whether such an agreement will again be reached should calls for another referendum be heeded, the agreement indisputably set an important precedent and, as will be discussed, contrasts with the non-accommodative approach to facilitating a vote on secession in Spain.

Notwithstanding the flexibility of Scotland's devolution arrangements, a number of limitations were identified which in turn demonstrate the precariousness of devolution in Scotland. The lack of finality of devolution in Scotland eschews the rigidity found in other states' constitutional arrangements, but it simultaneously risks unbinding the ties that have seen the union persevere for over 300 years. Further devolution has been offered based on short-term tactical reactions and not on holistic, strategic long-term thinking. The UK has yet to find a stable equilibrium between too flexible and overly rigid constitutional arrangements. This is worsened by the fact that devolution has in effect become a project of the peripheries and not of the centre; almost no change has been experienced in Westminster or Whitehall. The absence of formal IGR, including, but not limited to forums for cooperation, risk the union becoming disintegrative rather than accommodative. In consonance with the lack of progress at the centre, very few efforts have been made beyond rhetoric to enshrine formal shared rule mechanisms in the UK's constitutional architecture. While it is fair to point out that such mechanisms were never the concern of pro-devolutionists, the increasing remit of the Scottish Parliament, which now includes responsibility for taxation and social security, as well as the most recent controversy vis-à-vis EU withdrawal and the repatriation of powers and thus intertwined competences, necessitates deeper concern for the institutionalisation of shared rule structures to ensure some form of formal cooperation to manage this new category of shared competences.

4.5 The Constitutional Future of Scotland and the United Kingdom

The constitutional journey embarked upon by the UK and its constituent nations in the late 1990s has completely transformed the landscape of British politics. Identifiable, separate political systems have evolved in Scotland, Wales and Northern Ireland and while the union itself remains intact, its future is uncertain. In Scotland, the political transformation precipitated by the establishment of the Scottish Parliament in 1999 is epitomised in the shifting sands of the Scottish party system. The secessionist SNP has held the reins of power in Holyrood for over ten years, while the pro-union and initially devolution-sceptic Scottish Conservatives constitute the largest opposition party.

The electoral dominance of the SNP has triggered a seemingly perpetual debate on what has come to be one of the defining features of the Scottish political system post-devolution: territorial politics. The constitution, despite being a reserved issue and thus outside the legislative competence of the Scottish Parliament, has dominated the political agenda since the SNP's election in 2007. Furthermore, the rise of territorial political movements around the globe has led to a resurgence of interest in this field of study (Keating 2008) and thus has refocused the spotlight on the development of territorial management in the UK's home nations, namely Scotland. The campaign that preceded the 2014 vote on independence may have been hailed a democratic triumph, but the vote to reject independence failed to settle the matter. A number of questions in relation to the purpose of the union, Scotland's place within it, as well as the accommodation of Scotland's self-determination demands remain.

The penultimate section of this chapter, therefore, occupies itself with the future terrain of territorial politics in Scotland and the UK. Given that the constitutional future of Scotland and the UK remains in flux, this section examines the future of Scottish autonomy through the prism of the different positions endorsed by the main actors, ranging from recentralisation to federalisation, disintegration to confederation.

4.5.1 The Conservatives: Forging a Strong and Stable Union?

The Conservative Party's commitment to the union is unyielding. Historically suspicious of territorial management, the Conservatives briefly flirted with the idea of devolution, before completely abandoning it under the leadership of Thatcher. More

recently, the party has moved beyond this limited view and instead has resorted to traditional Conservative thinking: support for the union balanced with recognition of the internal ethnonational plurality of the state. Despite claims, however, that the Conservatives are 'the party of devolution' (Davidson 2017), the party's rhetoric is not always matched by its action and in government in Westminster has struggled to completely shake off its image as an English party inimical to Scottish demands and aspirations for further accommodation, empowerment and recognition. The Conservative government's approach to Brexit, which despite being supported by the Scottish Conservatives, significantly jars with the Europhile rhetoric endorsed by the Scottish party and its leader prior to the 2016 referendum. In addition, while the party is aware of the challenges posed to the union in the wake of the experience of the 2014 independence referendum, its rhetoric and actions, particularly as relates to EU withdrawal and the repatriation of powers, threatens to wreak irreparable damage, rather than bolster, what the party's 2017 manifesto termed 'our precious union' (Conservatives, 2017: 31).

Support for the union, however, is not support for the status quo, but rather a reformed union in which there is a shift in emphasis away from separate, ad-hoc developments to a more holistic constitutional package for the whole of the UK. Both Ruth Davidson and Theresa May have endorsed this position. Davidson (2015), for instance, argued that as well as supporting devolution:

> We need more union, too. The maintenance of the union can no longer be bolted on as an added extra. All of us, including the UK Government machine, need to reflect consistently on how our decisions and actions impact on the union. Whitehall needs to start thinking like someone from Cardiff, or Carlisle, or Coatbridge and ask how it feels for them.

Theresa May (2017) echoed something similar in her 2017 conference speech and stated, 'for too long the attitude in Whitehall has been to "devolve and forget"' and thus proposed reforming UK government policy towards the union, including 'explicitly looking at the interests of the union' in reserved policy. In line with this, a number of Conservative representatives have argued that while much has to change in Westminster and Whitehall to ensure devolved arrangements are respected and considered in UK government deliberations, it is equally important to increase the visibility of the union in the devolved parts of the UK. The 2014 independence referendum almost resulted in the near-death of the union, thus for these Conservatives increasing the prominence of the union is just as

important as supporting devolution. Adam Tomkins, Conservative MSP and Shadow Cabinet Secretary for Communities, Social Security, the Constitution and Equalities believed that 'to positively present the union' has proved a 'chronic problem' for successive governments, thus more has to be done to strengthen its case (Tomkins, 14 October 2015, HL 149). According to Baroness Goldie, former leader of the Scottish Conservatives, (11 December 2015, HL 149):

> We are moving into an age where the Westminster government, of whatever political hue, should be cognisant of the need to make more visible to the recipients of its services throughout the United Kingdom that it has provided them. Whether it is an emblematic Union Jack, a logo on letterheads or whatever it may be, I don't know but something needs to give a visible connection to the provision of service.

Other Conservatives concurred with this assessment. One interviewee argued that 'nothing speaks as loud as money' and suggested that the UK government, significantly increase its investment in Scotland which would in turn increase its visibility (Interview with Conservative MSP). He suggested that the UK learn from other plurinational states, such as Canada, whereby federal funding in the provinces is often signposted by the Canadian flag. Doing something similar in the UK, would, he believed, increase the visibility of the Westminster government and entrench a wider connection between the union and Scottish citizens.

Much emphasis has been placed on enhancing a positive attitude towards the union as well as increasing the visibility of the Westminster government, but emphasis has also been placed on improving relationships between the devolved governments and the Westminster executive. Ruth Davidson (2015) promotes the creation of a 'Committee of the Parliaments and Assemblies' to be 'a body designed to change the historic lurches of asymmetric devolution and examine in an ongoing fashion, the role and central importance of the union to provide a constant review and health check'. This, unsurprisingly, is rooted in the Conservative's commitment to the union and hostility towards a second independence referendum, but also underlines the importance of viewing devolution in the round, and not as separate political projects. The UK Conservatives have also championed such tangible reforms. The 2017 manifesto committed the party to improving Westminster's machinery to take account of devolved arrangements, including moving government beyond London and establishing civil service and cultural body offices in the other parts of the UK (Conservatives, 2017: 31). The party's approach to Brexit, however, demonstrates that

Conservative rhetoric does not match the actions of government.

Withdrawal from the EU has been seized upon by certain Conservatives to advocate reform of the UK's own unions. Speaking in the House of Lords, Baroness Goldie argued that there was now an urgent need to 'strain every sinew to protect and preserve our remaining United Kingdom union' as a result of the decision to leave the EU (HL Deb, 5 July 2016, C1879). Ruth Davidson (2016) agrees with Goldie's assessment and writing in the *Financial Times* in October 2016 stated that 'there is little doubt, as we face up to Brexit, that the union will be challenged once again to deliver'. In line with Davidson's stance, other senior Conservatives, including the PM and Secretary of State for Scotland, champion EU withdrawal as an opportunity to recast and reinforce the union. In a similar vein to other pro-union interviewees in this thesis, much has been made of the fact that while 'Brexit has provided the SNP with plenty of ammunition' it at the same time weakens the case for independence (Davidson 2017). Withdrawal will result in a new relationship between the UK and its European neighbours, but Davidson also forcefully posits that it should also initiate 'a fresh start' among the UK's nations, and reset 'the relationship Holyrood has with the United Kingdom government' (ibid).

The approach pursued by the Conservative government hitherto, does not, however, fit with the rhetoric endorsed by senior Conservatives. Instead, and reminiscent of relations between Scotland and the UK government under Thatcher, a narrow and contested interpretation of the UK constitution is being imposed on the devolved territories, ignorant of the plurinational reality of the UK or of the developments of devolution over the last two decades. In fact, the lack of concern afforded to devolution prior to the 2016 referendum, the hesitance of the UK government to engage with the devolved administrations, the judgement of the UKSC on Sewel, as well as the Conservative government's intransigence in regards to discussions on the repatriation of powers, betrays a unitary, conservative and antedated interpretation of the UK constitution. This particular doctrine is widely contested in the devolved nations which instead adopt a more multilevel, federalist and plurinational vision of the UK state. In consequence, the Conservative government's approach has the potential to be just as risky to the continued existence of the union as those advocating Scottish independence.

4.5.2 Labour and the Liberal Democrats: Reinventing the 'F' Word?

Labour and the Liberal Democrats have been highly critical of the Conservative government's approach towards the devolved nations in relation to EU withdrawal and vehemently scathing of the attempt at recentralisation of repatriated powers. In contrast with the Conservatives, both Scottish Labour and Scottish Liberal Democrats advocate a federal future for the UK, believing that this 'third way' offers an optimistic alternative to 'the intransigent unionism' of the Conservatives and 'the radical independence of the SNP' (Interview with Labour MSP 2). Despite the federalising tendency that has developed as a result of devolution over the last 20 years, federalism remains a marginalised constitutional preference in Scotland and the UK as a whole (Keating 2015a).

In the aftermath of Brexit, as well as Scottish Labour's support for federalism, the Liberal Democrats believe that 'the momentum for a federal UK is building' (Purvis 2017). In this vein, the party believes federalism can serve as a way out of the binary constitutional divisions that continue to be discussed in Scotland and as such 'design a system that would bring us all together' and ensure that Scotland, as well as England, Wales and Northern Ireland, would 'have the best of both worlds' (Interview with Liberal Democrat MSP 2). EU withdrawal is thus framed as an opportune moment to recast the UK in a more federal direction. At the same time, the Liberal Democrats also believe that the already complicated debates on Brexit have demonstrated the necessity of a more federal approach, to help manage disputes between the UK government and the devolved nations as well as ensure the creation of apparatus that would involve, in the words of the Scottish party leader, 'devolved administrations coming together to agree common frameworks' (Rennie 2018).

Yet, while the Liberal Democrats are indisputably united in calling for a more cooperative and consensual approach to British politics and believe federal structures would facilitate this, the party's long-standing commitment to federalism, much like their Labour counterpart, remains ill-defined. There is no doubt that the experience of Brexit substantiates calls for experimentation with federal structures, but for example, neither the Liberal Democrats nor Labour have made much headway in explaining how federalism would work with regards to England, the largest nation of the UK with circa 85% of the state's population. Thus, while federalism is a potential solution and indeed posited as a cure to manage 'the politics of identity' and 'the politics of grievance', the lack of detail on how federalism would work remains an intractable hurdle to increasing the appeal of the party's

preferred constitutional provision (Interview with Liberal Democrat MSP 2).[67]

Scottish Labour has tended to avoid detailed debate on Scotland's constitutional status (Hassan and Shaw, 2012: 299-316). The party did not enter into prolonged constitutional discussions until the referendum on independence and even then, the party looked like it had been 'dragged kicking and screaming into this debate rather than embracing it properly…we have always been behind the curve with the recent autonomy debate' (Interview with former Labour MP 1). The party's reluctance to enhance devolution in Scotland was evidenced in its 2014 constitutional report, outflanked and overshadowed by the Conservatives (Anderson 2014).

Squeezed at both ends of the political spectrum, with the SNP on one side championing independence and the Conservatives on the other advocating union, Scottish Labour has struggled to articulate a distinctive vision vis-à-vis Scotland's constitutional status. The referendum decision to leave the EU has propelled the territorial dimension of Scottish politics back onto the political agenda and has afforded Scottish Labour an opportunity to find its constitutional voice. For one MSP, 'Brexit', in terms of constitutional politics, 'changes the game quite profoundly' (Interview with Labour MSP 3) to the extent that 'we need a new post-Brexit settlement for Britain that keeps the UK together' (Interview with Labour MP). As a result, Scottish Labour, akin to the Conservatives, considers Brexit an opportunity to forge a (re)new(ed) vision for Scotland's constitutional future while concomitantly precipitating wider debate on reshaping the territorial governance of the whole UK. In the words of former party leader, Kezia Dugdale (2016), 'while Brexit has led us into a period of instability and chaos, it also provides us with an opportunity to confront problems in our society and make lasting changes that have long been overdue'. The incumbent Scottish Labour leader, Richard Leonard (2018), argues along similar lines.

Federalism has thus become what Scottish Labour presents as an alternative to 'two different brands of nationalism' (Interview with Labour MSP 2). Former PM Gordon Brown (2017) has also advanced this position and presents federalism as 'the third option' which 'transcend[s] the bitter division and extremism of an inflexible, die-hard Conservatism at war with an intransigent and even more hard-line nationalism'. Hitherto, the party has taken what may be termed an organic approach to the subject, providing very few details as to

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[67] This was corroborated in interviews whereby a number of non-Liberal Democrat interviewees believed neither Labour nor the Liberal Democrats had done enough to explain how federalism would work vis-à-vis the size of England.

what a federal restructure of the UK will eventually look like. Core elements of any re-structure, however, include a people's constitutional convention, a new Act of Union and reform of government institutions, specifically the House of Lords (Interview with Labour MSPs 1, 2, 3).

A constitutional convention, 'should bring together groups to deliberate on the future of our country and propose a way forward that strengthen the UK and establishes a new political settlement for the whole country' (Dugdale 2016). The idea of the convention is not only supported by Scottish Labour but has the backing of its Welsh counterpart and the UK Labour Party, too. In a similar vein to the Conservatives, such a convention would ensure a UK-wide debate about further change, avoiding what has come to be the norm of separate, disjointed discussions in each of the different parts of the UK. Scottish Labour has also expressed its support for a new Act of Union to 'renew partnership between Scotland and the other nations of the UK' (Interview with Labour MSP 1), further 'strengthen the union' (Interview with Labour MSP 3) and 'provide constitutional balance' among the UK's constituent nations (Interview with Labour MSP 2). For Scottish Labour, it is therefore important to not only ensure a renewed constitutional settlement committed to protecting and enhancing the powers of the Scottish Parliament, but also to reform the UK and reset the relationships between the different nations and governments on a more equal standing.

However, while Scottish Labour may now have a forward trajectory in terms of constitutional policy, 'there is a long way to go to persuade people it is an attractive proposition' (Interview with Labour MSP 2). A core problem that Labour face is the lack of support for a federal future from its Labour counterparts in other parts of the UK, including party leader Jeremy Corbyn. Corbyn, for example, endorsed the Scottish party's call for a constitutional convention, but rejected calls for a new Act of Union (BBC News 2017b). One Labour interviewee agreed with Corbyn and believed that the Scottish party's move towards federalism was nothing more than a mere 'branding exercise…rather than a fundamental shift in the [party's] constitutional position' (Interview with former Labour MP 2). The jury remains out, therefore, even amongst the party faithful, as to whether federalism really is a worthwhile constitutional endeavour.

4.5.3 The SNP and Scottish Greens: A Fluid Interpretation of Independence?

The SNP and Scottish Greens' commitment to independence for Scotland is as resolute as the Conservative Party's support for the union. Both parties fully support the Scottish devolution project and since its inception have campaigned for the devolution of more powers and responsibilities, as well as for independence. Despite losing the independence referendum, the Greens and SNP substantially increased their party memberships and chalked up significant results in the 2016 Scottish Parliament election. In the aftermath of the 2016 EU referendum, both the Greens and SNP have called for a major rethink and redesign of the Scottish devolution settlement, but at the same time have remained consistent in their support for independence. In March 2017, both parties joined together to pass a resolution requesting permission from Westminster to hold a second independence referendum, and although this has been put on hold as a result of the SNP's loss of 21 seats in the 2017 general election, independence remains the long-term constitutional preference of both parties.

As has already been discussed in this chapter, the lack of concern afforded to the devolved governments on the part of the UK government with regards to Brexit policy formation has further soured relations between the different governments and in fact has led to an unprecedented situation in which the Scottish and Welsh governments present themselves as defenders of the national interest against the tyranny of the UK government. Both the SNP and Greens have consistently complained that the EU referendum exposes the existence of a 'democratic deficit' insofar as the wishes of Scottish voters are superseded by demands elsewhere in the UK (Interview with Green MSP 1 and SNP MSP 8). Drawing upon this, the rejection of the SNP's double majority proposal, the failure of the UK government to facilitate an agreed approach to trigger Article 50, the ruling of the UKSC on the status of Sewel and the attempt by the Conservatives to recentralise repatriated powers from Brussels, both the SNP and Greens have sought to show that Scotland, in spite of rhetoric to the contrary, is not an equal member of the union. Consequently, Nicola Sturgeon (2017b) has argued that the UK's status as a plurinational democracy is under threat. The SNP, as a result, has called for a complete rethink of devolution, not only in terms of the devolution of powers, but the role the devolved governments should play in influencing central government policy and the hierarchical structures which see the devolved

administrations treated as 'mere subordinate provinces not equal nations' (Interview with SNP MSP 3).

For the SNP, an extension of powers to the Scottish Parliament is crucial to create a better autonomy settlement after withdrawal from the EU. As well as calling for the devolution of repatriated powers for devolved competences, the SNP also believes other powers related to current reserved matters should be devolved, including, *inter alia*, employment law, equalities, health and safety and consumer protection. The Scottish government's White Paper (2016: 42-43) argued that:

> Leaving the EU requires a rethinking of the nature of the UK as a state to ensure an appropriate balance of powers and responsibilities to replace that previously shaped with reference to EU law and institutions, and to avoid a further concentration of power at Westminster. This needs to cover both the devolution of powers, and the arrangements for devolved institutions to have a say in decisions on reserved matters affecting the countries concerned.

The paper lays out a number of powers to be considered for further devolution including, *inter alia*, import and export control, immigration company law and insolvency and social security which would, in effect, create a much looser union styled along confederal rather than federal lines. In interviews for this thesis, all SNP members advocated the further devolution of powers to Holyrood, most endorsing a model that would see everything but foreign affairs, defence and some macroeconomic policy reserved to Westminster.

What may be termed the SNP's 'second-best' model has the hallmarks of a confederal approach as opposed to independence *per se*. Indeed, while during the 2014 referendum campaign the SNP campaigned in favour of independence, the vision put forward by the party prior to the vote was a vision that saw independence as 'internationalist', not 'isolationist' (Interview with SNP MSP 4). The SNP's model of independence would not result in the severing of ties between Scotland and the rest of the UK, but would instead be based on enhanced cooperation, shared goals and common confidences. In short, the SNP advocated 'independence-lite' (Keating and McEwen, 2017: 9). There is an argument, however particularly in light of the interview data analysed here, that the vision of independence has hallmarks of a confederal approach, too. Indeed, commenting on the SNP's independence plans, particularly Alex Salmond's proposed retention of the social, monetary, monarchical, defence and European unions between Scotland and the rest of the

UK, former SNP MP, George Kerevan (2013) stated: 'Salmond is offering us a new British confederation in everything but name.'

Watts (2008: 10) writes that confederations 'occur where several pre-existing polities join together to form a common government for certain limited purposes (for foreign affairs, defence or economic purposes), but the common government is dependent upon the will of the constituent governments'. The UK, in its current form, is far from meeting the criteria that denotes a confederation, but the SNP's independence vision does. Furthermore, in the context of Brexit, the SNP has made much noise with regard to the UK as a union of equal members. Confederation, then, would ultimately ensure a much more equal relationship: Scotland would retain its own sovereignty and autonomy in certain areas, while pooling it in others. It is already clear that the SNP advocate 'a rather attenuated form of independence', evidenced in the party's 'independence in Europe' policy which accepts the inevitable limitations on the independence of states, particularly in today's globalised world (Keating and McEwen, 2017: 9). A confederal arrangement, therefore, may alter the final destination on what the SNP envision as Scotland's constitutional journey, but would not entail a complete overhaul of the party's constitutional vision.

Independence may remain the SNP's constitutional preference, but the recent decision to suspend plans for an immediate independence referendum demonstrate that it constitutes, as it has largely always done, a long-term rather than short-term goal. Instead, as has been noted above, the SNP has devoted its energies to championing further devolution to Holyrood as well as support for a complete overhaul of devolution to ensure a more coherent and accommodative model of autonomy is sustained. The Greens, on the other hand, support the extension of powers to the Scottish Parliament, particularly in relation to immigration, but are much more radical in their support for a second independence referendum. The Party believes that the decision to withdraw from the EU coupled with the 'belligerent stance against Scotland' taken by the PM and her government 'make an independence referendum inevitable' (Chapman 2017). Patrick Harvie and Maggie Chapman, the party's co-leaders, urged Nicola Sturgeon not to heed advice about delaying her proposed referendum arguing that 'the UK government's choice to ignore the strong remain vote in Scotland and to take a narrow UK-wide leave vote as a pretext for a hard Brexit stance' required a second independence referendum (quoted in Davidson 2017).

For both the Greens and the SNP, independence remains the parties' long-term constitutional preference. The independence movement failed to win the 2014 referendum

but has remained alive, buoyed by the 45% vote in the referendum. As such, many pro-independence interviewees believed independence was within touching distance and thus offers of other constitutional arrangements would fall short 'when the ultimate goal is in sight' (Interview with Green MSP 1). The terms and implications of the UK's withdrawal from the EU will have profound ramifications for Scotland's devolution settlement, as well as the electoral fortunes of the SNP and its independence project. In light of this and the 2017 general election, the SNP is treading a more cautious approach, while the Greens remain committed to their support for an immediate second independence referendum. In the current discourse, discussions on moves towards a confederal model are all but absent and indeed would be perceived by both Scottish and UK parties as a radical solution. However, as the analysis here demonstrates, while a new confederal model would move the Conservatives and Labour beyond their comfort zones, a looser constitutional framework may well be the required solution that not only ensures a more coherent and accommodative model of autonomy, but would render the pursuit of Scottish independence obsolete. This, it may well be argued, would be a tough selling point for the SNP, but as this section has shown, the party is already very much confederal in its thinking.

4.6 Forging a Coherent Model of Autonomy in the UK

20 years after the inception of devolution, Scotland and the UK stand at a constitutional crossroads. There is little doubt that devolution has proved a remarkable success, yet tensions remain and the constitutional issue, notwithstanding the 2014 referendum, is far from settled. The differing referendum results among the nations in the 2016 EU referendum, the process towards triggering Article 50 as well as the UK's government's approach towards withdrawal and the repatriation of powers illuminate just some of the most pressing issues facing the UK.

A predominant feature of the UK's constitutional order has been one of elasticity, manifest in the further devolution of powers that has occurred to the devolved territories in recent years. The implementation of new powers in Scotland, however, has not arrested or severely dampened support for independence (Henderson and Mitchell 2015), and it is becoming patently clear that observing the development of devolution solely through the prism of self-rule is a significant limitation of the UK's territorial thinking. In addition, the constitutional upheaval provoked by the UK's departure from the EU necessitates urgent

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thinking vis-à-vis the layout of the UK's territorial architecture and majority-minority relations. In light of this, the penultimate section of this chapter brings together both theoretical and empirical considerations, as discussed in Chapter Three, to examine some of the most important elements in the ongoing debate about the accommodation, empowerment and recognition of Scotland within the UK. In doing so, this section seeks to move debate beyond the current limited discussions of self-rule mechanisms and examine whether other reforms, both in silos and in combination, can work to improve and bolster the UK's extant constitutional arrangements.

4.6.1 The Normative Dimension

In *In Search of the Federal Spirit,* Burgess (2012a: 22) writes that the different governments operating in multilevel contexts 'must assist and support each other, inform and consult each other, cooperate and coordinate activities with each other, respect established procedures and generally maintain friendly relations with each other.' In order to bolster the abovementioned arrangements, Burgess identifies a number of federal values and principles that are essential to guide relations in multilevel states, particularly in plurinational contexts in which there is even more imperative on different orders of government to create a hospitable environment in which both majority and minority communities cannot just exist, but flourish (see also Gagnon 2014).

From a normative consideration, some of the biggest issues with regards to relations between the Scottish and UK governments relate to important principles such as trust, equality, respect and partnership. Political congruence, which for the first two terms of the Scottish Parliament saw Labour in power in Edinburgh and London, better facilitated relations between Holyrood and Westminster, but this has not been the case in more recent years between the SNP and Conservatives. To compound to this already tenuous relationship, the absence of consensus on the UK's departure from the EU has further complicated relations and illuminated a widening gulf between the Scottish and UK governments.

Trust is an essential component that undergirds multilevel plurinational systems, requiring different governments within the state to work together as well as 'clear mechanisms to allow the minority nations to participate in the shared government of the federation' (Requejo, 2015: 164; see also Karmis and Rocher 2018). In the proceeding

section I will discuss some of these mechanisms, but it is clear that in the context of the UK the differing interpretations of the state, as well as the 'competitive nation-building and nationalist claims, especially when secessionist parties are in power', have resulted in 'a detrimental impact on relations of trust' between the Scottish and UK governments (McEwen, 2017: 669). On the one hand, pro-union representatives distrust the SNP given the party's support for independence and thus question the party's commitment to devolution. One interviewee believed the SNP was 'timid' to use extant powers 'because it doesn't want Scotland to believe that devolution is enough' (Interview with Liberal Democrat MSP 1).

On the other hand, the process of preparing for EU withdrawal has further deepened distrust between the Scottish and UK governments. While, for example, the Conservatives argue that 'the UK government has made it plain that there will be no re-reservation of powers as a result of Brexit' (Interview with Conservative MSP), the general view among pro-independence representatives, as well as some Labour interviewees, was sceptical and suspicious of the UK government's approach: 'we have no reason to trust them that these powers would go directly from Brussels to Edinburgh' (Interview with Green MSP 1).

Clause 11 of the UK government's original EU (Withdrawal) bill underlines and supports this claim as the UK government proposed repatriating all EU competences to Westminster, including those that were already devolved. The new status of 'retained EU law' was vehemently opposed by the Scottish and Welsh governments which hailed such moves a 'power grab' that not only went against the spirit of devolution, but represented the first significant rolling back of devolution in its two decades of existence (BBC News 2017d). The threat by the devolved administrations to withhold consent for the bill resulted in a revision to the UK government's position, but while the Welsh government subsequently gave its consent to the bill, the Scottish government did not follow suit. As a result, there has been a significant erosion of trust between the UK government and the devolved administrations.

The attempt at recentralisation, which is to occur irrespective of the consent of the devolved administrations, also reveals a more pressing concern as relates overall to devolution arrangements: the ability of the UK government to unilaterally alter the devolution settlement. Reinforced by the UKSC's decision that the Sewel Convention was a political rather than legal convention, the UK government has made clear that whether approved by the devolved administrations or not, its proposed measures will proceed as

planned. This centralising and unitary impulse would result in the unilateral alteration of the respective devolved acts, fruit of only a simple parliamentary majority, which, for instance, is not the case in other plurinational states, including Spain, where the central government cannot unilaterally alter the distribution of powers by a simple majority in parliament. As well as further eroding trust between the different levels of government, the UK government's approach is at odds with the values and principles that undergird a plurinational culture, necessary in such states to manage majority-minority relations.

The UKSC's judgement on Sewel also undermined the federal spirit and federalising tendency of the UK. In lieu of ruling that EU relations was a reserved matter and thus out with the competence of the devolved government and thus not subject to the Sewel Convention, the UKSC's judgement went beyond this, declaring the Sewel Convention not binding at all. As Keating (2018: 46) points out, unlike in Canada whereby through the 1998 Secession Reference the Supreme Court of Canada adopted a role in 'constitutional reasoning', the UKSC sought to confine 'itself to the letter of the law and the doctrine of parliamentary sovereignty' to the extent that, 'after twenty years of a federalising tendency…it was insisting on the fundamentally unitary nature of the UK constitution'. The UK government's unilateral approach, buoyed by the UKSC's ruling, further betrays this unitary vision of territorial politics and equally underlines claims that successive UK governments have yet to fully grasp the reality and logic of devolution and the constitutional developments this has entailed (Interview with former Labour MP 1).

It is well known that devolution, unlike federalism (at least in theory), establishes a more hierarchical territorial setup, given that power is merely delegated to the devolved administrations and can be rescinded or encroached upon by the central government. Given the importance attached to parliamentary sovereignty, the UK has a 'constitutional hierarchy', but at the same time, UK governments have sought to eschew exercising this 'constitutional muscle… in part for fear of losing electoral support and legitimacy among their electorates' (Swenden and McEwen, 2014: 489). The battle over Brexit between the UK government and the devolved administrations, however, has already shown a willingness on the part of the UK government to flex its 'constitutional muscle' in line with the imposition of its particular interpretation of the UK constitution. Scottish Secretary, David Mundell, has explicitly acknowledged this point, noting that one of the fundamental issues between the UK and Scottish governments relates to the 'interpretation of our constitution' (BBC News 2018). However, while this, in the words of Burgess (2009: 188),

requires the central government as the representative of the majority community to exercise 'self-restraint' and 'self-discipline', the reality in the UK is that the Conservative government's approach imposes a constitutional interpretation on the devolved nations which fundamentally contest it.

Evolving arrangements predicated upon principles and values such as engagement, mutual respect and partnership are crucial elements to help facilitate relations between the different orders of government in a multilevel polity. In recent years, this has become all the more important as a consequence of concurrent functions, namely those on social welfare extended in the *Scotland Act 2016*. In addition to this, withdrawal from the EU also spotlights the need for better working relationships among governments, particularly if the UK state is to remain intact. The UK government has made much noise about seeking to reach consensus and achieving a 'UK approach' over Brexit, but hitherto a statist and centralist approach has prevailed. This, for instance, is evidenced in a number of issues and developments in the aftermath of the referendum result, but was also evident prior to June 23; despite the fact that EU withdrawal would have a significant impact on devolved issues, 'there were no arrangements in place to provide the devolved territories with a formal, legally defined role in deciding whether or not to hold the EU referendum; what should be the nature of the vote itself; and how to respond to it' (Blick, 2016: 4). Laforest and Keating (2018: 179) reach a similar conclusion noting, 'to a greater extent than was appreciated in London, common EU membership served to hold the British union together.'

For one Labour interviewee the crux of the problem is that, while, as a result of devolution, 'Scotland and Wales have changed fundamentally', the same cannot be said for Westminster, which 'has not caught up' with the developments of devolution (Interview with former Labour MP 1). As a consequence, Theresa May's approach towards the result of the referendum, which was to see the UK as a state-wide *demos*, is widely questioned and rejected, particularly in Scotland, where the nationalist government claims its own mandate from the referendum, which is for Remain. Theresa May (2016b), however, rejects this notion:

> Because we voted in the referendum as one United Kingdom, we will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom. There is no opt-out from Brexit. And I will never allow divisive nationalists to undermine the precious union between the four nations of our United Kingdom'.

The majoritarian approach taken by the PM, whereby the will of the majority transcends the will of the minority, poses challenges to the plurinational context of the UK. While it is true to point out that the UK as a whole voted to leave, this is to simplify the plurinational reality of the UK, which, after all, is composed of four individual constituent units, each with its own recognised *demos*. As discussed, the Scottish government sought to correct this anomaly through proposing a double majority rule. In the words of Alex Salmond, 'nations within a multinational state should be recognised as more than regions, counties or areas and should not be counted by population; they are national entities in their own right, and that confers a relationship of respect'(HC Deb, 16 June 2015: c192). Rather, the UK government rejected the territorial supermajority and the future of devolution, as a result, remains in the balance.

Given the radical change expected from EU withdrawal, particularly in relation to devolution arrangements, the importance of securing a consensus-based approach to managing the implications and effects of withdrawal cannot be overstated. The rhetoric of the PM and other UK government ministers has very much chimed with this ideal, but grave concerns remain 'about the extent to which the UK position takes account of the preferences of the devolved governments' (Greer, 2018: 135). Rooted in the UK government's unitary conception of sovereignty, its approach conflicts with the multilevel and plurinational vision of the UK endorsed by the devolved governments and in particular, the Scottish interpretation that the union is a negotiated pact and thus its terms can be revised. For one SNP representative, 'we are no longer the coming together of nations, we are all one-nation' (Interview with SNP MSP 2), while for the Greens 'it is clear that the UK government sees the UK as a single unitary entity and they are just going to forge ahead because they believe they have a mandate and there is no differentiation underneath that' (Interview with Green MSP 1).There is very little evidence of compromise.

Compromise is an essential component of plurinational states, particularly, as Gagnon (2014: 87) notes, if the state 'is aspiring to have a promising future'. Gagnon (ibid), positing cooperation and compromise as essential aspects of federalism, continues that in a plurinational state, 'it is important for the national group involved to show proof of compromise, tolerance, and respect for diversity, and to maintain and strengthen bonds based on trust between partners, while adhering to an ensemble of shared values.' In short, the existence of a democratic and plurinational state warrants negotiation and compromise between majority and minority groups.

Both the Scottish and Welsh governments championed the pursuit of consensus and compromise in light of the EU referendum results. In *Scotland's Place in Europe*, the Scottish government did not merely focus on its constitutional preference of independence but presented a number of potential avenues to be explored, not excluding but not limited to independence. Consonant with the fundamental values and principles inherent in the multinational federal model, as discussed in Chapter Three, the Scottish government committed to doing this 'in good faith and a spirit of compromise' (Scottish Government, 2016: viii). The paper accepted the need for 'UK-wide frameworks' but stipulated that these must be the result of an inclusive decision-making process, 'that should be a matter for negotiation and agreement between the governments concerned, not for imposition from Westminster' (ibid: 41).

The Welsh government (2017: 17) advocated a similar approach, positing that where necessary, common approaches and frameworks should be developed 'through discussion, not diktat' and proposed the creation of a 'UK Council of Ministers' to operate like the EU Council of Ministers, involving regular meetings. The 'retained EU law' approach advocated by the UK government, however, is far removed from the consensus-building proposals of the devolved administrations, that neither envisions equal working relationships nor joint decision-making processes. This has reinforced the 'imbalance of power in the relationship' (Interview with SNP MSP 4) between the Scottish and UK governments and the issue of a democratic deficit: 'it has become abundantly clear that the UK government is not interested in compromise or in accommodating differentiation within the UK' (Interview with Green MSP 1).

Brexit illuminates a number of puzzles, dynamics and contradictions thrown up as a result of devolution, but moreover, reveals a lack of serious thought not only about the ramifications of Brexit vis-à-vis the UK constitution, but, as was discussed as a limit of devolution, the absence of vision for any constitutionally acceptable future direction for the UK as a whole. Short-term exigencies are prized over any long-term outlook. Referendum provisions were not designed to take the plurinational nature of the UK into consideration, nor have the devolved governments been guaranteed any role in consolidating the UK government's position on withdrawal. Devolution, despite fundamentally altering the territorial landscape of the UK, remains feeble. In light of this, and particularly the UK government's majoritarian approach, in which a centralising tendency has been pursued as the default position, it is clear that a more plurinational and constitutionally sensitive

perspective is necessary to rebuild trust and confidence between the different levels of government and rekindle what is a limp plurinational spirit. In short, a more inclusive, collaborative and consociational approach to politics is required. This, it could be argued, is not just necessary to ensure a commitment to and thus understanding of how the UK constitution has changed and developed since the inception of devolution, but more crucially, is essential if devolution is to remain the organising principle to continue to bind the UK together.

The approaches advocated by the Scottish and Welsh governments as relates to EU withdrawal and UK-wide frameworks vis-à-vis devolved powers have a markedly consociational flavour, but, notwithstanding the urgency to ensure a much more cooperative and constructive style of relations, the UK government has appeared intransigent in allowing such a politics influenced by more federal and plurinational thinking to develop. Rather, an aggressive reassertion of a unitary, old-fangled sovereigntist interpretation of parliamentary sovereignty has resurfaced, counter to any commitment to plurinational respect and justice and thus a serious threat to the continuation of the UK state in its current form. There is, as was discussed earlier, acknowledgement from the Conservatives that more has to be done to change thinking on devolution and make a better case for the union, but while there is agreement that Westminster and Whitehall need to change, the actions of the UK government do not match its rhetoric. In the words of one SNP representative, 'the real test of democracy is about how you treat your minorities not whether the majority gets its way and inevitably that's the compromise which, at the moment, there isn't much sign of' (Interview with SNP MSP 1).

4.6.2 The Empirical and Institutional Dimension

On a normative level, we have seen that there is a distinct lack of influence of federal or plurinational thinking in the psyche of the UK government as relates to devolution, as well as the impact of Brexit on the UK's territorial set-up. Power has been hollowed out to three of the four nations in the UK in the form of democratically elected governments and legislatures, but a hierarchical and majoritarian vision has yet to subside in the upper echelons of the UK Parliament and government. This hierarchical and majoritarian vision lends credence to complaints in Scotland that the UK government has yet to fully catch up with the ramifications of devolution and the changed and changing nature of the UK

constitution.

The process of managing the UK's exit from the EU has merely emboldened such grievances, whereby the aggressively unitary attitude of the UK government, as well as the UKSC, reinforce the view that Scotland, rather than commanding respect as a nation with an elected government and parliament, as befits the practice of politics in a democratic plurinational state, is instead treated as a subordinated province without any meaningful voice or influence in central government decisions. As discussed in section five, while there is acknowledgement that Brexit poses a risk to the territorial setup of the UK, representatives from all political parties have equally sought to frame it as an opportunity to recast the union. This is necessary, as discussed above, at a normative level in terms of the philosophy and thinking behind devolution, as well as institutionally. As one interviewee put it, the debate on Brexit had already shown that 'we need to reconfigure the constitutional arrangements that empower nations and regions more effectively' (Interview with former Labour MP 1). It is to these institutional tools I now turn.

The sole formal representation of Scotland as a territorial entity in the UK government is the Secretary of State for Scotland and the Scotland Office. Political incongruence, however, has limited the ability of the Secretary of State for Scotland to fulfil his or her dual role of advancing Scottish interests in the cabinet while advancing the interests of the UK government in Scotland. The conflicting and at times diametrically opposing visions of the Scottish Nationalist government and the UK Conservative government render this task difficult if not impossible. One SNP MSP pointed out that as long as the SNP was in government in Scotland, any Secretary of State for Scotland from any of the pro-union parties would be the 'servant of conflicting masters' and as such limited in his or her capacity to be Scotland's voice in national decision making (Interview with SNP MSP 1).

For one interviewee, the fact that 'the territorial offices of Scotland, Wales and Northern Ireland are now so hollowed out and so small' necessitated reform of these structures and suggested the establishment of 'a very powerful department of state at the heart of government' to better manage and keep adrift with developments in the devolved territories (Interview with Conservative MSP). This would result in improved relations between government departments, the devolved administrations and the central government as well as ensure that devolution was a central rather than peripheral concern for the UK government. In recent years, this has become much more important given the introduction of concurrent functions in the *Scotland Act 2016* which necessitates, at the very least, a

functioning relationship between the UK and Scottish governments.

Concurrent competences are not unique to the UK but constitute an intractable issue for the distinct levels of government as a result of the UK's lack of formal and effective intergovernmental machinery. 'A formal system of intergovernmentalism is widely seen as a crucial component in any credible decentralised model', but 20 years after the inception of devolution and in spite of a myriad of reports vehemently critical of the UK's extant intergovernmental structures, very little has changed (Tierney, 2008: 452). The JMC may have been introduced to provide a forum for cooperation between Whitehall, Westminster and the devolved administrations, but its lack of formality as well as hierarchical organisation, which consequently elongates the unitary mentality that characterises UK government thinking about devolution, has rendered it a weak and ineffective format.

The creation of the JMC (EN), created to provide an arena to facilitate discussion on EU withdrawal, although notably not designed as a forum to facilitate joint decision-making, signalled a new phase in IGR between the UK government and the devolved nations. The intergovernmental forum has, however, been a consistent source of complaint for the devolved administrations, which in spite of the JMC (EN), have not been party to UK government thinking. In this vein, while the JMC (EN) may have created a 'much more focused and task-oriented' committee, 'it would be a considerable stretch…to regard the JMC (EN) as a channel through which the devolved governments have been able to date, to exert meaningful influence' (McEwen, 2017: 682). It did, after all, fail in its principal objective: securing agreement on a joint approach to triggering Article 50.

Withdrawal from the EU has already proved to be 'a test of intergovernmental relations at a quadrilateral basis' and requires serious reboot in order to ensure a more efficient and constructive forum for engagement and partnership among the devolved nations and UK government (Interview with Conservative MSP). In order to bolster existing IGR architecture and facilitate the development of a more plurinational political culture such changes could include, but are not limited to, a fixed schedule of meetings, for example, at least two a year, rotating the location of meetings between the four nations, and the creation of a JMC secretariat to relieve the UK government of the organisational responsibility of the meetings while simultaneously improving transparency and checking the seemingly unfettered dominance of the central government on existing arrangements.

Yet, while there seems to be general consensus that IGR need to be 'enhanced and

have much more statutory authority' (Interview with former Labour MP 1), there was general consensus among interviewees from all parties, that 'people' and 'personalities' were as much an impediment to intergovernmental cooperation as the design of the structures themselves: 'to be blunt, they are as effective as participants allow them to be' (Interview with SNP MSP 1). Hence, while there is undoubtable mileage in providing a more robust intergovernmental machinery 'to provide a mechanism whereby the devolved administrations can ensure not just that they are heard but they are listened to', it is equally important that, in line with the normative discussion above, the different partners within the multilevel and plurinational state canalise a more plurinational and federal spirit through a commitment to working with each other, irrespective of party affiliation and constitutional vision (Burrows and Fletcher, 2017: 55).

While more formal intergovernmental mechanisms are considered important to facilitate joint working between the devolved governments and the UK government, particularly between the Scottish and UK governments as a result of concurrent competences, interparliamentary relations (IPR) are also important, although oft-considered of second-class importance in the UK (Evans 2018). The lack of concern afforded to IPR is evidenced in the fact that 'there is no institution that brings together the four UK legislatures in the way that the JMC does for the four governments' (ibid: 3). Forging a more constructive working relationship among and between the different parliaments was mooted by several interviewees as a more innovative tool to ensure a better working relationship and that, notwithstanding the hollowing out of power, the centre remained connected with its peripheries. One interviewee described how the Scottish Parliament's Social Security Committee sought to utilise inter-parliamentary machinery by holding joint meetings with the Scottish Affairs Committee in Westminster (Interview with Conservative MSP). Evans (ibid: 9) discusses in more detail the objective and success of these meetings and points out that while it remains unclear whether such joint sessions will be a regular feature of Westminster-Holyrood relations, the model itself:

> Represents the germ of a potentially significant extension of IPR cooperation that could see IPR become a vehicle for scrutiny of IGR at a time when the scale of the latter, already made more significant by the earlier-mentioned expansion of concurrent policy responsibilities in recent devolution legislation, will become even more significant as a result of Brexit.

As well as using committee to committee structures to help facilitate partnership

between the Scottish and UK governments, the British-Irish Council was also mooted by a couple of interviewees as a potential model to bring parliaments together (Interviews with SNP MSPs 1, 2). Membership of the Council is already extended to the devolved parliaments, as well as the UK's crown dependencies, but could serve as a model to create a formal and robust interparliamentary forum that would enable, for example, discussions related to common frameworks which will result after Brexit. As Evans (2018: 14) notes, 'this trend towards ever more interconnected union, at least policy responsibility wise, looks set to only increase in the future', thus establishing or extending new and more innovative working practices, such as those discussed above, would be a welcome step in guaranteeing the UK's constituent nations a role in the machinery of central government. This would likewise facilitate opportunities to develop and deepen the confidence, trust and sense of partnership required to ensure a promising future, not merely for the state as a whole, but the constituent units themselves.

Reform of the House of Lords into a territorially representative chamber, as advocated in the 2015 Labour Party manifesto, was also high on the agenda of interviewees in discussing how to increase the influence and clout of the UK's nations in central government decisions. In line with their support for federalism, Labour and Liberal Democrat interviewees were more strongly supportive of the creation of a geographically representative second chamber, or in Labour parlance, a 'Senate of the Nations and Regions'. Some interviewees believed such reform would relieve 'a lot of the angst' of territorial politics and the relationship between the Scottish and UK governments, while equally ensuring that England was once and for all given a proper territorial voice (Interview with Liberal Democrat MSP 2). The SNP's long-standing opposition to the House of Lords is well known, but all interviewees expressed support for reform, provided that members were directly elected or nominated by the devolved administrations.

In contrast to power-sharing models such as consociationalism, the devolved territories – neither the governments nor the parliaments – do not have a guaranteed constitutional role in central government decision-making. As was pointed out by an SNP interviewee, irrespective of which party held a majority of the 59 Scottish seats in the House of Commons, the ability of all 59 Scottish MPs to influence UK government policy was severely limited. She posited that:

> We [the SNP] have the vast majority of Scottish representation, but unless you
> end up with a minority government down the road [Westminster] that voice is
> not heard…we might be making a difference about how people perceive us in

Scotland…but we are not making a difference in terms of policy (Interview with SNP MSP 2).

Labour in power in Westminster and Holyrood between 1999 and 2007 masked the absence of any guaranteed constitutional role for the devolved nations in central government decision-making. Informal networking functioned in lieu of formal arrangements and thus impeded the development of any formal or constitutionally sanctioned intergovernmental procedures that would enable Scottish ministers to exert influence over reserved policies, irrespective of whether they impacted upon devolved areas of jurisdiction (McEwen, 2017: 670). The election of 56 SNP MPs in 2015 increasingly spotlighted this issue and the Scottish government and SNP party members have consistently highlighted that despite wielding the majority of Scottish seats in the House of Commons, the influence of Scottish MPs is impotent in the context of a majority (English) government. Interviewees drew upon policies such as the renewal of trident, the bedroom tax or the most recent EU (Withdrawal) bill to demonstrate that despite the majority of Scottish MPs voting against these policies or offering amendments, the lack of guaranteed role for Scottish influence rendered their opposition obsolete (Interviews with SNP MSPs).

Drawing upon the consociational model detailed in Chapter Three, it is clear that the UK system is not consociational, although it shares similarities with some of its principal components, namely segmental autonomy. Veto powers accorded to minority elites is another important element of the consociational model, but do not explicitly exist in the UK system. There is an argument that the Sewel Convention, in effect, serves as an informal veto over encroachment of the central government in devolved affairs. Two important points, however, must be considered. Firstly, none of the four nations of the UK wield an explicit, legally entrenched veto power over decisions made by the central government. Second, the judgement of the UKSC in the *Miller* case effectively ruled that Sewel was not a veto power; neither the Scottish government nor Parliament have legal power to stop EU withdrawal.

Generally, interviewees responded negatively to the constitutional guarantee of veto powers, with one interviewee describing the idea as 'crackers': 'you cannot have the tail wagging the dog' (Interview with Liberal Democrat MSP 1). One Labour official, however, argued that the UK's withdrawal from the EU, particularly the lack of consensus around which type of Brexit to pursue, the challenges for the constitutional authority of the devolved

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territories, and thus the threat of the UK's government 'railroading us into all of these decisions with enormous implications' necessitated a broader examination of devices such as minority vetoes and double majorities (Interview with former Labour MP 1). While there is predominant hesitance at the institutionalisation of veto powers, or indeed, qualified majorities regarding specific policy areas, the plurinational reality of the UK, combined with its commitment to democratic principles, as well as the uncertain future terrain of British politics, demonstrates that irrespective of opinion that considers such mechanisms as alien to British political tradition, they may become crucial tools to check the majoritarian tendency of central government while putting minority nations on a more equal and equitable footing.

In plurinational contexts, while a commitment to liberal democracy is important, it is clear that it is not sufficient to ensure the accommodation, empowerment and recognition of national minorities essential to sustain the order and stability of the state. In this section I have discussed a number of factors from both a normative and empirical viewpoint that are not only considered important to ensure the survival of Scotland as a constituent unit within the UK, but moreover to ensure the survival of the UK as a plurinational state. It is possible to identify some traits of a plurinational culture in the UK, but it is clear, from both a normative and empirical perspective, that this is weak and thus requires development and deepening in order to ensure a more genuine plurinational culture permeates not just the devolved institutions, but the apparatus of the central state, too. In this vein, it is important to look beyond the current model and develop arrangements with regards to shared rule as well as a more consociational approach to politics which will not only muscle-up the democratic and plurinational credentials of the state, but moreover will help rebuild trust and confidence among the different governments.

4.7 Concluding Remarks

This chapter has analysed the development of territorial politics in Scotland and the UK, paying particular attention to the SNP's time in office. From the analysis presented in this chapter, it is clear that discussions related to Scotland's place in the UK not only continue but remain at the forefront of political debates. Taking into consideration the analysis presented in this chapter, a number of observations with regards to the UK's experience with autonomy, plurinationalism and secessionism can be made.

First, devolution, despite its limitations, has proved to be a remarkable success, lauded by both pro-union and pro-independence supporters. Entrenching the principle of differentiation, an important feature stipulated by liberal nationalist scholars, Scotland's autonomy arrangements have succeeded in allowing Scotland to go its own way, albeit – at least for the time being – within the framework of the UK. In addition, in a nod to the flexible approach championed by Carl Friedrich, devolution has become an evolving process, which despite posing challenges to the overall development of the UK's territorial landscape, has enabled successive UK governments to take a much more dynamic approach to constitutional reform. At the same time, however, there are clear limitations to Scotland's autonomy model. The different limitations identified in this chapter: the piecemeal approach to devolution, the lack of shared rule and the absence of a plurinational culture, are factors which, left unchecked could potentially further increase secessionism in Scotland, thus jeopardising the future existence of the union. The lack of formal IGR and other shared rule mechanisms have impeded the development of trustworthy and cooperative partnerships between the Scottish and UK governments as well as allowing for the perpetuation of majoritarian thinking at the centre. Notwithstanding devolution, Westminster and Whitehall continue to operate as before.

Second, the analysis in section five revealed that the future of Scotland within the UK lies between three potential scenarios: recentralisation, reformulation and disintegration. All political parties champion some form of reform, but while for some this is limited to the devolution of only some repatriated powers in the aftermath of EU withdrawal, for others this requires a complete overhaul and rethink of the UK's constitutional architecture. The incumbent UK government has advocated rhetoric in favour of the union and increasing its importance in everyday life, but the analysis presented here demonstrates that this is mainly lip service. The government's approach towards Brexit betrays a unitary and centralising strategy that not merely risks rolling back devolution, but poses a grave threat to the continued existence of the union itself. In this vein, the Scottish government's call for a second independence referendum looks likely to increase. Yet, the analysis presented here has demonstrated that short of independence, a confederal approach may work for the benefit of both the majority and minority communities, saving the union while moving Scotland closer to attaining the status of independent statehood without the predicted drama in between.

Finally, and drawing upon the theoretical framework proposed in Chapter Three, it is

clear that reform of the UK's approach to autonomy, as well as the institutional furniture itself, is required in order to ensure a more coherent and accommodative model of autonomy. A number of institutional reforms as relates to IGR, Whitehall architecture and the House of Lords would result in stronger shared rule mechanisms that would increase the standing of the minority nations in the functions of central government. Drawing upon the last 20 years' experience of devolution as well as the complicated debate with regards to withdrawing from the EU, there is merit in proposing that a much more consensus-based and inclusive approach to politics would help strengthen the union as well as the plurinational credentials of the UK. The UK's current approach to autonomy, while beneficial in some respects, continues to be guided by a hierarchical tendency and unitary thinking that impedes and undermines the development of a plurinational culture and some of its most important values and principles, including cooperation, trust and mutual understanding. The different compromises proposed by the Scottish and Welsh governments in the aftermath of the Brexit vote had a markedly consociational favour, but the approach of the UK government, in contradistinction with its rhetoric, has been to proceed without not by consensus. This chapter has argued that the unilateral approach taken towards EU withdrawal by the UK government, as well as the lack of concern afforded to examining the ramifications of withdrawal on the devolved territories, misunderstands the importance of both the EU and devolved frameworks in holding the UK together. In light of the unravelling of these bonds, it may well be that a trajectory towards a more consociational approach will not only further deepen democracy and entrench a truly plurinational culture but may be the required remedy to prevent the disintegration of the union.

5. Chapter Five: Catalonia

'Spain today is a state for all Spaniards, a nation-state for a large part of the population, and only a state but not a nation for important minorities' (Linz, 1973: 99).

'The State of Autonomies has worked for almost 40 years, but it does not mean that it can work for the next 40' *(Interview with PSC MP 1).*

5.1 Introduction

Centre-periphery relations have a long and controversial history in the Spanish state, oscillating between periods of centralisation and decentralisation. Incessant attempts to forge a homogenous population, and thus eradicate minority nationalism, have failed to have much success in Spain, even under periods of dictatorial rule. In fact, as a result of repressive mechanisms that sought to eliminate Spain's internal diversity, minority nationalisms, namely in the Basque Country and Catalonia, came to embody a democratic spirit committed to ensuring the empowerment of such minority communities within a liberal democratic framework. Despite the longevity of Spain's national question, the puzzle has yet to be adequately resolved and continues to inform constitutional debates in the twenty first century.

This chapter analyses the development of territorial politics in Catalonia, paying particular attention to the rise of the independence movement, accompanied by pro-sovereignty and ultimately pro-independence governments since 2010. It begins with a detailed overview of Catalan-Spanish relations dating back to the conquest of Catalonia in 1714, with particular focus on the evolution of the Catalan nationalist movement as well as its distinct demands for accommodation and recognition within the contours of the Spanish state. Equally important is an examination of how the Spanish state has sought to deal with such demands, which, notwithstanding the transition to democracy in the late 1970s, has

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pursued a strategy to contain rather than empower the state's national minorities. Next, the chapter examines the most recent developments vis-à-vis Catalan demands for better accommodation, empowerment and recognition, beginning with the 2010 TC ruling on Catalonia's Statute reform. From here, the chapter analyses the merits and limitations of the Spanish experience of decentralisation including the state's levels of self-rule and shared rule, the pernicious issue of recognition and the role of the TC in the development of territorial politics. The chapter then turns to analysing the future terrain of Catalan politics and Catalonia's territorial and constitutional journey, drawing upon the numerous visions of the various political actors in Catalonia. In line with the analysis of the previous section as well as the theoretical framework discussed in Chapter Three, the penultimate section of this chapter examines from both a normative and institutional viewpoint, potential avenues for reform of the current Spanish territorial regime.

5.2 The Context of Political Partnership 1714-2010

Since the Middle Ages, Catalonia has existed as a territorially defined entity with an identifiably distinct language and culture. Its political covenants and constitutions antedated the Magna Carta and its parliament was one of the first to be established in Europe (McRoberts, 2001a: 1). Unlike Scotland, Catalonia never existed as a fully independent territory. Keating (1996: 142) argues that while the existence of autochthonous institutions, such as the *Corts* (Parliament) and the *Generalitat* (government), are often drawn upon by Catalan nationalists as evidence of its past independent status, the entity was best described as a 'self-governing principality'.

From 1137, Catalonia formed an integral and equal partner of the Catalan-Aragonese confederation, maintaining its distinctiveness vis-à-vis language, culture, institutions and laws (Balcells, 1996: 5). Notwithstanding the dynastic union between the Crowns of Aragon and Castile in the late fifteenth century, this sense of distinctiveness was preserved. Akin to Scotland in the aftermath of 1707, Catalonia retained its own institutions, culture and language.

Between the seventeenth and eighteenth centuries, however, a creeping process of centralisation from Castile resulted in a number of Catalan-instigated rebellions and ultimately the siege and surrender of Barcelona to Castilian forces on 11 September 1714.

From here on, a centralised model of governance was imposed upon Catalonia. Seeking to replicate the French Jacobin model, Spanish elites pursued a process of *Castilianisation* throughout the eighteenth and nineteenth centuries. But, rather than create a culturally homogenous population, such centralist processes merely alienated territories like Catalonia and further emboldened minority nationalist movements (Muro and Quiroga, 2005: 34).

Catalan nationalism emerged as a political force towards the end of the nineteenth century, preceded by the *Renaixença* (Renaissance), a largely apolitical cultural movement committed to the revival of Catalan as a literary language. The Renaissance increased the visibility of Catalan throughout Catalonia and reinforced the territory's cultural distinctiveness, providing 'the atmosphere in which Catalan nationalism was to be born' (Balcells, 1996: 25). The evolution of Catalanism from a cultural movement to an overtly politicised nationalist movement entailed the inclusion of a number of overlapping and competing ideologies and ideas (McRoberts, 2001a: 25).[68] What emerged towards the end of the nineteenth century, however, was a Catalanist movement that remained wedded to the idea of building a self-governing Catalonia within a federal Spain. Notions of separatism were all but absent from this pro-Catalan discourse.

Unlike the Scottish nationalist movement, nationalism in Catalonia crosses the left-right ideological spectrum. The *Lliga Regionalista* (Regionalist League), for example, emerged in 1901 under the leadership of Enric Prat de la Riba as the first Catalanist, conservative and bourgeois political party. It dominated Catalan politics for much of the first two decades of the twentieth century and was instrumental in securing the establishment of the Mancomunitat in 1914 (Medrano, 1994: 549). Although a largely administrative arrangement, the Mancomunitat represented the first official institutional recognition of Catalonia's distinctiveness since the territory's defeat in 1714. It was, however, a short lived endeavour and abolished in 1925, by which time the Spanish government had been overthrown by Miguel Primo de Rivera in a dictatorship which, contrary to the recognition bestowed on Catalonia by the Mancomunitat, sought to eradicate Catalan distinctiveness and foist upon Catalans, a homogenous, pro-Castilian identity.

By the 1930s and the fall of the Primo dictatorship, the ascendancy of conservative

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[68] Interestingly, from its inception until the present day, Catalan nationalism has appeared in various guises in the ideological thinking of Anarchists, Carlists, Communists, Conservatives, Federalists, Separatists, Socialists and Republicans. This remains relevant today given that the different political parties involved in the independence movement straddle the left-right ideological continuum.

Catalanism that precipitated the creation of the Mancomunitat gradually eroded and transmuted into a left-wing republican movement, manifest in the establishment of *Esquerra Republicana de Catalunya* (Republican Left of Catalonia – ERC) in 1931 (Argelaguet, 2011: 155). 1931 also saw the proclamation of the Second Spanish Republic which not only heralded the return of democracy, but equally reaffirmed acknowledgement and recognition of Catalonia's ethnonational distinctiveness (Moreno, 2001: 54). Nonetheless, this recognition of Catalonia's distinct status, was, much like Spain's previous flirtation with institutional recognition, short-lived.

The victory of Francoist forces in 1939 precipitated a 40-year period of dictatorial rule during which Catalan nationalism, or more concretely minority nationalism, was identified as a *bête noir* of the regime. As well as rejecting regional autonomy, which under the Second Republic had been granted to Catalonia, Galicia and the Basque Country, the Franco regime equally repudiated democracy, anti-clericalism and socialism (Guibernau, 2004: 34). The regime, however, harboured a 'special hatred' towards Catalonia and sought to completely eradicate Catalan culture, identity and language from society (McRoberts, 2001a: 46).

The death of Franco on 20 November 1975 initiated Spain's transition from an authoritarian regime towards democracy. The transition, unsurprisingly, was fraught with complications, including the challenge of satisfying pro-democratic forces, namely Catalonia and the Basque Country which demanded a right to autonomy, without offending the autonomy-cautious Spanish nationalists that supported the Franco regime. For most, however, the damage inflicted by the Franco regime vis-à-vis these territories ensured that both democracy and decentralisation would become comfortable bedfellows. As Roller (2002: 71-72) notes, 'it was widely accepted that a refusal or reluctance to address the issue of regional autonomy and cultural, linguistic and historical differentiations would endanger the consolidation and establishment of the post-Franco democratic regime.'

The challenge of drafting a constitution that reflected and balanced the concerns of both pro-autonomy and autonomy-cautious sides in Spain was a protracted process.[69] The Constitution which emerged has been infamously analysed in the academic literature, considered 'a model of ambiguity' (Keating, 1996: 149), 'a great document of compromise'

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[69] Two committees were established. An initial Committee on Constitutional Affairs with 36 members and a subsequent drafting subcommittee with seven members. The drafting committee included three *Unión de Centro Democrático* (UCD) representatives, one socialist, one Communist, one member of the *Alianza Popular* (AP) and one Catalan representative. Notably absent from the committee was a Basque representative after the *Partido Nacionalista Vasco* (PNV) decided to boycott the process.

(Dowling, 2013: 114) and 'a feat of semantic engineering' (Balfour and Quiroga, 2007: 46). According to one interviewee, the Constitution represented 'a solution conditioned by the politics of that time' inasmuch as it lacked precision and allowed for two distinct interpretations (Interview with *Catalunya en Comú-Podem* MP 1). The lack of precision relates to a number of articles, including the recognition of Spain's internal diversity, the fuzzy boundaries to delineate competences and the lack of self-definition as to what sort of state Spain is. Consequently, there remains ongoing debate as to whether the state is a strictly unitary or federal model (Requejo 2017; Sala 2014). This was also reflected in a number of interviews where definitions ranged from 'pre-federal' (Interview with ERC MP 1), 'flawed federalism' (Interview with PSC MP 1) to 'quasi-federal' (Interview with C's MP). Arzoz (2012: 179) succinctly encapsulates this lack of consensus, defining Spain as a 'multinational quasi federal unitary state'.

The Constitution provided for an open-ended rather than a definitive territorial model and detailed two processes – a fast track (Article 151) and a slow track (Article 143) – to achieve autonomy.[70] The former process was designed specifically for those regions which had approved Statutes during the Second Republic and enabled them to gain more extensive autonomy than the slow track regions. The fast-track procedure was well received in the historic regions given that it afforded them extensive autonomy as well as reinforced their perceived status as historically distinct communities. The Constitution, however, despite acknowledging the existence of these 'historic nationalities' did not enumerate them. Moreover, while asymmetry appeared to be the order of the day, reinforced by the fact that the Basque Country and Navarre were accorded fiscal autonomy, the necessity of individual negotiations between each community and the central government meant the Constitution provided for the development of 'both asymmetric and symmetric devolution' (Colino and Hombrado, 2015: 175). In the event, 17 ACs were established to form part of the *Estado de las Autonomías* (State of the Autonomies).

The drafting of the Constitution was an indisputable critical juncture in Spain's democratic transition, but the fact that there was no 'democratic rupture' with the past immediately tainted the transition as well as enshrined in the Constitution competing conceptions of the Spanish state. Cooperation amongst the political elites, including

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[70] Article 151 also contained an exceptional route to autonomy for any region wishing to achieve the same level of autonomy as the historic nationalities. This entailed a number of complex conditions such as a referendum in which the proposed statute had to be approved by a majority in each of the region's provinces.

representatives from Catalonia, was pivotal in the development of Spain's pacted transition, but this did not lead to a wholly inclusive process in which the political longings from the Basque Country and Catalonia for recognition of nationhood and a right to territorial self-government were explicitly and enthusiastically embraced. Consequently, the Constitution codified two competing conceptions of the Spanish state: an explicit mononational vision that provided for decentralisation and a tacit recognition of Spain's internal ethnoterritorial diversity as well as a more open interpretation, confirming the existence of the historic nationalities and a guaranteed right to self-government. Article Two of the Spanish Constitution has been termed 'the most controversial [Article] in the whole text' (Guibernau, 2003: 124), and 40 years after its inception, remains just as contentious (see Cetrà and Harvey, 2018: 10). Article Two states:

> The Constitution is based on the *indissoluble* unity of the Spanish Nation, the common and *indivisible* homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all (my emphasis).

On the one hand, Article Two affirms the concept of Spain as a nation-state, a state composed of only one nation which cannot be divided. On the other hand, it recognises the existence of other nationalities and regions (though these are not identified) and their right to self-government. While recognising other nationalities and regions, Article Two makes clear that there is only one nation, that of Spain. As Balfour and Quiroga (2007: 52) note, the recognition of the historic communities such as the Basque Country, Catalonia and Galicia as nations was considered 'anathema for the right and the Armed Forces', while the relegation of the aforementioned historic communities to the status of mere regions, 'would have been unacceptable to the regional nationalists and the left'. The result was thus 'a rather ambiguous formula' whereby two competing conceptions of the nation were enshrined (Martínez-Herrera and Miley, 2010: 8).[71]

Title VIII of the Constitution, entitled 'The Territorial Organisation of the State' detailed the processes of gaining autonomy as well as the powers conferred upon the different levels of government. However, given that from its inception, decentralisation was conceived as a process involving each prospective AC negotiating individually with the

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[71] It is important to note, that while Spain is often held up as a prototypical case whereby ambiguity has been enshrined to meet the needs of both minority and majority communities, competing national visions are not unique to Spain and in fact are a general characteristic of plurinational states. Canada, for instance, is a case in point (see Anderson 2018).

central legislature, the Constitution's enumeration of competences is somewhat vague (Aja and Colino, 2014: 448). Article 149 enumerates no fewer than 32 'exclusive' areas of legislative competence for the state, including ambits such as customs, defence and international relations. The preceding Article 148 lists 22 powers that may be assumed by the ACs, but as a result of the open-ended decentralisation process, no exclusive powers were delineated to the ACs in the Constitution (Colomer 1998). To add to this lack of clarity, Article 150 (sections one and two) states that other legislative and administrative powers may be transferred to one, some or all the ACs, while section three imbues the central government with authority to intervene in AC jurisdiction in order to protect and promote 'the general interest' of the state. This vague delineation of competences and powers led to a rather messy system of overlapping jurisdictions.

The PSOE, under Felipe González, was swept to victory in the 1982 general election, instituting a period of socialist dominance that would last until 1996. During much of this period, the socialists formed a majority government (see Figure four). Yet, while they remained committed to Spain's territorial re-organisation, the party's penchant for 'Jacobism' and 'statism' gradually tempered its zeal for decentralisation (Nagel, 2010: 121). There was a clearly identifiable strategy of slowing down decentralisation under the PSOE, but the concern with harmonisation preceded the PSOE's assumption of power, precipitated by an attempted *coup d'état* in 1981.

Figure Four: Spanish General Election Results 1982-2016
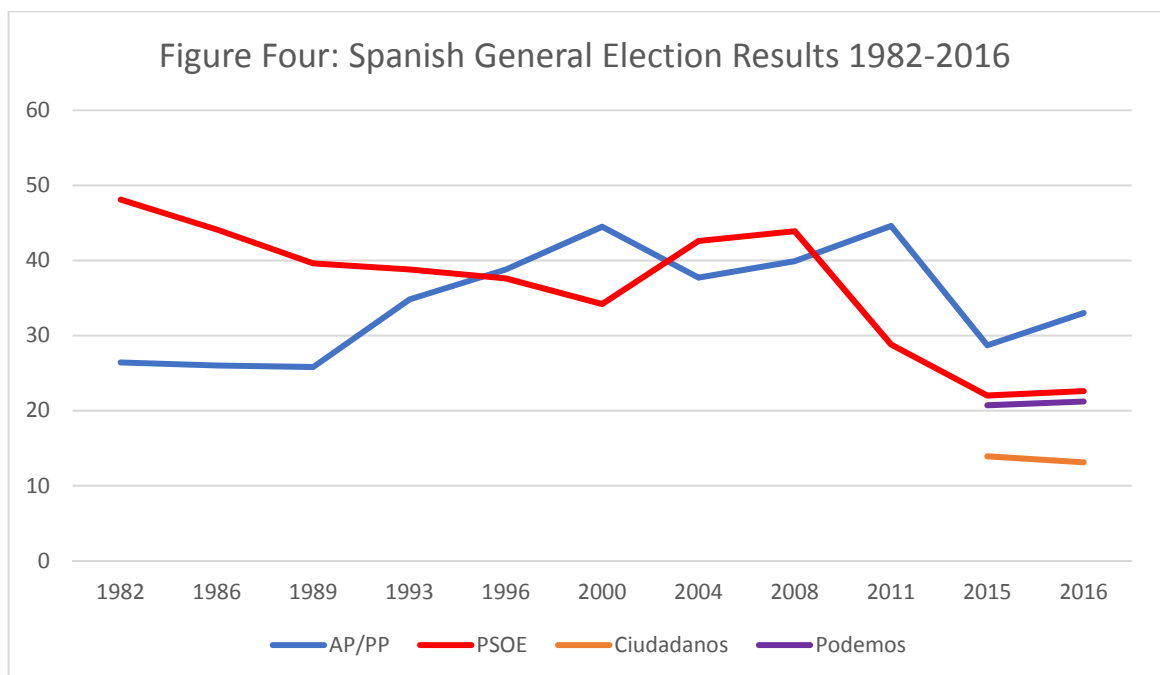
The failed coup was widely interpreted as a backlash against decentralisation and entailed a radical shift in the Spanish government's decentralisation policy. The government sought to impede the process of decentralisation through the *Ley Orgánica de Armonización del Proceso Autonómico* (*Organic Law for the Harmonisation of the Process of Self-government* – LOAPA). The result of a bipartisan agreement between *Unión de Centro Democrático* (Union of the Democratic Centre - UCD) and PSOE, LOAPA was designed to end the perceived existence of first and second order ACs by diminishing the powers of the fast-track ACs while bolstering the competences of the others. The bill was fiercely opposed by the historic nationalities, particularly provisions that would see already devolved powers revoked and a requirement that legislative acts passed by autonomous parliaments be approved by the central government (Agranoff and Ramos Gallarín, 1997: 12). Catalonia and the Basque Country challenged this in the TC, the result of which was a landmark ruling that struck down 14 of LOAPA's clauses and prohibited unilateral action by central government to reform the distribution of powers. Yet, and much to the chagrin of the Catalan and Basque governments, the TC upheld the use of Basic Laws in AC jurisdiction to promote and protect 'the general interest' as stipulated in Article 150(3) of the Constitution (Muñoz Machado 1983).

Between 1982 and 1993, the González administrations, repeatedly invoked 'the general interest' to pass Basic Laws in a number of ambits, including, economic development, education, health care and tourism (McRoberts, 2001a: 73). Despite challenges from ACs, the TC tended to uphold central government intervention (Máiz et al 2010). In effect, the González governments' aim was not merely to ensure a more equal development of territorial autonomy in the state, but to weaken claims of distinctiveness from the historic communities. In 1992, the governing socialists signed an agreement (*pacto autonómico*) with the PP to rationalise the autonomy process by gradually extending the powers of the slow track ACs and provide a maximum level of competences (*techo autonómico*) (Agranoff and Ramos Gallarín, 1997).[72] The doctrine, dubbed 'café para todos' (coffee for everyone), was designed to dilute the powers of the fast track ACs and top up the competences of the other regions, while reaffirming the primacy of the central government. In short, *café para todos* was designed to dilute diversity and undermine claims for distinct

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[72] The PP was founded in 1989 to replace the AP. Despite a change in nomenclature, the party continued to advocate a mononational vision of the state.

treatment from the historical communities.[73] The most controversial articles of LOAPA may have been invalidated by the TC, but the underlying objectives of the law – to standardise the autonomy regime and thus curtail the increasing distinctiveness of the historic nationalities – remained in motion.

In reaction to the extension of decentralisation to the other ACs, the historic nationalities advocated the transfer of further powers to their communities. It was not until 1993, however, when the PSOE lost its majority, that nationalist parties, such as CiU[74] gained leverage and were able to extract concessions from the central government in return for parliamentary support (see table four).[75] This was also to be the case in the 1996 election when the PP failed to win a majority.

Table Four: Governments in Spain (1979-2011)

Year	Party	Type
1979-1981	UCD	Minority
1982-1986	PSOE	Majority
1986-1989	PSOE	Majority
1989-1993	PSOE	Majority
1993-1996	PSOE	Minority
1996-2000	PP	Minority
2000-2004	PP	Majority
2004-2008	PSOE	Minority
2008-2011	PSOE	Minority

Source: Ministerio de Interior.

During the same period, CiU took a more decidedly nationalist stance and called for

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[73] Despite controversy surrounding the *café para todos* doctrine, it was warmly received in the slow track ACs which, since the creation of the state of autonomies, consistently pressed for the devolution of more powers to reach the status originally reserved for the historic nationalities (Hombrado 2011).

[74] CiU was an 'alliance of convenience' formed in 1978 between two separate parties, *Convergència Democràtica de Catalunya* (CDC) and *Unió Democràtica de Catalunya* (UDC) (Elias, 2015: 80).

[75] This policy is known in Catalan as 'Peix al cove', translated into English as 'a bird in the hand'. In essence, it meant 'CiU would take advantage of periods of national minority government to negotiate benefits for Catalonia' (Field, 2016: 160). Under the González regime, Catalonia gained further powers over healthcare and its regional police force, as well as retained 15% of the income tax paid by residents (although this was not limited to Catalonia and was extended to all ACs, save the Basque Country and Navarre). This was extended to 30% under the minority Aznar (1996-2000) administration.

the redistribution of power in Spain along confederal lines. This idea of 'shared sovereignty' was reinforced in the *Declaration of Barcelona*, signed on 16 July 1998 by the main Catalan (CiU), Basque (PNV) and Galician (*Bloque Nacionalista Galego* – BNG) nationalist parties. The joint declaration complained that after 20 years of democracy Spain had yet to establish any official juridical or political recognition vis-à-vis the historical nationalities and called for a radical reform of the Spanish Constitution to recognise Spain as a multilingual, multicultural and multinational state. Both the PP and PSOE rejected the declaration and instead mounted a defence of the constitutional status quo (Balfour and Quiroga, 2007: 156-157).

In the general election campaign in 2000, the PP campaigned on a pro-decentralisation platform, albeit in favour of further equalisation, but once in office, this time with a majority, the party's pro-decentralisation position was replaced by an increasingly centralist stance (Verge, 2013: 325).[76] Having secured an overall majority, the government was no longer obliged to seek the support of smaller nationalist parties and as such adopted a much more conservative, centralist and Spanish nationalist discourse. Health care competences were further extended to the slow-track ACs, but the government claimed this signalled 'a halt' in the devolution process (Colino, 2009: 266). This resulted in accusations of centralisation and resymmetrisation (Máiz et al 2010), reflected in the increased number of legal challenges brought to the TC by ACs against central government legislation (Grau Creus 2005).

The PP government became much more critical of demands for further autonomy, including increased hostility towards language policy and developed a markedly nationalist discourse aimed at accentuating Spanish culture and 'strengthening the Spanish national identity and the Spanish language' (Colomer, 2017: 959). In line with this, the government sought to re-energise Spanish nationalism through a new discourse of 'constitutional patriotism' and as such was transformed 'from being the foremost critics of the Constitution… [to]…its staunchest defenders (Nagel, 2010: 129).[77] The 2004 Spanish election took place in the wake of a terrorist attack in Madrid and returned a narrow and surprising victory for the Spanish socialists. With a total of 164 seats, the PSOE led by José Luis Rodríguez Zapatero, formed a minority government, which although reliant on the

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[76] For more on the specific territorial strategies employed by the PP and PSOE see Fabre (2008) Hopkin (2009) and Verge (2013).

[77] For more on the PP's constitutional patriotism see Balfour and Quiroga (2007) and Muro and Quiroga (2005).

votes of smaller parties to invest Zapatero as Prime Minister, did not seek any formal coalition partner or agreement with other parties (Field, 2009: 418). In contrast to the PP, the PSOE under Zapatero campaigned on a pro-decentralisation platform, committed to further decentralisation and reform of the Constitution and the ACs' Statutes of Autonomy.

Zapatero, in contradistinction with Aznar, endorsed a 'nationalist friendly' stance, cognisant of Spain's internal diversity and comfortable with the description of Spain as a 'nation of nations' (Interview with PSC MP 2). This nationalist friendly approach became much more emphatic after the 2003 Catalan regional election in which the PSC, with the support of ERC and *Iniciativa per Catalunya Verds - Esquerra Unida I Alternativa* (Initiative for Catalonia Greens-United and Alternative Left –ICV-EUiA), formed a centre-left coalition, known as the *tripartit* and ended CiU's two decade hegemony over Catalan politics.[78] Pasquall Maragall, the new President of the Generalitat, with the support of Zapatero, campaigned in favour of Statute reform and placed this constitutional issue at the top of the political agenda.

The development of Catalan self-government and conferral of further competences that was achieved in 1979 resulted from situation-specific negotiations and deals during episodes of minority government (Field 2015). The decision, therefore, to pursue Statute reform marked a further stage in the development of the Spanish State of Autonomies.[79] Indeed, several interviewees pointed out that Maragall's framing of the debate on Statute reform was intended to amend and update the Catalan Statute of Autonomy, but was essentially designed to engender change in the Spanish Constitution and State of Autonomies (Interviews with *Catalunya en Comú-Podem* and PSC MPs). The objectives of the reform were threefold: to clarify and protect the division of competences, to increase the powers of the Generalitat, including a new fiscal arrangement, and to redefine the extant relationship between Catalonia and Spain, with emphasis on recognition of the plurinationality of the Spanish state.

Arguably, one of the biggest issues with the 1978 Constitution was the lack of clarity vis-à-vis the division of competences among the ACs and central government.[80] The Catalan Statute, therefore sought to correct this and assiduously detailed with extreme precision

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[78] Interestingly, the PSC polled fewer votes in 2003 than in 1999. Its elevation to government was only made possible thanks to the electoral breakthrough of ERC and ICV-EUiA.
[79] Other ACs also pursued Statute reform: Andalucía (2006), Valencia (2006), Aragon (2007), The Balearic Islands (2007), Castile and Leon (2007) and Extremadura (2011).
[80] This was corroborated in a number of interviews.

which level of government held jurisdiction over competences. This process, known as *blindaje* (shielding), included identifying the different levels in each section and sub-section in an attempt to protect the Generalitat's jurisdiction from encroachment by the central government (Keating and Wilson, 2009: 552). The new Statute also advocated the recognition of Catalonia as a nation as well as the conferral of new powers, including over finance and immigration.

Figure Five: Catalan Election Results (Main Parties 1980-2006)
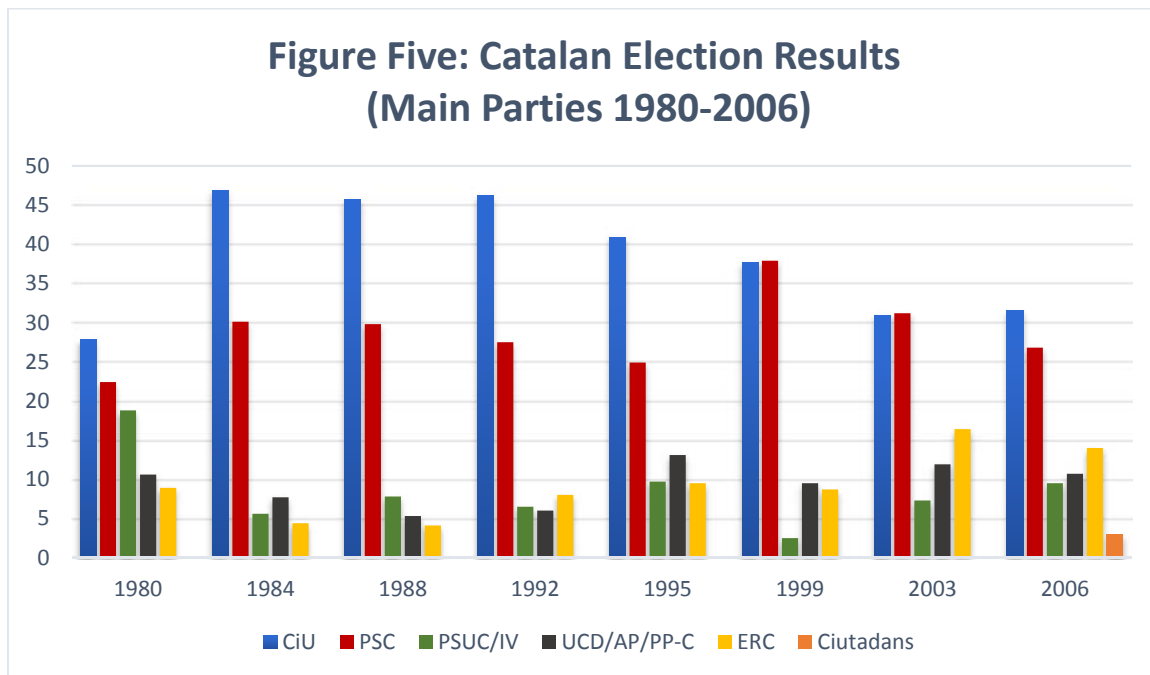
Source: Departament de Governació, Administracions Públiques i Habitatge

As per the multilevel process of Statute reform detailed in the Constitution, the draft Statute was approved by the Catalan Parliament and was then sent to the Spanish Parliament for review (Colino 2009). Here, however, in spite of Zapatero's pre-election promise to accept the Statute and ensure a smooth process of ratification, the reform encountered its first hurdle. As a result of opposition from PSOE members, including vociferous regional barons such as the Presidents of Andalucía and Extremadura, the draft Statute was subject to a number of modifications. Amendments were applied to 144 of the 227 articles. The Statute no longer conceived of Catalonia as a nation, except in the Preamble, which stripped the statement of 'juridical value' (Requejo, 2010: 161). On finance, Catalonia's share of taxation increased to 50% of all taxes raised in the region, but the creation of an autonomous tax agency was rejected. In addition, amendments were applied to other important articles on language and Catalonia-Spain relations. The amended text passed votes in both houses

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of the Spanish Parliament, although ERC, as a result of the new changes, abstained. In the subsequent referendum campaign in Catalonia, both the PP and ERC campaigned in favour of a no vote, albeit for diametrically opposed reasons, but a resounding majority endorsed the new Statute.[81] The PP rejected all versions of the Catalan Statute, disputed the constitutionality of 128 articles and subsequently referred it in the TC (Colino 2009).[82]

The *tripartit* was reassembled in the aftermath of the 2006 Catalan election, which also saw the election of a new party, *Ciutadans,* (C's) which won three seats in the Parliament. Founded during the reform process of the Statute, C's eschewed endorsing a position on the left-right continuum and presented itself as an anti-nationalist party (Rodríguez Teruel and Barrio 2016). Internal problems, in part hangovers from the previous government, persisted but the *tripartit* survived the full term. During this time, the PSOE was re-elected as a minority government in the 2008 general election. By 2009, however, Spain's previously hospitable economic climate had taken a dramatic nose-dive and the Spanish economy entered recession. The economic crisis, compounded by the final judgement of the TC, had the ingredients of 'a perfect storm', precipitated a significant spike in support for independence and significantly altered the course of Catalan politics for the foreseeable future (Interview with *Catalunya en Comú-Podem* MP 1).The next section further details the evolution of territorial politics beginning in 2010 with the TC's final judgement on the reform of the Catalan Statute of Autonomy and the re-election of CiU to government.

5.3 2010 – 2018 Chartering New Territory

5.3.1 2010-2012 Fiscal Autonomy and the 'Right to Decide'

On 28 June 2010, after four years of deliberations, the TC released its judgement on the Catalan Statute of Autonomy. It found 14 of the referred articles 'unconstitutional' and narrowed the interpretation of a further 27 (STC 31/2010). Much of the Statute remained intact, but some of its most symbolic and important proposals, were 'filleted…to the point of evisceration' (Burgess, 2015b: 25). The TC's judgement nullified the proposal of Catalan

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[81] 74% on a turnout of just below 50%.
[82] The PP was not the only actor to mount a legal challenge against the Statute. The Spanish Ombudsman and 5 other ACs (Aragon, Balearic Islands, Murcia, La Rioja and Valencia) referred aspects of the Statute to the TC.

as the preferred language, denied any legal effect to the definition of Catalonia as a nation and rejected the Statue's attempts to create a typology of competence jurisdiction. The court's decision sparked a flurry of civil society movement (Crameri 2015), manifest in the huge demonstration held in Barcelona on 10 July 2010 under the banner, 'Som una nació. Nosaltres decidim' (We are a nation. We decide).[83] Furthermore, accusations of 'politicisation' and a 'centralist bias' dogged the TC in the aftermath of the decision, with many pro-independence supporters claiming it heralded a rupture of the 1978 constitutional pact (Interview with PDeCAT MP 1 and ERC Senator). As Casanas Adams (2017b: 357) notes, 'the Court's 2010 decision in the Catalonia case strongly divided scholars, institutions, and public opinion, leaving the future of the system at a crossroads and undermining the Court's legitimacy in the eyes of some people in Spain.'

Prior to the TC's judgement, a series of unofficial and non-binding referendums on independence took place in municipalities across Catalonia. The Constitution does not allow for the holding of a sub-state referendum on independence, but in line with the law, local municipalities in Catalonia organised a series of unofficial and non-binding local referendums on independence, the first taking place in the small town of Arenys de Munt in September 2009.[84] On a turnout of circa 41%, 96% of voters voted yes to the question, 'Do you agree with Catalonia becoming an independent, democratic and social state under the rule of law, integrated in the European Union?' (Muñoz and Guinjoan, 2013: 45).

As a result of the municipal referendums, coupled with growing dissatisfaction in the aftermath of the TC's final judgement on the Statute, the 'right to decide' movement gained increasing traction (López 2017). The movement, however, while it included elements that alluded to a right of external self-determination, was not exclusively secessionist and presented itself as an inclusive grouping committed to facilitating the necessary tools and structures to enable Catalans to freely decide their political future (Requejo and Sanjaume,

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[83] Interestingly, there is ongoing debate as to whether the Catalan independence movement represents a top-down or bottom up movement. Most interviewees believed the movement was bottom-up, arguing that demonstrations in favour of independence and the right to decide 'forced political institutions to sit up and take notice of this demand' (Interview with CUP MP). On the other hand, a PP interviewee described the movement as top-down, believing that 'the government propelled the movement by using its influence and power to convince Catalans to support the right to decide and/or independence' (Interview with PP MP). Others, however, saw merit in both arguments and posited the movement as multidimensional: 'it is true that the bottom current influenced the top, but from 2012 it's also true that the role of the government was fundamental to maintaining the level of mobilisation in favour of independence because they put all public services, communications, civil servants and all the structures of the government at the service of this movement' (Interview with *Catalunya en Comú* MP 1).

[84] This was reiterated by the TC in 2008 when considering a proposal from the Basque Parliament to hold a two-pronged consultation on the future relationship of the Basque country and Spain (STC 103/2008).

2015: 124). This was most evident in the 2010 Catalan election campaign when CiU, which historically had pursued an anti-secessionist strategy, adopted the language of the right to decide movement to bolster its key priority in the election campaign: to negotiate a new fiscal pact for Catalonia (CiU 2010).

The elections in November 2010 saw the return of a CiU (minority) government and the electoral decline of the *tripartit* coalition partners. Both the PSC and ERC recorded dismal electoral performances, the former polling its worst ever electoral result, while the latter's provision of seats was reduced to ten and forced into fifth place behind the *Partido Popular-Catalunya* (PP-C) and ICV-EUiA. C's maintained its three seats, but was overtaken by a new pro-independence party, *Si* (Catalan Solidarity for Independence), which won four (Rico 2012). Prior to the election, CiU ruled out any formal coalition and thus entered into policy-specific deals with different parties as and when required, including reliance on the PP-C (Martí, 2013: 508).

The socialists not only left office in Catalonia, but in the 2011 general election, badly affected by Zapatero's mismanagement of the economic crisis, were replaced by the PP, which secured a comfortable majority. The PSOE won only 29% of the electoral vote, while the PP won 45%, securing it 186 seats (Kennedy 2012). Giving past experiences of a majority PP government, there was little optimism in Catalonia that the Generalitat would be able to secure a new fiscal pact (Interview with PDeCAT MP 1). Indeed, while the economic crisis was one of the primary drivers to reform Catalonia's fiscal arrangements, the disadvantageous economic climate which led to a tightening of the central government's budgets and an identifiable strategy of economic recentralisation, rendered the opportunity of reform unlikely (Dowling 2017). In September 2012, at a meeting between President Mas and PM Rajoy, the former requested that Catalonia leave the common financing system and be granted fiscal autonomy. But, on the basis that the new fiscal proposal would contravene the Constitution and a suspicion that Mas was merely 'taking advantage of the difficult economic situation to shore up his own electoral support', it was flatly rejected by the Spanish PM (Interview with PP MP).

The inability to secure a new fiscal pact led President Mas to call early elections for November 2012. This decision was compounded by the fact that civil society organisations such as *Omnium Cultural* and the newly established *Assemblea Nacional Catalana* (Catalan National Assembly – ANC), had mobilised huge numbers of Catalans to demonstrate in favour of the right to decide. Just over a week before Mas met Rajoy, for example, the ANC

organised a massive demonstration in Barcelona under the banner 'Catalunya, nou estat d'Europa' (Catalonia – new state in Europe) (Crameri 2015). Prior to its dissolution, the Catalan Parliament passed a resolution in favour of holding a referendum on independence and kick-started the 2012 electoral campaign (Parlament de Catalunya 2012).[85]

5.3.2 2012-2015: The Participation Process and Plebiscitary Elections

The refusal of the Spanish government to enter into negotiations vis-à-vis a new fiscal pact for Catalonia, alongside the mass mobilisation of civil society in support of the right to decide, culminated in President Mas' decision to call a snap election in November 2012. The campaign was dominated by the independence issue, primarily the right to hold a referendum on independence (Rico and Liñeira 2014). CiU radically shifted its territorial position away from its traditional accommodationist stance towards not only pro-right to decide (which had begun to evolve in line with the party's support for fiscal autonomy), but in support of the creation of an independent Catalan state. The party's electoral manifesto justified this shift on the basis that the central government was not willing to negotiate and thus the only alternative was for Catalonia to seek the establishment of its own state via a referendum (CiU, 2012: 9). ERC, *Si* and *Candidatura d'Unitat Popular* (Popular Unity Candidacy – CUP) also included support for independence and a referendum in their manifestoes.[86] What is more, the increasing salience of the territorial issue precipitated the polarisation of party positions (see Barrio and Rodríguez-Teruel 2017) as well as led to an identifiable 'outbidding' strategy in order to win votes in which both the PP and CiU 'entertained themselves by outbidding each other on the nationalist dimension' (Colomer, 2017: 960).[87]

The election took place on 25 November with turnout of nearly 68%. CiU failed to gain the majority it had campaigned for and to the surprise of many lost 12 of the 62 seats it gained in 2010. ERC, for the first time in the party's history, became the second largest party (21 seats), overtaking the PSC, which was relegated to third place, and just one seat ahead of the PP-C. The anti-independence C's more than doubled its share of the vote increasing

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[85] For more on the Catalan Parliament's role in the constitutional debate see (Viver Pi-Sunyer and Grau Creus 2016).

[86] CUP is a radical-left, anti-capitalist 'assembly-based party initiative' and prior to the 2012 national election, had only ever fielded candidates in municipal elections (Feenstra et al, 2017: 28-29).

[87] For more on ethnic outbidding see Rabushka and Shepsle (1972), Zuber (2012) and Zuber and Szöcsik (2015).

its tally of seats to nine, while the pro-independence CUP won three seats. The split of the pro-independence vote among CiU, ERC and CUP denied CiU an absolute majority, but the Parliament was, for the first time in its modern history, composed of a pro-right to decide, as well as a pro-independence majority. As had been the case in 2010, CiU, albeit with fewer seats, formed a minority government. No party entered into coalition with CiU, but a deal was struck between ERC and CiU which saw the former support the latter in crucial votes in return for a referendum on independence to be held in 2014.

Paving the way for a referendum, on the 23 January 2013, the Catalan Parliament passed *The Declaration of Sovereignty and Right to Decide of the Catalan People* Act (Parliament de Catalunya 2013), which was subsequently challenged by the central government and declared unconstitutional by the TC (STC 42/2014).[88] The Generalitat produced a White Paper entitled *The National Transition of Catalonia*, and organised the referendum to be held on 9 November 2014 (Generalitat de Catalunya 2014). Voters were asked two questions, whether Catalonia should be a state, and if yes, whether that state should be independent (Liñeira and Cetrà, 2015: 263).

In January 2014, the Catalan Parliament voted in favour of requesting permission from the Spanish government to hold the proposed referendum in November.[89] Buoyed by the Scottish experience (Interviews with ERC and *Catalunya en Comú-Podem* MPs), a delegation from the Catalan Parliament presented an official request for the transfer of the relevant powers to the Catalan Parliament to facilitate the holding of a referendum (Cetrà and Harvey 2018). By a margin of 299 to 47, the Spanish Parliament rejected the request (Garea 2014). Hence, in September 2014, the Catalan Parliament passed its own law on non-binding popular consultations. This was challenged by the Spanish government, temporarily suspended by the TC and ultimately declared unconstitutional (STC 31/2015; 32/2015). The Catalan government, however, in defiance of the TC, pressed ahead with the vote, rebranding it a 'participation process' which would have no legal effect. With an estimated turnout of circa 36%, an overwhelming majority of Catalans voted in favour of both questions (see table five).

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[88] *La Declaració de sobirania i del dret a decidir del poble de Catalunya* was passed with the votes of CIU, ERC, ICV-EUiA and one representative from CUP. C's, the PP and the PSC voted against, although several members from the PSC defied the party whip and abstained.

[89] 84 parliamentarians, which included members of CiU, ERC, ICV-EUiA as well as 3 deputies from the PSC (which defied the party whip to vote against), voted in favour of the request. PP-C, C's and the remaining members of the PSC voted against. The 3 members of CUP abstained, believing that it was not necessary to request the permission of the central state to hold a referendum.

Table Five: November Consultation Results

Yes-Yes	80.7%
Yes-No	10.1%
No-No	4.5%

Source: Generalitat de Catalunya.

Given the low turnout, a factor caused by the anti-independence boycott, the results of the consultation did not translate into any official mandate for Catalonia to secede from Spain (Martí and Cetrà, 2016: 108). A clear majority of participants had voted in favour of Catalonia becoming an independent state, but this was treated as a symbolic victory rather than a conclusive vote on independence. In January 2015, President Mas announced he would call an early election for September of the same year, framed as a de facto vote on independence.

5.3.3 2015 and Beyond: From Secessionism to Secession?

As discussed supra, the Spanish government's response to the independence challenge in Catalonia has been a series of legal bulwarks, yet controversy and contestation of this strategy boldly increased in 2015 when the PP proposed emergency legislation to transfer new powers to the TC to specifically deal with the Catalan situation (Casanas Adams 2017b). These new powers were designed to ensure the TC had power to enforce its own rulings and included the ability to impose recurring fines on or suspension of public authorities, public employees or private individuals that did not comply with TC rulings. The proposed legislation was vehemently criticised by opposition parties and challenged in the TC by the Basque and Catalan governments.[90] The TC however, by a majority of eight to three upheld the measures (STC 185/2016), although, as Casanas Adams (2017b: 402) notes, the changes 'not only placed further responsibility on the Court, but … effectively converted it into the Spanish government's enforcer'.[91]

On 27 September 2015, Catalans voted in yet another early election in which the independence issue remained at the centre of the campaign. Heralded as 'plebiscitary

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[90] Criticism was not limited to Spain. The Venice Commission (2017), an advisory body of the Council of Europe, expressed concern that the measures to empower the Court to distribute fines or suspend elected officials from office could potentially harm its role as a 'neutral arbiter'.
[91] This will be further elaborated in Section four.

elections', voters in favour of independence were asked to vote for pro-independence parties in order to secure a majority of parliamentarians to begin 'the process of disconnection' from the Spanish state. Prior to the election, and largely as a result of the gradual radicalisation of CiU's territorial stance, the CiU federation was dissolved. CDC, which tended to be the dominant partner in the alliance, had become much more pro-sovereignty that its UDC counterpart, which remained wedded to the idea of self-government, and as such the parties decided to end the three decades' old alliance and compete separately in the impending election (Barberà and Barrio 2017). Free from its alliance with UDC, CDC sought to pursue a new pre-electoral partnership, yet this time with other pro-independence groupings in an attempt to 'maximise pro-independence votes' (Martí and Cetrà, 2016: 109). A deal was struck between CDC, ERC and other smaller parties and organisations to form the pro-independence coalition, *Junts pel Sí* (Together for Yes – JxSí). Another coalition, *Catalunya Sí que es Pot* (Catalonia Yes we Can – CSQEP) was also formed. This left-leaning coalition included ICV-EUiA and the newly emerged *Podemos* party, which while opposed to Catalan independence, supported the right to hold a referendum and the recognition of Spain as a plurinational state (Rodríguez Teruel et al 2016).

Turnout at the 2015 Catalan election was 77%, the highest recorded in an election in Catalonia since the transition to democracy. The pro-independence parties emerged victorious, winning a majority of seats (72), but were unable to secure a majority of votes (47.8%). On the other hand, those advocating an anti-independence stance won 39.1% of the vote, while those parties endorsing an anti-independence but pro-right to decide stance, won 11.5% of the vote. C's emerged as a clear victor on the pro-Spain side, winning 16 more seats than it had done in 2012.

On 9 November 2015, JxSí and CUP joined forces to pass a resolution in the Parliament acknowledging that the majority of pro-independence parliamentarians represented a 'democratic mandate… [to]…start the process to create an independent Catalan state in the form of a republic' (Parlament de Catalunya 2015). The resolution committed the government to passing legislation to create Catalonia's own state structures (such as a Catalan social security system and tax agency), dismissed the authority of Spanish institutions over Catalonia (particularly the TC) and to engage in a participatory process to create a new constitution for the independent Catalan republic. As a result of internal divisions among the three governing parties, implementation of the route map was delayed, but was kick-started with the election of Carles Puigdemont, the pro-independence mayor

of Girona, to replace Mas as President.[92]

In September 2017, the Catalan Parliament, passed the *Referendum Act 2017* legislating for a binding referendum on independence and the *Act of legal transition and of the formation of the republic 2017* which would come into force in the case of an affirmative outcome of the referendum. Both laws were immediately suspended by the TC, but caused considerable controversy in Catalonia, too (Interview with PSC MP 2). The *Referendum Act,* for instance, entailed 'significant irregularities' and was pushed through Parliament with only limited time for proper debate and scrutiny (which prompted the walkout of 52 opposition parliamentarians) as well as passed with only a simple majority (Cetrà et al, 2018: 133). In spite of this opposition and suspensions by the TC, the government organised the referendum to take place on October 1. Prior to this, the Spanish government caused much controversy in its attempts to impede the vote from taking place, including raids of buildings and offices in search of ballot boxes and voting papers, the closure of websites and the arrest of ministers and officials suspected of helping to organise the vote (Anderson 2017b).

On 1 October 2017, amid a massive and harsh police operation to prevent the referendum from going ahead, circa 43% of voters participated in the referendum. From this number, over 90% voted in favour of the question 'Do you want Catalonia to become an independent country in the form of a republic?'. Given the concerted state resistance to the vote, the boycott of anti-independence voters, and the paucity of 'procedural guarantees' (Field and Barrio 2017), the results of the referendum resulted in only a 'contentious…mandate for independence' (Cetrà et al, 2018: 129). On 10 October, President Puigdemont declared Catalonia's independence but immediately suspended it in return for negotiations with Madrid (BBC News 2017e). This attempt to use the affirmative vote for independence as leverage in negotiations, however, had very little effect as the Spanish government refused to enter into negotiations vis-à-vis independence and threatened to apply Article 155 of the Constitution which would suspend Catalonia's autonomy and impose direct rule from Madrid.[93] On 27 October, the Senate voted in favour of activating

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[92] CUP, which as a result of electoral arithmetic had been cast the role of kingmaker, refused to support the re-election of Mas as a result of his pro-austerity programme pursued in the preceding parliament.

[93] Article 155 reads, 'If a self-governing Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to meet said obligations, or to protect the abovementioned general interest.'

Article 155, while the Catalan President unilaterally declared Catalan independence. In the aftermath of the application of Article 155, Catalonia's regional autonomy was suspended and the Catalan government deposed. In addition, a number of members of the Catalan government and the leaders of ANC and *Omnium Cultural* were remanded in custody on suspicion of rebellion, sedition and misuse of public funds, while others, including the deposed President, fled to other European countries.

In line with the imposition of Article 155, the Spanish government called new elections in Catalonia for December 2017. Heralded by Rajoy as an opportunity 'to restore democracy', the election took place on 21 December, but there were only minor variations on the electoral results (Martín Plaza 2017). As had been the case in 2015, a majority of pro-independence parliamentarians was elected (albeit two fewer than 2015), but the clearest victor was the anti-independence C's, which emerged as the party that won most votes and seats. C's' election victory cemented the party's reputation as the staunchest defender of Spain, but it was a 'pyrrhic victory' in that electoral arithmetic prevented the party from forming a government (Moreno 2017). As in 2015, non-secessionist parties (including both anti-independence and pro-referendum parties) won a majority of the vote (52.5%), but pro-independence parties, on 47.5% of the vote had, once again, secured a majority of pro-independence parliamentarians. The replacement of the PP government in Madrid with the PSOE in June 2018, led to the lifting of Article 155 and the confirmation of Quim Torra, a close ally of Puigdemont, as President of Catalonia. In terms of electoral arithmetic, the 2017 election changed very little, and while the replacement of the PP with the PSOE indicated an immediate change in rhetoric, the constitutional issue remains far from settled. For many pro-independence supporters, it remains 'game on rather than game over' (Cetrà et al, 2018: 140).

The next section analyses the merits and limitations of the Spanish autonomy model in Catalonia.

5.4 Examining the Merits and Limitations of Decentralisation in Spain

The Spanish State of Autonomies has evolved over the last four decades, albeit questions of self-government and self-determination remain at the heart of ongoing political debates. As elucidated in the citation by Linz at the beginning of this chapter, there are

different conceptions and formulations regarding the configuration of contemporary Spain, most clearly in the relationship between nation and state. After over three decades of relatively harmonious coexistence, disenchantment with Spain's territorial architecture and contestation as relates to centre-periphery relations have been voiced with increasing vehemence, most strongly manifest in the ongoing quest for Catalan independence. In attempting to cater to the demands of various actors, the Spanish system has often come under intense scrutiny and criticism, charged with 'being both too centralised and too decentralised and simultaneously excessively rigid and overly flexible and fluid' (Colino and Hombrado, 2015: 171). On the one hand, proponents of the territorial model continue to hold it in relatively high esteem, while, on the other, detractors consider it 'a failure and disappointment' (Crameri, 2014: 60). This section, therefore, examines Spain's constitutional architecture in relation to its ability to accommodate minority nationalist demands vis-à-vis self-government, self-determination and recognition.

5.4.1 The Merits of Decentralisation

As has already been discussed, political decentralisation in Spain was viewed as an essential element in the country's transition to democracy. At the 1977 general election, almost all political parties included support for territorial autonomy in their election manifestoes and thus the country's path towards democratisation was twinned with a process of political decentralisation. The Constitution enshrined a model of decentralisation which involved bilateral negotiations between each region and the central state and the passing of a Statute of Autonomy specifically tailored to the political reality of each region. Given the authoritarianism of the Franco regime, emphasis was placed on reconciliation with and accommodation of the Basque, Catalan and Galician territories, all of which were guaranteed a right to self-government in the Constitution.

5.4.1.1 A Democratic and Dynamic Model

Spain's democratic trajectory has been a turbulent one, punctuated by significant periods of civil war, dictatorship and repression. The transition to democracy in the wake of Franco's death was considered a process that would develop in tandem with a process of decentralisation in an attempt to right some of the wrongs of the Franco regime. This

commitment to, or at least in the beginning, acknowledgement of, the necessity of reconciliation in line with democratic principles resulted in the modernisation of the state's centralised structures and established and entrenched a liberal democratic system with support from above and below.

The Constitution that resulted from the prolonged period of debate and negotiation symbolised 'a new beginning' and stood in stark contrast to the hyper-centralist and repressive politics of the Franco regime (Magone, 2008: 82). Between the first Constitution written in Cadiz in 1812 and the promulgation of the 1978 Constitution, Spain has had no fewer than seven constitutions, which, unlike the 1978 document, were not the result of compromise and negotiation but imposition (Viver Pi-Sunyer 2012: 220). The 1978 Constitution was thus a 'consensus Constitution' and for this reason is defended so much by Spain's main state-wide parties (Interview with PP MP). For the PP, for example, the 1978 document represents 'a Constitution for everyone; it had the advantage of bringing people together around the table to achieve consensus among almost all political parties' (ibid). The arrival at consensus was no mean feat considering that a compromise had to be found among the competing proposals of the Francoist forces, which advocated unitarism, the left-wing parties, which endorsed federalism, and the peripheral nationalists that sought self-government and recognition of their differential facts (*hechos diferenciales*). As already discussed, the result was ambiguous wording, but as Núñez (2000: 135) attests, 'in spite of its terminological vagueness and lack of congruity, it [the Constitution] has also proved itself to be a surprisingly, functional, flexible and robust provisory solution.'

Writing in the late 1990s, Colomer (1998: 41) described the process of decentralisation as 'the most innovative institutional feature in democratic Spain.' While in recent years the Constitution has amassed growing numbers of detractors, there is no doubt that it engendered a dynamic decentralisation process that enabled the creation of the State of Autonomies with ACs able to achieve rather generous levels of administrative and legislative autonomy. The Constitution prescribed an open-ended territorial model which 'permitted regions, following different procedures justified on historical and political grounds, a broad leeway to choose… the degree of devolution desired among the possibilities offered by the Constitution' (Colino, 2009: 263). This principle – *el principio dispositivo* – described as the most prominent and fundamental principle of the Constitution, enabled each AC to assume the powers it wanted within the limits established by the Constitution (Viver Pi-Sunyer 2008). In essence, the framers of the Constitution, in lieu of establishing definitive territorial

arrangements, settled on an open-ended and flexible model to be subsequently defined by negotiations between the regions and central government and the evolving jurisprudence of the TC. However, as will be later developed, while the Constitution provided only a loose framework for the territorial model, it was anchored within a rather rigid framework that, for instance, allowed for the development of autonomy insofar as it did not question or pose a threat to the territorial integrity of the state or the supremacy and existence of the Spanish nation-state.

This flexibility, however qualified, still ensured the devolution of significant powers to the ACs and in this regard proved much more flexible than other plurinational states such as Canada.[94] In Spain, the Constitution's open-ended model allowed for the development of asymmetry, the two track approach to autonomy, recognition of co-official languages as well as other *de jure* asymmetry such as respect for Catalan civil law and fiscal autonomy for the Basque Country and Navarre. Some aspects of the Constitution hinted at a liberalism I and statist agenda, but some of the aforementioned aspects, at least on paper, are consonant with a liberalism II vision. There was no explicit recognition of Spain's plurinational reality in the 1978 Constitution, but it constituted 'reconciliation' with the historic territories (Interview with C's MP) and an 'implicit recognition' of their cultural and linguistic distinctiveness (Interview with PP MP). In this sense, the 1978 Constitution represented 'a watershed moment' in the relationship between Catalonia and the Spanish state, a state in which there was some recognition, however timid, of its differential fact and a guaranteed right to self-government (Interview with *Catalunya en Comú-Podem* MP 1). Spain, in a very short time, transformed from being a highly centralised state to one of the most decentralised in Europe.

5.4.1.2 The Consolidation and Enhancement of Self-Rule

The institutionalisation of autonomy in Spain permitted the peaceful accommodation of minority nationalist projects while concomitantly advancing and deepening democracy. The Constitution provided only the framework for decentralisation and as such it was the ACs themselves, through the creation of their Statutes of Autonomy, that 'complet[ed] the

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[94] Pierre Trudeau, the PM responsible for the repatriation of the Canadian Constitution in 1982, considered provincial equality a cornerstone of Canadian federalism, but this had the effect of stymieing Quebec demands for recognition of special status (Laforest, 2014: 64).

content of the constitutional text and concretis[ed] general aspects of the Spanish Constitution related to the territorial power structure' (Viver- Pi Sunyer, 2012: 222). According to Article 147 of the Constitution, Statutes of Autonomy 'constitute the basic institutional rules of each Autonomous Community and the State shall recognise and protect them as an integral part of its legal order'. Statutes, while Organic Laws that complete the Constitution, remain subordinate to it, but are in effect mini constitutions for the ACs (Flores Juberías, 1998: 203).

The Catalan Statute passed in 1979 represented a complete reversal of the treatment of Catalonia under Franco. As well as enshrining a number of exclusive powers for the Generalitat, the Statute referred to the Catalan territory, culture, history, language and symbols such as the flag, to the extent that, in line with Flores Juberías above, it came to represent a Catalan Constitution. Related to this, the autonomy afforded to Catalonia was used by the Catalan government and its President, Jordi Pujol to further entrench his nationalist project of *fer pais* (Catalan nation-building).

Pujol's nationalist project, which began before the transition to democracy, sought nothing less than the cultural, economic and social reconstruction of Catalonia (Pujol 1980). Hence, the powers devolved to the Generalitat were used to deliver public services, but were crucial elements in Pujol's process of 'proto-state building' (Dowling, 2013: 123). Generalitat control over policy in education, language, culture, communications and media provided successive Pujol governments with important tools and opportunities to entrench its political objectives.[95] As Crameri (2015: 100) notes, 'the 23 year period of government by Jordi Pujol from 1980 to 2003 saw the consistent top-down dissemination of discourses designed to convince Catalans (and others) that Catalonia was a nation'.

As well as contributing to the Generalitat's nation-building project, territorial autonomy in Catalonia has also ensured the devolution of a substantial number of competences that have made Catalonia a very powerful sub-state entity. This point was raised by PP and PSC representatives who believed that Catalonia was a powerful autonomous region and that other autonomous sub-state entities, such as Scotland and the

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[95] It is important to reiterate that while Pujol was an unapologetic Catalan nationalist, his vision was for a strong Catalonia within a strong Spain. Support for self-government and self-determination was not framed as secessionist.

German Länder, had fewer competences than Catalonia (Interviews with PSC MPs).[96]

Using the RAI developed by Hooghe et al (2016), it is possible to locate Catalonia within a comparative framework of 81 countries.[97] Prior to the passing of the Catalan Statute of Autonomy and the first elections to the parliament held in 1980, Catalonia scored only six out of the maximum 18, but by 2010 this had risen to 14. Interestingly, Catalonia scores below both Scotland (after the implementation of the *Scotland Act 2016*) and the German Länder (as well as a number of others such as Quebec, the Swiss cantons; the US and Australian States and the Basque Country and Navarre), but does score the same as units in the fully-fledged federations of Argentina, Belgium and Brazil. Catalonia, therefore, may not enjoy the same level of self-government as some in other established federations or regionalised states, but has significant levels of autonomy and thus does indeed belong to one of Europe's most decentralised states.

Much like in Scotland, survey evidence demonstrates the sustained support amongst the Catalan population for autonomy, albeit increasing numbers of respondents in recent years have expressed support for secession rather than increased levels of autonomy (CEO 2019). From this evidence, however, it is clear that while support for independent nationhood has steadily increased in the last decade, support for inhibiting Catalonia's existing autonomy provisions or indeed its status as an AC within the Spanish state are marginalised and minority positions. In a recent round of polling, for example, fewer than six per cent of respondents believed that Catalonia's position within the Spanish state should be nothing more than 'a region of Spain' (ibid).

Since the passing of the 1979 Statue of Autonomy and prior to the reform process that took place after 2003, Catalonia secured incremental enhancements of its self-governing powers as a result of concessions given by minority Spanish governments in return for Catalan support in the Spanish Congress. This *quid pro quo* scenario saw deals reached on, *inter alia*, socio-economy policy, increased investment and the devolution of further autonomous powers (Heller 2002). Much like the Scottish Parliament, the powers of the Catalan Parliament have gradually increased. Yet, while in Scotland these changes have

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[96] This opinion was not shared by interviewees from other parties. León et al (2017) draw similar conclusions in their survey of politicians, whereby PP and PSOE politicians generally consider the level of devolution for Catalonia 'fine', whereas representatives from CiU and ERC consider it 'not satisfactory'.

[97] To recap, the RAI measures both self-rule and shared rule. Self-rule is measured according to: institutional depth and policy scope, fiscal autonomy, borrowing capacity and the level of independence of legislature and executive. Findings on the shared rule scale will be discussed in the next section.

occurred in response to the electoral successes of the SNP, in Spain they have taken place as a result of the failure of the state-wide parties to gain absolute majorities. Among interviewees, there was general agreement that the 'pragmatic' approach of *peix al cove* worked well, for both Catalonia and Spain, 'beefing up Catalan competences while ensuring a stable government [in Madrid]' (Interview with JxCat MP 1). The approach, in line with the flexible approach to federalisation endorsed by Friedrich discussed in Chapter Three, ensured a period of almost permanent dialogue, negotiations and bargaining and was in line with the 'Catalan tradition of pactism' (Interview with *Catalunya en Comú-Podem* MP 1). All this, was made possible through the pliable nature of the territorial model and distribution of power.

5.4.1.3 Intergovernmental Forums: Attempting to Forge a Federal Spirit?

As is well known and has been discussed elsewhere in this thesis, processes of self-rule are often accompanied by, and indeed complemented by, mechanisms of shared rule. Shared rule is an important element in multilevel systems as a vehicle to foster cooperation, mutual trust and inter-territorial solidarity. As is the case in the UK, shared rule mechanisms in the Spanish context, specifically the Senate and IGR, are relatively weak and have been the subject of much academic and political criticism. Conversely, in recent years new research has demonstrated that while there is still much to be done in order to improve upon and consolidate shared rule in Spain, developments since the early 2000s have demonstrated a maturation of IGR (Colino 2009; Colino and Parrado 2009; Expósito 2017; García Morales 2009; León 2017).

As well as measuring self-rule, Hooghe et al's (2016) RAI allows us to examine and situate Spain's shared rule mechanisms within a comparative context.[98] From a maximum of 14, Spain's ACs (which exclude the Basque Country and Navarre) score 9.5, placing them ahead of many of the regions it was behind or on par with in terms of self-rule.[99] The American states score 7.5 and the Swiss Cantons 8.5. Interestingly, the Spanish ACs also

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[98] To recap, the measures used by Hooghe et al to examine shared rule range across five dimensions: the extent to which sub-state governments can influence the policy process of national legislation (second chamber); the extent to which authority is shared between different levels of government in the intergovernmental arena; fiscal control; borrowing co-determination and the role of sub-state governments or electorates in determining constitutional reform.

[99] The Basque Country and Navarre, given their fiscal autonomy, are measured separately. On shared rule they were one point in front of the remaining 15 ACs.

poll much further than other plurinational states, including Belgium, where the regions score only 5.5, Canada whose provinces score 6, while Quebec scores 6.5, and the UK, where Scotland scores only 6.5. Akin to the UK, decentralisation in Spain has focused on building out as opposed to building in, but as Hooghe et al and the analysis below shows, there have been some attempts to create and maintain forums for intergovernmental cooperation.

Since the Spanish transition to democracy, a number of intergovernmental forums have been developed in Spain, vertically and horizontally, bilaterally and multilaterally, sectoral and cross-sectoral. As mentioned above, analyses of IGR have been predominantly negative and there remains much room for reform.[100] Nevertheless, in taking stock of the merits of Spain's experience with decentralisation, it is undeniable that intergovernmental forums have played an important role in consolidating the decentralised system and institutionalising and demonstrating, at least to a certain extent, cognisance of the federal spirit and some of the values that undergird it (see Burgess 2012a).

Bilateral commissions were established early on in the transition to democracy in order to negotiate the devolution of competences from the central government to ACs, and have continued to evolve as forums of debate, discussion and cooperation between ACs and the central government. These commissions include representatives from both the central government and respective ACs and have become the preferred channel for maintaining relations with the central government (Interview with PDeCAT MP 1). Multilateral arrangements are considered to reduce Catalonia to 'just another AC' and as such preference is for bilateralism as this enables Catalonia to be on equal footing with the central government (Interview with *Catalunya en Comú-Podem* MP 1). The focus on bilateral relations in the reform of the Catalan Statute, which not only increased the visibility of these arrangements but sought to make them permanent bodies, underlines this point.[101]

Bilateral commissions are the earliest mechanism of IGR developed in the wake of the democratic transition but were closely followed by a multilateral forum of participation: sectoral conferences. Sectoral conferences were designed to serve as multilateral bodies that would foster cooperation among the ACs and the central government and provide a space for inter-ministerial discussion on specific policy briefs. These conferences bring together

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[100] This will be developed in the next section.
[101] Taking the initiative from the Catalan Statute, a number of other ACs sought to ensure the permanence of a bilateral relationship with the central government through including this in the reform of their respective Statues.

ministers and senior officials from the central government and ACs and to date, 47 sectoral conferences have been convened. García Morales (2009: 55) considers the establishment of sectoral conferences as one of the most significant developments in the consolidation of political decentralisation and described them as 'the motor of collaboration' that have facilitated the exchange of points of view and ideas, as well as being effective forums of participation.

Another important initiative vis-à-vis collaboration and cooperation between the two levels of government was created by Zapatero in 2004. The Conference of Presidents, which brings together the PM of the central government, the presidents of the 17 ACs and the president-mayors of the autonomous cities Ceuta and Melilla, was created as a vertical forum to facilitate closer cooperation among the different orders of government. Although not an entirely new concept in multilevel systems, this was a new mechanism for regulating relations in Spain and was believed to have 'filled a hole' in the constitutional architecture (Expósito, 2017: 6). Designed to promote coordination, ensure the participation of ACs in central government decisions and to serve as a forum for the resolution of intergovernmental disputes, the Conference of Presidents represents an important advance in IGR in Spain, although only six meeting have taken place in a period of nearly 15 years (Aja 2006).[102]

This short analysis of IGR in Spain has shown that the Spanish government and ACs have made much headway in the advancement of shared rule mechanisms. However, it is important to point out that while there is much to criticise about these arrangements, the bad press has often clouded analysis of the maturation of these intergovernmental forums (Colino 2013). It is true, as will be developed in the subsequent section, that much more needs to be done in terms of bolstering shared rule in the Spanish state, but an assessment of the last four decades shows that much progress has been made in achieving qualitative changes in the system.

5.4.2 The Limitations of Devolution

One of the biggest achievements of the autonomy process, as we have seen, was the facilitation and consolidation of the transition to democracy. The Constitution guaranteed a right to self-government for Spain's respective regions and the subsequent development of

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[102] Conferences took place in 2004, 2005, 2007, 2009, 2012 and more recently in 2017.

the system has led to incremental increases in the powers of the ACs and the establishment of a number of intergovernmental forums. These forums have in some ways attempted to provide mechanisms of influence, participation and dispute resolution and while there is still significant room for improvement, their mere existence underlines a maturation in the development of Spanish autonomy. Notwithstanding these merits, praise of the Spanish system is few and far between. Crameri (2014: 60) succinctly encapsulates this lack of support, noting that detractors of the system often couch it 'as a failure and disappointment that belongs firmly in the past' while reform of the system, particularly moves towards asymmetric federalism, are conceived as 'an impossible dream that could only come to pass in a utopian future.' Interviews carried out for this thesis were peppered with complaints about autonomy arrangements, and as will be seen, these were not limited to pro-independence supporters.

5.4.2.1 The Centralist Tendency

The history of state and nation-building in Spain has oscillated between periods of centralisation and decentralisation. Commitments to decentralisation, which included the First and Second Republics, were undermined and ultimately failed as a result of the unitary ideology of the Spanish right. Tellingly, this statist vision, even at the hands of brutal dictators, failed to materialise and the end result is nothing short of 'a bad copy of France' (Interview with JxCat MP 2). The association of centralisation with the draconian policies of Franco tainted any centralist programmes in the transition to democracy and thus resulted in a Constitution that represented 'the outright rejection of the centralist model imposed by Francoism' (Guibernau, 2004: 72). Yet, in spite of the constitutionalisation of a decentralised model with a clear commitment to asymmetry, Spain's main political forces, representing both the left and the right, have impeded the organic evolution of the system and instead have sought to engineer its trajectory towards a more centralised and symmetrical territorial model. In the words of Gillespie (2015: 12), 'although the notion of "Spanish nationalism" has experienced ideological reformulation and differentiation under democracy, it has tended to remain more or less centralist.'

Criticism abounds in relation to the central government's ability to intervene and encroach upon regional competences, regardless of being the exclusive jurisdiction of the ACs. This option has been consistently exploited by central governments in order to

circumscribe the competences of the ACs and push towards policy uniformity, including in economic development, education, health care, tourism and welfare (see Máiz et al 2010). As Requejo (2017) notes, the fact that the central government can freely encroach upon the competences of the ACs undermines any claim that Spain is a federal country.

Notwithstanding the protest of ACs as relates to processes of recentralisation (notably, not only the historic communities have protested against this), more recent Spanish governments have enacted questionable centralising policies. These processes of recentralisation are worsened still by the fact that, namely in the case of PP governments, they have been accompanied by a reinvigorated Spanish nationalism, which accepts the existence of the territorial model, but continues to seek to foist a mononational and statist ideology upon it. Aznar's aversion to further developments in autonomy, for instance, not only led to a recentralist approach, but coincided with an increasingly 'neo-nationalist Spanish discourse designed to promote uniformity' (Requejo, 2010: 158).

More recently, this centralist and neo-nationalist approach was embodied by the Rajoy governments under which the *Organic Law for the Improvement of Educational Quality* (LOMCE) was passed. This law sought to standardise the curricula (through increasing the powers of the Ministry of Education at the expense of the powers of the ACs) and contested the policy of linguist immersion in those ACs with co-official languages, requiring fewer subjects to be taught in vernacular language (Muro 2015). Predictably, the Generalitat took umbrage at the propositions of the law, particularly the comments of the Minister spearheading the policy, who believed that it was necessary in the case of Catalonia to 'Hispanicise Catalan students' (Aunión 2012). Recentralisation was framed as guaranteeing parity of equal rights and citizenship. Yet, in line with the theoretical framework discussed in Chapter Three, clearly demonstrates the pernicious ramifications of the tyranny of the majority and a lack of respect and recognition of minority rights. Equal rights, in this example, are fashioned solely in the image of the majority community.

The examples discussed above demonstrate a classic liberalism I understanding of the state. For some, centralisation is a necessary phenomenon with regards to ensuring 'efficiency' within the autonomies model (Interview with PP MP) and parity of rights among the ACs (Interview with C's MP). For others, however, these centralising dynamics have sought to dilute the national and cultural distinctiveness of the historic nationalities (Interview with PDeCAT senator) and reinforce the 'superiority' of the Spanish state (Interview with ERC MP 2). A predominantly unitary and uniformist ideal continues to

permeate the ideologies of Spain's main state-wide parties, betraying a territorial rather than plurinational vision of the state in which recognising and accommodating ethnonational differences are side-lined in favour of supposed equal treatment of all ACs. In short, processes aimed at territorial symmetry and standardisation, whether overt or implicit, while they may erroneously propagate a myth of nation-state status, incidentally serve to undermine rather than bolster the cohesion of the state and respect for ethnonational diversity. Spain, as we have seen, is no exception to this and in the words of one interviewee, will continue to battle this issue until central governments realise 'they are trying to solve problems in the twenty-first century with answers from the nineteenth century' (Interview with PSC MP 1).

5.4.2.2 The Problem of Convoluted Recognition

As discussed in Chapter Three, there has been a groundswell of research examining the importance of recognition for minority communities, particularly in plurinational states. Despite the constraints of the time, the 1978 Constitution represented a critical juncture in the development of democracy in the Spanish state, which included recognition, at least to some extent, of the state's internal diversity. The so-called 'national question' was a salient yet sensitive issue in which the framers of the Constitution tried to find equilibrium between Francoist forces and the historic nationalities. The Constitution, in turn, differentiated between historic nationalities and regions and guaranteed them a right to self-government, but concomitantly qualified this by declaring the indivisibility of the Spanish nation. Other articles elaborated further, such as Article Three, which declared Castilian, 'the official Spanish language of the State', but in a nod to those ACs with distinct languages, declared these languages co-official in the respective ACs and vowed to respect and protect this linguistic diversity. The Constitution also recognised the existence of historical legal privileges (*fueros*) which in turn entrenched an asymmetric fiscal agreement for the Basque Country.

The recognition of Spain's internal diversity, while it indisputably signified a clear break with the previous authoritarian regime, endorsed only a timid acceptance of Spain's plurinationality. Achieved through ambiguous wording, the Constitution succeeded in cementing two competing conceptions of the state which hitherto remain unresolved and as such 'contaminates all of the debates' related to Catalonia's political status and relationship

with Spain (Interview with PSC MP 1). While differentiating between historic nationalities and regions, the framers of the Constitution eschewed any explicit recognition of nationhood for Catalonia, the Basque Country and Galicia and consequently impeded any official acknowledgment of Spain as a plurinational state. Thus, constitutional debate between Spain and Catalonia are dominated by two conflicting visions: a mononational conception of the state versus a plurinational vision. In the words of Arzoz (2018: 247), 'the Spanish Constitution of 1978 attempted to combine the traditional ideology of the nation-state with a limited recognition of territorial and cultural autonomy.'

There was general consensus among interviewees that more had to be done to ensure that the internal diversity of the Spanish state was reflected in the Constitution. This idea, however, was refuted by PP and C's interviewees. For the PP, further recognition was a futile endeavour since the 1978 constitution already recognised the distinct status of some ACs (Interview with PP MP). For C's, 'nationalism is an ideology not a right', thus aversion to constitutional reform to further recognise Spain's internal diversity was much stronger:

> We do not agree with academics that say Spain has to recognise the specificity of Catalonia in the Constitution. We do not agree with this because our Constitution is a pillar of our country that belongs to the citizens not the nationalities…and we do not want to change this (Interview with C's MP).

In contrast, PSC interviewees considered constitutional reform essential in order to explicitly recognise the plurinational nature of the Spanish state. One interviewee pointed out that while there was already recognition of the 'national character of Catalonia…in the Constitution and in several laws', more was required to make this explicit and ensure that institutions are reformed 'to fit with the reality of Spanish and Catalan Society' (Interview with PSC MP 1).

For other interviewees, the lack of recognition of Catalonia's nationhood, reinforced Catalonia's status as a subordinate minority that is not treated 'as a political subject' nor an equal stakeholder in the state (Interview with ERC MP 1). This is compounded by the state's mononational vision and the dismissal of requests for recognition or differentiation 'from stateless nations seen…as selfish, backward and medieval' (ibid). The relegation of the term nation in the reformed Catalan Statue as well as the prolonged process of approving the Statue and the subsequent referral to the TC were frequently drawn upon as examples of the clash between the mononational and plurinational conceptions of the Spanish state. The

paucity of consensus and willingness among Spanish elites to initiate constitutional dialogue on negotiating Spain's plurinationality was framed as a state threatened rather than enriched by its diversity (Interview with JxCat MP 1). Indeed, while a C's MP believed statements that Spain did not respect its internal diversity were unfounded, she believed that more needed to be done to ensure this was considered an inherent value: 'we respect diversity, but maybe we need to love it as a value, as a special thing that Spain has and other countries do not have, so maybe we need a new government that understands that this diversity is a good thing' (Interview with C's MP).

A plurinational vision of the Spanish state is not limited to nationalists in the peripheral territories but is also a feature of the Spanish political landscape. The PSOE's zeal for recognition of plurinationality was markedly tempered once Zapatero left office, but other left-wing parties, namely *Podemos*, have consistently endorsed a plurinational agenda which includes supporting Catalonia's right to self-determination. The unwillingness of other Spanish elites to entertain this notion, including the PSOE, is rooted in the lack of recognition afforded to Catalonia to be recognised as a political subject, equal and not subordinate to, the central state (Interview with ERC MP 1). A liberalism I vision prevails.

Encroachment on AC policy jurisdiction has become a general characteristic of Spanish politics. Yet, while this is strongly opposed by the ACs, particularly the historic nationalities, some interviewees, evoking the guise of equal citizenship and treatment, argued that a certain level of central government encroachment was necessary to ensure that all ACs are treated the same:

> What the [historic] nationalities want is that they want to have more competences than the others…they gain these competence but what they do not like is that the others [other ACs] get them too and this is the idea that we are better than the others…it is difficult to say the other Autonomous Communities should have fewer rights than Catalonia' (Interview with PP MP).

To this end, successive PP and PSOE governments have sought to roll out the same level of autonomy to all ACs, to the extent that, reference to historic nationalities, irrespective of what the Constitution says, 'nowadays means all 17 autonomous communities' (Interview with C's MP). In the absence of a plurinational model to acquiesce the demands for recognition of Catalonia, the issue of recognition remain a perennial problem.

5.4.2.3 High Level Litigation: The Politicisation of the Judiciary

The TC, established by Article 159 of the Constitution, came into being in 1980 and has played a pivotal role in the development of autonomy and construction and consolidation of the State of Autonomies. As a result of the lack of detail in the Constitution regarding the development of autonomy, it fell to the TC, as the only state institution with 'a monopoly on the interpretation of the Constitution' to put flesh on the bones of the autonomy model (Rodríguez and Harguindéguy, 2017: 3). The TC, thus, was not merely the actor involved in the mediation of disputes between the central government and ACs, but has been and continues to be 'an active power' in shaping the territorial system (Guillén López, 2008: 559). However, the relatively high esteem in which the TC was held during the first years following the transition has gradually dissipated, rooted in charges of politicisation and centralist bias.[103]

The Court is composed of 12 judges who are chosen by four different institutions: the Congress, the Senate, the central government and the General Council of the Judiciary (GCPJ).[104] The nomination process, however, has come under a barrage of criticism for 'politicising' judges and facilitating the selection of judges 'ideologically influenced' by the main state-wide parties (Interview with JxCat MP 1). There is no guaranteed role for the smaller parties or ACs themselves in nominating judges. As a result, the nomination process is dominated by partisan and ideological influences whereby political parties seek to secure the nomination of judges more predisposed to their ideological leaning. Judges, as a consequence, 'are identified by the parties that support them' (Guillén López, 2008: 536). In recent years, this has become much more pronounced where political parties, namely PP and PSOE, have attempted to have judges recused, particularly those at odds with their ideological leaning (Miley 2008).

In the Second Spanish Republic, regions were guaranteed a role in deciding the composition of the republic's constitutional court, the *Tribunal de Garantías Constitucionales* (Sánchez Barrilao 2009). This, however, was not the case after the transition. The Basque Country and Catalonia have consistently called for reform of the

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[103] The gradual decrease in trust and confidence in the TC has been recorded in studies carried out by the CEO. In Catalonia, the October 2017 survey recorded only 4.1% of respondents with 'full confidence' in the work and deliberations of the TC, while 39.1% had 'no confidence'.

[104] The Congress and Senate each choose four judges (passed with a three-fifths majority) while the central government and GCPJ choose two, the latter also requires a three-fifths majority.

nomination process to secure a guaranteed role for the ACs.[105] This was most clearly reflected in the reformed Catalan Statute which advocated for the participation of the Generalitat in appointing judges to the TC and GCPJ. In 2007, the 1979 *Organic Law of the Constitutional Court* (LOTC) was reformed to include, among other things, an amendment that would enable the ACs to compile a list of proposed nominees to be selected by the Senate, subject to the three-fifths majority rule. But, in the event that enough support is not secured for an AC proposed nominee, the Senate has 'the final say' and is 'free to select judges other than those proposed by the legislatures of the autonomous communities' (Palermo and Kossler, 2017: 197-198). Advancements have been made in order to make the nomination process much more inclusive, yet as was pointed out in one interview, the ACs are still inhibited in proposing judges and furthermore there is no constitutional guarantee that a Catalan judge will sit on either the TC or Supreme Court (Interview with PDeCAT MP 1).

While the TC has consistently played a fundamental role in the development of the State of Autonomies and the many disputes that have arisen as a result of its consolidation, more recently it has played a leading role in the debates vis-à-vis Catalonia's place within Spain. This, as has already been discussed, began with the Statute reform in which the TC was heavily criticised for adopting a restrictive interpretation of the Constitution. For some, the TC's actions represented nothing less than a juridical *coup d'etat*, in which the creation of an independent Catalonia seemed an easier feat than continued negotiations on reforming state machinery (Gagnon, 2014: 8).[106] The problem with the TC's 2010 judgement, however, was not so much the content, although this was vehemently contested, but the tone in which this was handled (Interview with *Catalunya en Comú-Podem* MP 2). Rather than adopting a more conciliatory and flexible position, as had been demonstrated in the early years of the transition, the TC's judgment was considered unnecessarily harsh, particularly its reference to recognition of only one nation. In the words of Ferreres Comella (2015: 575), 'the court…did not choose the most felicitous phrase when it asserted that "the constitution only knows of the existence of the Spanish nation"'. The TC continues to play a key role in the territorial crisis between the Catalan and Spanish governments, albeit its role as a neutral arbiter has been increasingly questioned. 'The Constitutional Court', remarked one

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[105] The *Declaration of Barcelona* lambasted the TC as a centralist instrument of the state which facilitated the curtailment of AC power in favour of the central government. This inimicality towards the TC was much stronger in the Basque Country which from the 1990s refused to interact with the TC and boycotted it.
[106] This was also corroborated in a number of interviews.

interviewee, 'should be a tool to arbitrate, but rather than be the referee it has become a player for one of the two teams' (Interview with JxCat MP 2).

5.4.2.4 The Territorially Unrepresentative Chamber

Shared rule, as already discussed, is an essential component in decentralised systems. In Spain, both bilateral and multilateral forums have emerged and the Constitution envisioned a bicameral system which included the establishment of an upper chamber – the Senate (*Senado*) – to serve as a 'chamber of territorial representation'. On paper, both IGR and the Senate demonstrate cognisance of the significance of shared rule mechanisms in decentralised Spain. In reality, however, while the existence of these forums is irrefutably fundamental to the functioning of shared rule, the practical experience has been relatively limited. IGR remain weak while the Senate, in terms of composition and functions, fails to live up to its constitutional mandate as a genuine territorially representative chamber.

In the Spanish system there is a perception that 'connections between the Autonomous Communities and the central government are weak' as a result of the paucity of 'strong principles like loyalty, collaboration [and] coordination' (Interview with C's MP). Intergovernmental forums have been designed in order to combat such problems and provide new arenas for centre-periphery relations, but the perception remains that the historic nationalities, particularly Catalonia, explicit in their pursuit to see their differential facts recognised, are 'selfish and lacking in solidarity' (Interview with PP MP). As is the case in the UK, intergovernmental forums in Spain are hierarchical; the central government dominates and thus ACs are suspicious of multilateral forums which they perceive as tools to centralise AC competences as opposed to fostering a joint partnership (Interview with PDeCAT MP 2). A crucial drawback, however, which was also discussed in relation to the UK and Scotland, is the lack of willingness on either level of government to constructively engage in intergovernmental schemes. Central government, despite participating in such mechanisms, continue to be influenced by 'romantic notions' of centralism and uniformity (Interview with PSC MP 2), while the ACs, namely the historic nationalities, prefer bilateral relations in order to bolster their claims of distinctiveness: 'they are mechanisms which do not serve for what the state is looking for which is the harmonisation of politics…nor for what the Autonomous Communities are looking for which is to intervene and influence state affairs' (Interview with PDeCAT MP 2). Hence, while there are clear issues with the

structure and effectiveness of IGR in relation to the participation of sub-state governments on influencing central government policy and decisions, this is coupled with a lack of willingness on both sides to put aside differences and work together. As posited by Expósito (2017: 11), the inherent problem with IGR 'reveals that an important problem of political culture still exists' whereby neither the central government nor the ACs 'understand that collaboration is a legal duty as well as a practical requirement for decentralisation to function well.'

As has been discussed, the Constitution provided for an open-ended decentralisation model that did not specify any number of sub-state units. As such, the Senate, in spite of the Constitution's claim that it was a 'chamber of territorial representation' was designed to be a provincial rather than regional chamber (Roller, 2002: 77). The provinces, a hangover from the pre-transition centralist state, were assigned equal representation and four senators were to be directly elected from each province, totalling 208.[107] This was to be complemented by the appointment of one senator to represent each of the ACs, as well as one senator per million citizens which in the latest election totalled 58.[108]

In terms of composition, it is clear that the Senate fails to fulfil its role as a territorially representative chamber. This is further evidenced through an examination of the limited powers assigned to the upper chamber, which includes very few powers in relation to the ACs. The Senate is very much a subordinate body to the untrammelled power of the Congress, lacking legislative powers as well as playing no role in investiture votes, motions of censure or votes of no confidence. Furthermore, while the Senate yields a veto power over legislation from the Congress, it has only a limited period of two months to enact changes or veto legislation; on the return to Congress, however, these changes or veto can be overridden by a simple majority in the case of the former and an absolute majority in the latter. In short, the Senate is perceived as a mere 'expensive spellcheck service' tasked with simply rubber-stamping bills (Interview with PDeCAT MP 1).

Acknowledgement of reform of the Senate has been a recurring feature of political

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[107] The number of Senators elected for the Spanish islands differs. Gran Canaria, Mallorca and Tenerife each elect 3 senators while the smaller islands, Fuerteventura, Lanzarote, Menorca, Ibiza and Formentera, La Gomera, El Hierro and La Palma, elect one senator each. The autonomous cities, Ceuta and Meillia, are assigned two Senators each.

[108] In the latest Senate election, held on 26 June 2016, the PP maintained its overall majority with 126 seats, the PSOE won 42, *Unidos Podemos* 16, ERC 10, PDeCAT 2, and C's 0. Once combined with the appointment of senators to represent the ACs, the PP has 147 senators, the PSOE 62, *Unidos Podemos* 20, ERC 12, PDeCAT 4 and C's 4.

parties in Spain, although plans for reform differ in terms of composition and function. In the 2016 general election, for example, the PP, PSOE and *Podemos* argued in favour of Senate reform, while C's advocated its abolition in return for a 'Council of the Presidents of the Autonomous Communities'. In government, however, despite rhetoric, neither the PP nor PSOE have seriously pursued reform. Nationalist parties in the Basque Country and Catalonia have at various times supported Senate reform, including veto rights for the historic nationalities. Support for reform, however, is conditioned by the view that reform of the Senate into a proper multilateral intergovernmental forum should not be at the expense of bilateral relations (Interview with PDeCAT MP 1).

5.4.3 Summary

A number of pertinent conclusions can be drawn from this analysis of Spain's experience with decentralisation. The rather flexible and fluid territorial model provided for in the Constitution enabled the institutionalisation and ultimately consolidation of an autonomy model that has stayed in place for over four decades. A number of significant policy briefs have been devolved to Catalonia which, in turn, has been able to ensure the continued existence and protection of its cultural and linguistic distinctiveness. In addition to self-rule powers, IGR meetings and collaborative initiatives have increased in recent years, providing ACs with opportunities to participate in the decision-making process of the central government. In truth, while the existence of these forums signifies a clear maturation of Spanish IGR, they are often undermined by the actors involved, both at the central government and AC level.

Notwithstanding these merits, a number of limitations were identified which underline some of the principal problems with the Spanish state's experience with accommodation. Centralising tendencies have been a feature of all Spanish governments since the transition and in spite of rhetoric that champions the decentralised model, central governments have consistently sought to recentralise power, bolster the role of the centre and diminish claims of historical distinctiveness. This is rooted in another important and challenging limitation which relates to the lack of official recognition accorded to the historic nationalities. Recognition is undoubtedly an essential component of politics in a plurinational state, yet rather than accepting the expressions and claims of distinctiveness by the minority nations within Spain, successive governments have consistently sought to impede them,

jeopardising the stability of the system and undermining previous attempts at accommodation. This is compounded by the high levels of litigation on autonomy matters which have damaged the role of the TC as an impartial arbitrator. IGR, as noted above, have helped provide forums for intergovernmental cooperation and dispute resolution, but the absence of a genuinely territorial representative chamber further exacerbates centre-periphery tensions. In taking stock of the merits and limitations of the Spanish territorial model, it is clear that there is evidence to bolster arguments on both sides of the debate, but recent events show that in the absence of reform, the Spanish model may have reached its limits.

5.5 The Future of Catalonia in Spain

The transition to democracy embarked upon in the late 1970s precipitated, as was the case in the UK after 1997, a constitutional journey which has completely transformed the landscape of Spanish politics. Evidently, there are components of the Spanish system which underline continuity, including the bicameral parliamentary system, the monarchy and the continued relevance of the main state-wide parties, the PP and PSOE. In more recent years, change rather than continuity has been the order of the day. The party system has witnessed the most change. The PP and PSOE remain dominant actors, but their hegemony has been challenged by C's and *Podemos* and the once stable two-party system has transmuted into a multiple party electoral arena.

In Catalonia, the party system has also bore witness to a number of changes, including the entrenchment of the independence-constitutional cleavage alongside the more traditional left-right axis. New political parties specifically committed to the territorial question have been created, old alliances between others have collapsed, while all parties, irrespective of left-right positioning, have been forced to adopt a position on independence. As is the case in Scotland, territorial politics remains a central component of political life in Catalonia and looks set to dominate for the foreseeable future. As in the previous chapter, the penultimate section of this chapter examines the future terrain of territorial politics in Catalonia and Spain.

5.5.1 The PP, Ciudadanos and Spanish Constitutionalist Nationalism

The PP and C's are the staunchest and most unabashed defenders of the Constitution, the one-nation conception of Spain and the unity of the state. AP, the progenitor to the PP, was overtly hostile to the Constitution, namely the autonomy regime, but over time, and particularly with the replacement of the AP with the PP in 1989, the latter party not only came to accept the decentralised territorial model and was crucial to its subsequent development, but became staunch supporters of the Constitution. This was most clearly developed under the leadership of Aznar who sought to reinvent the Spanish nationalism tainted by the Francoist regime and restore prestige and pride in all things Spanish. In a similar vein, the governments of Mariano Rajoy (2011-2018) continued with the promotion of this constitutionally patriotic discourse, enlivened by the territorial crisis in Catalonia. Yet, while the language of constitutional patriotism is forcefully peddled by both the PP and C's, it has been widely misinterpreted and instead has become a guise for the reinvention of an exclusive Spanish nationalism.[109] C's, in comparison to the PP, is a relatively new party but endorses a similar discourse on constitutional patriotism, or what may be termed constitutional nationalism, which includes a firm rejection of minority nationalist movements.

Adopting the title of constitutional patriots has not altered the PP's traditional support for the development of a Spanish nationalist project in which Spanish national identity, the Spanish language and aspects of Spanish culture are accentuated and prized over the minority nationalisms also found in the state (Colomer, 2017: 959). For the PP, respect for the Constitution entails complete loyalty to it and its principles, including the indivisibility of the state, and strict adherence to what is written as opposed to a more fluid conception of the spirit of its content. This, as discussed in Chapter Three, clashes with the liberal nationalist vision in which questioning the organisation of the state is not considered problematic (Kymlicka, 2001a: 39). The PP's stance is most evident in the denial of a path to facilitate a referendum on secession in Catalonia. In his speech on the Catalan referendum and the proposed application of Article 155 in October 2017, Rajoy (2017) lambasted the Generalitat's declaration of independence as a clear example of institutional disloyalty, described the October 1 referendum as 'an exercise against democracy' and accused the Generalitat of having 'attacked our constitution…the rules and institutions of self-

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[109] For more on the theory of constitutional patriotism, see Habermas (1996) and Mueller (2007).

government in Catalonia and their own Statute'. This continued a line of argumentation and strategy pursued by the Rajoy government which sought to deny any extant constitutional path for an independence referendum. For the PP, national sovereignty and the unity of Spain were, are and will remain, non-negotiable principles.

For a long time, another non-negotiable principle for the PP was constitutional reform. The 2015 election manifesto described the State of Autonomies as 'the best formula to articulate unity and diversity' (PP, 2015: 141), and the party, according to one representative, 'feels comfortable with the State of Autonomies in relation both to the decentralisation of competences and the decentralisation of spending' (Interview with PP MP). In fact, a recurring feature of the Rajoy administration vis-à-vis the State of Autonomies and Catalan demands for more powers and recognition was to argue that in Spain 'there was little more left to decentralise' (Casado, quoted in Público 2017). Rajoy (2016), for example, posited 'there is no country in the world with a level of political decentralisation like Spain' and that Spain has 'a higher [level] of political decentralisation of all federal states in the world' (Rajoy 2014). As was discussed earlier in this chapter, the RAI index demonstrates this not to be the case, and while it is true that Catalonia enjoys the same level of autonomy as the constituent units of other federations, such as Argentina, Belgium and Brazil, it scored lower on the self-rule scale than other autonomous regions including the Australian and US states, the German Länder, Quebec, Scotland and the Swiss Cantons.

In addition to pursuing the argument that enough has already been devolved to the ACs, the PP, has in the past, consistently rejected offers of constitutional change, including recognition of the plurinationalism of the state, enumeration of the ACs in the constitutional text and clarification of competences. On the fiscal model, the PP is 'open to discussions', but the party remains unconvinced by any reform proposal, specifically a special economic scheme for Catalonia (Interview with PP MP). Discussing constitutional reform in 2013, Rajoy rejected any rash reforms in reaction to growing support for independence in Catalonia: 'I have the impression that to plan a reform of the Constitution in order to satisfy those that are not going to be satisfied with this reform would be a huge error' (Manetto 2013). PP representatives are thus sceptical of further decentralisation or constitutional reform, including the party's newly elected leader who recently rejected territorial reform, bluntly stating that the PP would 'reinforce our Constitution instead of splitting it open' (Casado 2018). The PP's intransigence towards constitutional and territorial reform,

however, will serve, as happened to the Conservatives in the UK and Scotland under Thatcher and Major, to further alienate the party from Catalan politics.

Since the inception of C's in 2006, the party has incessantly rejected the title 'Spanish nationalist' and in a similar vein to the PP, considers itself 'constitutionally patriotic' (Interview with C's MP). C's have religiously criticised the PP and PSOE for pandering to the demands of minority nationalists and intentionally 'not doing things so that separatist politicians do not get angry' (Rivera 2017b). Recently, for example, the party has attacked the plurinational vision of Spain promoted by the PSOE and to demonstrate their opposition, withdrew from the committee in Congress on territorial reform. C's accused the PSOE of having an erroneously skewed and biased vision of Spain and the party leader, Albert Rivera, commented that his party believed in reforming the Constitution, but could not support 'the invention of the nation of nations' (*La Vanguardia* 2018). The election of a C's government would put an end to this 'politics of appeasement' and as such put minority nationalists firmly in their place (Rivera 2017b).

Despite rhetoric which has a markedly (Spanish) nationalist flavour, C's seeks to encourage the vision that it is a 'postnational party' in which emphasis is placed on being patriotic and a commitment to the Constitution rather than any specific Spanish identity (Roldán 2017). Rivera, equally seeks to promote this idea of an inclusive, constitutionalist and postnationalist approach, albeit the party's rhetoric oscillates between mononationalism and postnationalism. Emphasis is placed on the equal treatment of all citizens: 'the solution to the problems of Spain are not about giving more privileges, but more equality' (Rivera 2017a). In this vein, C's has religiously criticised the Basque and Navarre economic model, describing it as 'a democratic anomaly' and the unfair privileging of two ACs over others (Alberola 2017).

C's, unlike the PP, are much more emphatic in their support for constitutional reform, although this remains limited in the ambit of territorial politics. In 2015, the party published a document entitled *Proposals for Democratic and Institutional Regeneration* and while it advocated a number of reforms, including enumerating the ACs in the Constitution, clarifying competences, reform of the common fiscal regime and the replacement of the Senate with a Council of the Presidents of the Autonomous Communities, the document explained that any reform 'must be done with upmost caution [and] political prudence' (*Ciudadanos,* 2015: 3). The party advocates a number of changes that would affect Title VIII of the Constitution, but rejects the devolution of further powers or constitutional

recognition of the historic nationalities. Instead, and echoing claims by former PP PM Aznar, C's believe 'it is time to finalise the State of Autonomies' (ibid: 8).

The PP and C's endorse a similar mononational vision of Spain in which symmetry is prized over asymmetry, and distinctiveness, while tolerated, is not something to be emphasised, particularly at the expense of the dominant nationalism of the state. Yet, as advocates of this dominant nationalism, the parties gain an advantage over other nationalist movements in the state, which in turn undermines any greater recognition of Spain's internal diversity and further entrenches the antiquated, more restrictive and statist liberalism I approach. Both the PP and C's continue to support the existence of the State of Autonomies and are, in principle, committed to celebrating Spain's diversity, but this is limited to the cultural sphere: recognition of the existence of a nation other than the Spanish one is anathema to the PP and C's' conception of the state.

5.5.2 PSOE and Podemos: Territorial Reform in the 'Nation of Nations'

Unlike those parties endorsing a more right-wing/centre-right agenda, PSOE and *Podemos* are much more vociferous and enthusiastic about constitutional change, including an overhaul of the territorial model. Federalism has been a long-standing policy of PSOE, but the party has consistently struggled to make a case for such territorial remodelling, even when in power with majority governments. For *Podemos*, a federal, and at times, confederal vision has been at the heart of the party's electoral agenda since it burst onto the political scene in early 2014. The party's initial zeal for profound constitutional and territorial change has progressively shifted from radical support to break the 1978 constitutional pact to more muted support for constitutional change. Significant constitutional and territorial reform remains central to the *Podemos* plurinational vision of Spain, coupled with the party's support for a 'constituent process' to ensure support for a new constitutional and territorial settlement is more bottom-up than top-down.

While for the PSOE, and its Catalan counterpart, the PSC, federalist rhetoric has been a feature of both parties for several decades, the recent territorial crisis has increased interest and analysis in what the socialists' proposals would entail. This has become even more important since the elevation of the PSOE to government in June 2018. Prior to this, and as was noted above, party leader Pedro Sánchez had already underlined the importance he attached to territorial reform in agreeing to support the application of Article 155 in return

for the establishment of a congressional committee to examine territorial change. After coming to power, the party's positive rhetoric vis-à-vis territorial change has continued, peppered with critique of both the PP and Catalan governments for having escalated the territorial conflict. The PSOE, for instance, has criticised the former for failing to provide an alternative and more accommodating vision of Spain that would placate pro-independence Catalans. In addition to this, much noise has been made as relates to the PP's strategy of invoking the Constitution as a legal straitjacket that not only precludes secession, but discussions of the matter. The incumbent minister for territorial affairs, Meritxell Batet (2018), has made this abundantly clear, arguing:

> We will not hide behind the Constitution…on too many occasions in recent years, the Constitution has been presented only as a regulation that imposes prohibitions to act and it is much more than this. It is the regulation that permits different options and that even permits us to arrive at agreements that integrate the possible diverse political options instead of excluding all the options except one, that of the government of the day.

This has also been the case for the PSC, which, in the December 2017 election, presented their leader, Miquel Iceta, as the reconciliatory candidate; an alternative between the ultra-conservatism of the PP and C's and the radicalisation of the pro-independence parties. On the latter, the PSOE have also been very critical, not only because they 'contravened the Statute… [and] the Constitution', but 'promised things which they were aware they could not deliver'. In short, 'they promised us independence, but lost us our self-government' (Interview with PSC MP 2). In contradistinction to the PP and C's, however, the socialists are much more cognisant of the internal plurality of the Spanish state, including recognition of Catalonia as a nation. Socialist interviewees explicitly acknowledged Catalonia's status as a nation and believed that both the PSC and PSOE had explicitly embraced the term to underline the parties' recognition of the plurinational reality of the Spanish state. Such recognition, however, was qualified by the opinion that constituting a nation did not imply a right to decide, that is, hold an independence referendum (ibid). In the words of another representative, the PSC occupied a third way approach to the issue: 'we do not share the idea that every single nation has to form its own state or reach statehood but we neither share the idea that the state can only afford one nation within it' (Interview with PSC MP 1).

This premise was further underlined in a document examining the debate on the right to decide in Catalonia written by one of PSC's MPs. Drawing upon other empirical cases

and the expertise and analysis of various constitutional experts, the document concludes that Catalonia has no right to secession, neither through remedial justifications nor a unilateral route (Pedret I Santos 2016). Threaded throughout the document, however, is a critique of the monist interpretation of the right to decide term, as well as the restrictive interpretation of sovereignty endorsed by parties such as the PP and C's. In fact, drawing upon the case of Canada, specifically the 1998 Supreme Court Secession Reference, much is made of the importance of negotiations and acknowledgement of the opposing side, even if 'this opinion implies breaking with [Spain's] territorial integrity protected by Article 2 of the Constitution' (ibid: 78). In consonance with a liberal nationalist position, the document concludes that while a referendum is neither 'inconceivable' nor 'desirable', it would be unfair, and indeed, undemocratic, to simply ignore any growing support for independence (ibid: 82).

The PSOE have painted a clear picture of the type of reforms required in order to ensure the full federalisation of the Spanish state, including recognition of its plurinationalism, reform of the Senate to a 'federal organ', clarity of the distribution of competences and the decentralisation of judicial power (*Fundació Rafael Campalans* 2013). In the meantime, the incumbent minister for territorial policy has argued for other changes which need not affect the Constitution, including improved IGR in order to better sow the seeds of federal principles, including confidence, loyalty, reciprocity and solidarity (Batet 2018). In addressing the congressional constitutional committee, Batet stressed the importance of redesigning IGR, particularly as a solution to foster dialogue between the Spanish and Catalan governments. Arguing for improved mechanisms for the participation of the ACs in state projects and decisions, the minister cited the reinforcement of already existing instruments such as sectoral conferences and the Conference of the Presidents: 'We have to get over the traditional formal rigidity of the organs of cooperation…and work…so that sectoral conferences are not considered as isolated or even sporadic meetings, but as permanent structures' (ibid). She continued, that the 'Conference of the Presidents must be the cornerstone of the system of cooperation', arguing that revalidating these IGR, 'would build a general framework of intergovernmental confidence and loyalty which are fundamental in order to advance in the construction of a federal culture' (ibid). The importance of these proposals was corroborated in interviews inasmuch as one PSC MP considered the 'construction of mechanisms for the participation of the federated units in the decision-making of the state' as 'crucial' (Interview with PSC MP 1).

Podemos share a number of similarities with PSOE in terms of territorial reform, although PSOE's federal vision is much more detailed. One significant difference between the parties, however, is *Podemos'* support for a referendum on Catalan independence. The party supports Catalonia's continued membership of the Spanish state, albeit a reformed and overtly plurinational state, but has consistently supported the right of the Catalan people to decide their future via a referendum. The Catalan crisis has thus been framed by *Podemos* as an opportunity to initiate debate on significant territorial change. For the party's leader, Pablo Iglesias (2017), 'the crisis in Catalonia is the proof that it is necessary to think about new formulas in order to deal with the plurinationality of Spain'. Developing on this idea in a recently published book, entitled, *Rethinking Plurinational Spain,* Iglesias (2018: 28) writes, 'what has happened in Catalonia for the last few years evidences the lack of political willingness from the state government to offer a democratic way out of the situation'. As such, the party, akin to the PSOE, have used the Catalan situation to refocus attention on its territorial plan, with emphasis on two components: recognition of plurinationality and a new federal or confederal model.

Recognition that Spain is, in the words of the *Podemos* leader, 'a country of countries' has been a central component of the party's territorial policy (ibid: 29). Iglesias (ibid) has explicitly acknowledged the existence of four nations in Spain - 'the Spanish nation, the Catalan, the Basque and the Galician' and has challenged those parties that espouse a mononational vision: 'those who say that Spain is mononational have understood nothing from the history of the last two hundred years'. Instead, *Podemos* promotes a plurinational understanding of the state in which the nationhood of the historic nationalities is recognised in the Constitution and the internal diversity of the country is constitutionally protected. The aim of *Podemos* is, therefore: 'to build a common project that constitutionally reflects the plurinationality of our country and which remains attractive so that the majority of the nations that make it up decide to stay' (ibid: 28). While, however, a plurinational state is oft-described as an 'undebatable reality' (Interview with *Catalunya en Comú-Podem* MP 1), since its inception, *Podemos* has argued that territorial reform must not be an elite-led process. Indeed, for this reason, the party refused to join the congressional commission established to examine the territorial model and instead opted to create its own 'constituent process', entitled 'Connect Spain' (*Conectar España*). This saw a number of high-profile party officials hold events in different cities throughout Spain to explain their envisioned territorial model and commitment to recognition of plurinationality.

Podemos are equally committed to moves towards a confederal or truly federal model (Iglesias, 2018: 35). In a similar vein to the PSOE, *Podemos* advocates constitutional reform in relation to the clarification of competences, the fiscal regime, the Senate and recognition of plurinationality. However, in advocating a confederal approach, Podemos go beyond the institutional parameters envisioned by the PSOE and seek to convince pro-independence Catalans that they can have the best of both worlds: a relatively independent status while sharing sovereignty with a hollowed out Spanish state. As was argued by one interviewee, 'it's all about shared sovereignty. The independence movement want to share sovereignty with Europe but not with Spain', thus, moves towards confederation, whereby the existence of the latter would be dependent upon its constituent governments, would represent a 'potential solution' to the Catalan crisis (Interview with *Catalunya en Comú-Podem* MP 1).

The territorial reform programmes presented by both the PSOE and *Podemos* seek to overcome what several interviewees described as the 'emotional break' or 'psychological disconnection' between pro-independence Catalans and the rest of Spain (Interviews with ERC and *Catalunya en Comú-Podem* MPs). Both parties have criticised the obdurate and unaccommodating positions of the PP and C's, and in the spirit of Friedrich, endorse a flexible approach towards the Constitution. Some form of reform is on the agenda of the PP and C's, but little concern is devoted to reconciling the diametrically opposed projects of the pro-independence Catalans and those who advocate timid change to the territorial status quo. For *Podemos* and PSOE, however, significant emphasis is placed on using the territorial crisis as an opportunity to recast the relationship between Catalonia and Spain and effect profound change that would substantially alter the territorial landscape of the Spanish state. Therein, however, lies the rub. Notwithstanding the positive endorsements of reform by those on the left, federalism remains a heavily contested project by the Spanish right as well as a marginalised option in Catalonia. The challenge for *Podemos* and the PSOE, then, is not merely to design change that will pass the cumbersome process to amend the Constitution, but moreover, and equally as important, demonstrate that their nice words and ideas can be translated into real change and political action.[110]

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[110] Sections 167 and 168 of the Spanish Constitution describe two mechanisms for constitutional reform. Article 167 requires the approval by a three fifths majority of both the Congress and Senate and if requested by one tenth of members of either house, a referendum. In the event that a total revision of the Constitution or a partial revision relating to specific articles is proposed, Article 168 stipulates that a two thirds majority in each chamber must pass any modification, followed by the immediate dissolution of the chambers and new elections. The newly elected chambers are then required to ratify the proposed amendment(s) as well as approve it, again with a two thirds majority which is ultimately subject to a referendum.

5.5.3 The Pro-Independence Parties: Between Pragmatism and Unilateralism

As was discussed earlier in this chapter, the Catalan independence movement is a heterogeneous movement. It not only includes the support of a number of civil society organisations, many of which were spawned as a direct consequence of increasing support for the right to decide and independence, but also straddles the traditional left-right ideological axis. The issue with such a heterogeneous grouping, however, is that while the parties may share the same end goal – an independent Catalan republic – the means of achieving this unsurprisingly differ. As one interviewee noted, 'the debate inside the independence parties' is no longer about the merits of independence over the status quo or other territorial settlements, nor about the right to decide, but 'about the way of creating an independent state' (Interview with ERC MP 3).

This section examines the strategies of four political parties JxCat and PDeCAT, ERC and CUP. From the analysis it is clear that the creation of an independent Catalan republic, as posit all parties, was voted for by citizens in the 2015 and 2017 elections and the 2017 referendum, yet hitherto two opposing strategies have emerged. On the one hand are situated those politicians who believe that a strong and viable Catalan government able to lead negotiations with the state, and thus the abandonment of any unilateral avenues, is required to ensure the transition of Catalonia from an AC to an independent republic. On the opposing side, however, are a number of pro-independence supporters and politicians who advocate the maintenance of the independence push, including intensifying the conflict with the state through civil and institutional disobedience, the internationalisation of the conflict and support for a unilateral, rather than negotiated route to independence. While it is easy to place parties such as JxCat, PDeCAT and ERC in the former category, and the more radical CUP in the latter, the strategies pursued by each party are not necessarily contained to one side. Negotiations are often framed as the most desirable outcome, but no pro-independence party has completely discounted the unilateral option.

Among the pro-independence parties, JxCat won most seats at the 2017 election and thus remain the main party that forms the incumbent Catalan government. Despite being one of the parties that approved the unilateral declaration of independence by President

Puigdemont in October 2017, the strategy remains 'to find an agreed solution' which would entail a state-approved referendum (Interview with JxCat MP 1). One representative described the party as having 'no clear position' but qualified this by noting it endorses 'a position in favour of rupture, to break with the constitutional order of the time' (Interview with JxCat MP 2). In this vein, the pro-independence results of the 2015 and 2017 elections and 2017 referendum, are considered by the party as a clear mandate to pursue independence and 'build an independent Catalan state in the form of a republic' (Interview with JxCat MP 2).

PDeCAT, JxCat's sister party in Madrid, endorses an identical position. One interviewee, posited, that while the party continued to support the holding of an official referendum, which 'would be a referendum with a choice between independence for Catalonia and an offer from Madrid', the party had little faith that the central government would be able to muster an alternative as attractive as independence (Interview with PDeCAT MP 1). At the same time, however, there was general consensus amongst interviewees that, as was the case with JxCat, the most optimal solution was to deescalate tensions and seek agreement on an official referendum. One MP considers the unilateral pursuit of independence, 'an obvious mistake' and continues that while 'the electoral results of the 27 September 2015 legitimised the [pro-independence] parliamentary majority to do many things…the majority in favour of independence was not sufficient to opt for a unilateral route' (Interview with PDeCAT MP 2).

A negotiated solution remains central to the strategy pursued by JxCat and PDeCAT, but scepticism abounds as to whether such an agreement, notwithstanding the change in Spanish government, could be reached. PDeCAT, for instance, rejected the PSOE's call to form a congressional commission on territorial reform, and while the party has framed such reforms as desirable, it has simultaneously argued that the party's concern is with the creation of new state structures in Catalonia not the reform of extant ones in Spain. Interviewees framed territorial reform as too little, too late and argued that previous attempts by the Generalitat to secure reform, including the 2006 Statute reform and the 2012 request for a new fiscal pact, had bolstered the conclusion that 'it is easier to proclaim independence than get a new Statute or new financial arrangement' (Interview with PDeCAT MP 1). For both JxCat and PDeCAT, the détente offered by the PSOE government, including the commitment to finding a political solution was welcomed, but the parties' main aim is the construction of an independent Catalan republic.

ERC endorse a similar strategy in relation to JxCat and PDeCAT, with emphasis on finding 'a democratic solution' to the party's support for an independent Catalan republic (ERC, 2018: 14). The party's strategy is detailed in their publication, *Ara, La República Catalana*, in which it considers the 2017 referendum as 'the founding moment of the Catalan Republic' and commits the party to working towards a negotiated solution that would see Catalonia separate from Spain (ibid). Importantly, however, the party document makes clear that, while:

> Dialogue with the state is the preferred and desired option by Esquerra Republicana…if in the face of the persistent refusal of the Spanish government a self-determination referendum is not possible, we cannot reject a declaration of independence, in line with the conditions set out in the positive opinion of the International Court of Justice in the Hague of the 22 of July 2010, about the unilateral declaration of independence of Kosovo (ibid: 34-35).

Thus, while ERC is committed to building a Catalan republic in conjunction with support of the Spanish state, it is equally committed to pursuing other routes, including the less desired unilateral declaration of independence. Emboldened by the attitude and actions of the Spanish state, which includes the incarceration of the party's leader and several MPs, some ERC members believe the time has come 'to take a risk' by continuing the pursuit of the unilateral route (Interview with ERC MP 3).

On the prospect of potential constitutional reform, ERC has remained as dismissive as other pro-independence parties. It also refused to join the congressional committee on territorial reform and all interviewees agreed that constitutional reform was beyond the interest of the party. Interviewees posited several changes such as reform of Article Two, the inclusion of the right to decide as well as the creation of a 'collective project' in which all languages were official and all citizens felt a sense of belonging yet, this proposal, described by one interviewee as 'being more like Switzerland' was dismissed as being antithetical to the traditional Castile-dominated interpretation of Spain espoused by the main state-wide parties (Interview with ERC MP 1). Akin to one PDeCAT interviewee, an ERC member believed the pursuit of tangible and accommodative territorial reform in Spain was 'utopian' and as such concluded:

> I think it is impossible for Spain to change…I always ask, what is more difficult, to build your own country with a process of secession or to transform the whole of Spain? You cannot transform the whole of Spain and what it means to be a Spaniard from Barcelona (Interview with ERC MP 3).

CUP, in line with ERC, also endorse a unilateral stance, but while for the latter this is considered a tool of last resort, CUP's leader, Carles Riera has proclaimed it 'the only way to make the republic a reality' (Esteve 2017). The Party's strategy paper passed at the May 2018 national assembly, however, endorses a more muted approach, stipulating:

> In the absence of a state and an international community committed to the recognition of the right to self-determination, the construction of an independent republic can only be the product of the ability to justly bring the states and the international community to a negotiation and agreement on the exercise of self-determination (CUP, 2018: 19).

Yet, while for other pro-independence parties, emphasis is placed on a negotiated solution with the mutual respect of both sides, the CUP paper attests that the creation of an independent republic, 'will only be the product of the combined and sustained exercise of a period of massive institutional disobedience supported by all possible institutions' (ibid).

Institutional and civil disobedience has been central to CUP's independence strategy. The party has incessantly criticised JxCat and ERC, and their joint alliance JxSí, for pursuing what CUP has termed a 'completely ineffective' strategy of attempting to negotiate independence within 'a legal framework designed to impede the exercise of self-determination' (Sallellas 2018). Moreover, CUP has vehemently criticised the two aforementioned parties for failing to adequately prepare Catalonia for a unilateral declaration of independence, which included, as promised by the JxSí government, the creation of state structures. In the words of one party official:

> It was a fantasy that we would have a democratically elected government capable of showing their flexibility in front of this massive popular movement… [and]…this took us to the farcical idea that we would be able to negotiate this rupture with Spain and then we find ourselves in the most recent situation where neither the government nor the structures of Catalonia were prepared for a unilateral declaration of independence (Interview with CUP MP).

For CUP then, the strategy is to continue with the construction of an independent republic, including state structures to ensure not just political independence, but economic and fiscal sovereignty, too (ibid). CUP, similar to JxCat and ERC, have consistently denounced the inflexibility of the central state with regards to Catalan sovereignty and a referendum. In contrast with the other parties, however, it believes the only way to secure independence is through putting concerted and persistent pressure on the central government through mass civil and institutional disobedience.

A commitment to constructing an independent Catalan republic remains at the heart of the strategies pursued by Catalonia's pro-independence parties. A negotiated pact is heralded as the ideal solution, but no pro-independence party has ruled out pursuing the unilateral route. CUP endorses a more radical approach towards independence, but while JxCat, PDeCAT and ERC are willing to negotiate with the central government, there has been very little backtracking in the long-term goal of Catalan independence. This is further compounded by the fact that a number of high-profile politicians remain in prison for their role in the organisation of the 2017 referendum.[111] This legal predicament contrasts strongly with the evolving independence movement in Scotland and, depending on its outcome, will no doubt have significant ramifications for the future trajectory of the Catalan independence movement. As is the case in Scotland, support for independence has yet to remain steady above the required 50% mark. Hence, in Catalonia, the challenge for independence parties is not just to win the support of the Spanish authorities to hold a state-approved and legal referendum, but to convince a majority of Catalans to support the independence route. This, as recent events demonstrate, will be no mean feat.

5.6 Forging a Coherent Model of Autonomy in Spain

So far, this chapter has examined and analysed the evolution of historical demands for Catalan autonomy and the varying strategies employed by successive Spanish governments to respond to (or not) these demands. We have seen that, unlike in Scotland, only limited symbolic recognition has been afforded to Catalonia and while autonomy was granted as part of the country's democratisation process and further powers have been conceded over time, an identifiable centralisation or symmetrisation strategy has been pursued by both conservative and socialist governments. It is a truism, as was discussed by various interview partners, that Catalonia has a significant level of autonomy, but attempts to further bolster Catalonia's self-rule powers and the pursuit of special recognition has jarred with the mononational, symmetrised and territorial vision endorsed by Spain's main political parties.

Far from the pacted transition to democracy in the late 1970s, which despite being fraught with difficulties, was achieved through a period of consociational bargaining that sought to ensure the inclusion of a number of stakeholders in the design of a democratic and

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[111] In November 2018, the Spanish attorney general charged those incarcerated former ministers and senior officials with rebellion and misuse of public funds with carries a minimum sentence of up to 17 years in prison.

decentralised model, 40 years later a gulf has appeared between Spanish and Catalan elites. It is the objective of this section, therefore, to examine from both a normative and institutional viewpoint, some of the biggest issues and potential routes for reform vis-à-vis the Spanish territorial regime that would seek to not only ensure the stability and continued existence of the Spanish state, but, in line with the prerequisites of plurinational justice, would equally bolster the accommodation, empowerment and recognition of Catalonia as a minority nation within the Spanish state.

5.6.1 The Normative Dimension

The Spanish state has facilitated autonomy for Catalonia, as well as the other 16 ACs, but one of the biggest anomalies in the Spanish experience with decentralisation relates to the dominant mind-set of Spanish political elites, which lacks some of the principal attributes, such as self-discipline, self-restraint and sensitivity to minority nation demands, required of majority communities in plurinational systems (Burgess 2009). In contemporary Spain, there is a relatively precarious federal spirit, evident in the absence of a commitment from both Catalan and Spanish elites to federal values and principles, as well as an almost non-existent plurinational culture, in which the existence of other nations is not merely tolerated – which in itself is insufficient – but wholly denied. Acknowledging the lack of federal culture in Spain, one interviewee posited, 'it is not a lie to say that we have a good level of decentralisation, but, I think we lack a good level of federalisation' (Interview with PSC MP 1). A similar point was reiterated by another PSC MP who believed that while 'at the level of the Spanish government much more could be done to recognise that Spain is plurinational', reform was not merely to be institutional nor constitutional, but required a change in culture and mind-set (Interview with PSC MP 2).

As already discussed when examining the limitations of decentralisation, one of the most frequent complaints as relates to the relationship between Catalonia and Spain is the lack of recognition, and thus the perceived lack of respect from Spanish quarters, regarding Catalan culture, language and claims to nationhood. Despite the Constitution's implicit recognition of Catalonia's right to autonomy, 'Spain has never treated Catalonia as a political subject to the extent that Catalan citizens, just because they are citizens of Catalonia, feel like second-class citizens inside what is the Spanish state' (Interview with ERC MP 1). This lack of respect for Catalonia as a political entity is not necessarily rooted

in any denial of the existence of Catalonia as a self-governing AC, but the refusal of Spanish elites to treat Catalonia as an equal partner in the decentralised system.

In Catalonia, it is clear that there is still significant appetite for better recognition of Catalonia as a distinct nation within Spain, but significant emphasis is placed on recognising Catalonia as an equal partner in the state. Several interviewees described the extant relationship between the Spanish state and Catalonia as 'imperialistic' (Interview with CUP MP) and 'colonial' - 'the Spanish state has always wanted to be superior to the Catalan nation and the Catalan government' (Interview with ERC MP 2). This hierarchical tendency clashes with the equal partnership theory endorsed by liberal nationalists and proponents of multinational federalism, oft-considered a prerequisite to ensure the loyalty of minority nations towards state institutions and thus the stability and integrity of the state (Gagnon 2014). The Spanish state, in contrast, considers itself to be the dominant authority, but it is clear that this narrow-minded interpretation of power and control must be substantially changed if Spain wishes Catalonia to remain an integral component of the Spanish state: 'there has to be a profound mental change. They have to realise that diversity is not a problem' (Interview with ERC MP 1).

As well as a lack of recognition as an equal partner, the lack of respect accorded to Catalonia vis-à-vis its own national language and culture is a further impediment in the development of a plurinational culture in Spain. Spain is indisputably a pluricultural and plurilingual country, and while there seems to be a tacit acceptance of this, even amongst the most Spanish nationalist parties, much more needs to be done to demonstrate that the central state 'understands that diversity is a good thing' (Interview with C's MP). As we have already seen, successive Spanish governments have consistently encroached upon Catalan competences, particularly in the area of education and language. For one ERC interviewee, Spain embodies 'an inflexible model of coexistence' in which, irrespective of rhetoric or constitutional provisions, there is a lack of respect accorded to Catalan distinctiveness and thus 'we feel like we cannot be ourselves' (Interview with ERC Senator). 'Catalanism', attested another interviewee:

> Has always had a model of Spain… [and] it is not just saying we want to be an independent country. We wanted to share the same state … but what we understand, that is, what a Catalan understands to be Spain, there is no Spaniard that understands this Spain. So, when we are talking about Spain [and Catalonia], we are talking about two different countries…the model that political Catalanism has always defended is, I want to be a citizen of Spain, but at the same time I am Catalan. It is my way of being Spaniard (Interview with ERC MP 3).

As is the case in other minority nations, there is an inherent clash between the plurinational vision of Spain endorsed by Catalonia and the mononational vision of the state promoted by Spanish elites. The mononational vision of Spain, however, while it seeks to promote an inclusive identity, inherently excludes those Catalans that endorse a different and competing vision. Indeed, as argued by Kymlicka (2001a: 105), opposition from the majority group to treating national minorities differently with regards to an asymmetric distribution of powers or, as is the case here, recognition of a distinct national identity, 'is rooted in a latent ethnocentrism – i.e. a refusal to recognise that the minority has a distinct national identity that is worthy of respect.' It is fair to conclude that this is the case in Spain.

Drawing upon the example of Switzerland as a model of federal stability with a collective project that recognises its plurilingual and pluricultural diversity, one interviewee posited, 'if it was like this in Spain, lots of independentists would not be independentists' (Interview with ERC MP 1). In contrast to Switzerland, the tradition of Spanish political culture has not sought to promote an inclusive project, but instead has outright rejected or as was the case in the late 1970s, only tacitly acknowledged difference. This clearly demonstrates the need for change in the model of accommodation not only to ensure that minorities are not misrecognised simply because they belong to a minority, but more importantly to ensure and particularly in the case of Catalonia, to repair the bonds of trust that have been continuously eroded over a number of years. In Spain, however, a monist and crudely majoritarian approach has been prized over the accommodation and recognition of minority nations.

Secessionism is a politically charged and at times controversial issue in plurinational states, but, as has been argued elsewhere, plurinational states seem destined 'to live in the shadow of secession' (Keil and Anderson, 2018: 96). In Spain, there is no constitutional path to facilitate the secession of an AC, but in contradistinction with other states such as Canada and the UK that have sought to work with sub-state governments to hold a referendum on independence, such calls for dialogue and negotiation in Spain have been met with a wall of silence, denial and ultimately confrontation. The PP and C's are of similar persuasion on this issue believing that discussions on independence cannot take place 'because it is not foreseen in the constitutional order to have a self-determination referendum' (Interview with PP MP). Yet, in democratic plurinational states, seeking the de-legitimisation of a

secessionist project through means other than dialogue and negotiation are challenging and problematic, particularly given the presumable aim of the majority community is to achieve the loyalty and allegiance of the minority community to ensure the maintenance of the territorial integrity of the state. Kymlicka (2001a: 118) acknowledges the perverseness of this issue: 'too often we have adopted the wrong standard for measuring unity and allegiance. We have defined unity and loyalty as the elimination of the very idea of secession. This is not a reasonable or realistic standard for any multinational state.'

In Spain, the use of the Constitution by the Rajoy administration as a legal straitjacket to outright reject discussion on secession ultimately posed a serious threat to the stability and unity of the Spanish state, as much as, for instance, those advocating Catalan independence. Dismissal of the claims of minority nations, whether they question the unity of the state or not, undermines the importance of federal principles such as mutual respect and tolerance and particularly in the case of Spain has served to further erode the already tenuous bonds of trust between the Catalan and Spanish governments. Dealing with intractable issues such as secession, necessitates respect, tolerance and good-faith negotiations, as well as frank and honest dialogue. In this vein, majority communities must move beyond their narrow perceptions and engage with minority communities, in what Tully (1995: 24) terms 'an unending constitutional dialogue, or multilogue, of mutual recognition'.

Yet, while it is clear that 'majority nations in multinational federations have a moral responsibility to keep alive the federal spirit', minority nations must equally share the burden (Burgess, 2009: 179). In Catalonia in recent years, there has been a significant breakdown of relations between the Spanish and Catalan governments, but while it is incumbent upon the Spanish government to ensure the evolution and development of a plurinational and federal spirit, Catalonia must also play its part. There is no doubt that elements of the federal spirit exist in Spain and have played a prominent role in the historical relationship between Catalonia and the Spanish state, embodied, for example, in the Catalan tradition of pactism. Furthermore, analysis of the 2006 reform of the Catalan Statute clearly reveals an explicit commitment to federal principles, evident for instance in the strengthening of IGR between the different orders of government. Nonetheless, while for many the debacle over Statute reform constituted a moment of reflection vis-à-vis Catalonia's place within Spain, for others, namely anti-independence supporters, it was further evidence of Catalonia being 'selfish and lacking in solidarity' (Interview with PP MP).

A consistent grievance with regards to Catalonia's place within Spain relates to fiscal matters and in recent years has increased support amongst Catalans for a new fiscal model, as promoted by CiU from 2010. The Rajoy administration consistently rejected fiscal autonomy for Catalonia. Amongst governmental and other Spanish nationalist elites, as well as the mainstream Spanish media, the lack of perceived economic solidarity from Catalonia, is often framed as a wealthy but selfish Catalonia, averse to inter-territorial fiscal solidarity (Dowling 2017). This, combined with a perceived disloyalty towards Spanish institutions and a lack of trust that Catalonia would continue to contribute to state coffers, rendered impossible the possibility of granting fiscal reform to Catalonia. In the words of a PP representative:

> The risk is having an independence movement in government. The fact that they could collect all taxes could mean that at one point in time they could decide to stop contributing to the expenses of the state, which is what they have tried to do now. The proposition of the independence movement and the unilateral plan was to have all the powers to collect and then to say to Spain we will not pay anything to the state. Therefore, for this reason, there have always been reservations about ceding or even debating the collection of state taxes by Catalonia. These were fears, but over time these have been demonstrated to have been justified and justify why we have not done this to the present day (Interview with PP MP).

Perceived disloyalty from the Catalan government and parliament towards Spanish institutions was also discussed in detail with regards to IGR. It has already been noted that Catalonia, much like other minority nations, prefers bilateral dealings with the central government as opposed to multilateral forums in which Catalonia is treated as 'just another AC' (Interview with *Catalunya en Comú*-Podem MP 1). However, while noting that it was important for the Spanish government 'to recognise the singularity of Catalonia both at a symbolic and institutional level' one interviewee argued that the Generalitat's dismissiveness of multilateral IGR clashed with the 'instruments for this in our own Statute' (Interview with *Catalunya en Comú-Podem* MP 2). This lack of institutional loyalty, for some a necessary measure to force change so that Spain 'accepts us as a political subject' (Interview with ERC MP 1), stems from, but at the same time, reinforces the lack of trust between Catalonia and the Spanish state. In this vein, it is incumbent on both sides to facilitate, at the very least, a functioning political relationship.

5.6.2 The Empirical and Institutional Dimension

On a normal level, I have discussed the importance of the development of a plurinational culture and treating minority nations as equal partners in the federal political system. This is also as true in the institutional design of the system, including in the devolution of powers, but relates as much to equity as it does to equality.

As has already been noted, the Spanish experience of political decentralisation is characterised by an almost incessant strategy of symmetrisation that has undermined the autonomy granted to ACs, particularly the historic nationalities. Strong unionist parties influenced by their territorial approach to autonomy, that is the American model of federalism, advocate a symmetrical approach, perceiving asymmetry as an unjust privilege for certain minorities (C's here is a case in point). This notion, however, has been challenged by Kymlicka (2001a: 105), who asserts that hesitance or failure to grant asymmetry to 'nationality-based units' over 'regional units' rooted in justifications of equality are wrong: 'equality for individual citizens does not require equal powers for federal units.' Kymlicka (ibid), further develops this point arguing that, according special status to a region, either in the constitution or through the asymmetrical devolution of powers, is an important step in the fulfilment of plurinational justice 'since it ensures that the national identity of minorities receives the same concern and respect as the majority nation.' The reform of the Catalan Statute sought to limit the ability of the central government to encroach upon the autonomous policy spheres of Catalonia through Basic Laws, but its attempt to disentangle competences and thus create a typology of competence jurisdiction was ultimately rejected by the TC. While asymmetry was an important principle in the development of Spain as a decentralised and democratic polity, Spain's most nationalist parties frame it as a potential threat to the continuation of Spain in its current form.

The discussion of multinational federalism in Chapter Three made clear that asymmetry is an integral component to ensure the inclusion of minority nations as stakeholders in the political system as well as acknowledging their status as more than regions in the system. Gagnon (2001: 321-222), for instance, considers asymmetry an important tool for a number of reasons, including, to ensure 'better protection of a community defined by language and culture', to fulfil the requirements of a 'politics of recognition' and finally, as a tool of equality and equitable treatment, which relates to 'equality of outcome rather than for identical treatment.' In Spain, however, as has been the

case in Canada and Quebec, the majority community has afforded a lack of concern towards the particular needs of minority nations. This, however, as noted above, rather than cementing the equality of treatment of all individuals, in effect harms those who identify with a minority community. In Spain, thus, there is a necessity to move beyond the perception of asymmetry as a privilege and ensure a territorial model and asymmetrical distribution of powers that empowers minority nations inasmuch as secession from the host state is rendered futile. The Spanish experience vis-à-vis asymmetry and minority nations has shown that attempts to tamper with the distribution of competences, including the encroachment of central government on AC policy spheres, as well as recentralising measures, have not solely undermined recognition of Catalonia or impeded its development vis-à-vis equality and equity, but moreover, and more worryingly, has itself contributed to the instability of the state. In discussing the importance of asymmetry for Quebec, Gagnon (ibid: 337) concludes, 'if Quebec is to remain in a political partnership with the Rest of Canada in the twenty-first century, it is clear that the option of ignoring the concept of asymmetrical federalism simply does not exist.' The same stands true for Spain.

As was pointed out by one interviewee, granting powers to 'a political community that feels a common identity and a [sense of] nationhood' is an important move in a plurinational system, but this is 'merely the starting set' that requires an almost permanent conversation over which powers should efficiently remain at which level (Interview with PSC MP 1). Powers, however, do not mean much when the minority nation does not feel adequately recognised by the majority community: 'you cannot address issues of recognition only by giving more powers, particularly if the starting set is already granted' (ibid). Indeed, this seems to be the case in Catalonia inasmuch as grievances vis-à-vis the Catalan relationship with Spain is not necessarily focused on powers, as for instance is the case in Scotland, but the lack of genuine recognition afforded to Catalonia within the Spanish state: 'the problem is not so much about political decentralisation but the recognition of plurinationalism and the recognition of the existence of different nations with the right to self-government and to be political entities' (Interview with PDeCAT MP 2).

To ensure the stability and integrity of a plurinational state, it is often taken for granted that minority nations must become stakeholders in the state and participate, through a number of devices, in the decision-making powers of the central state. In Spain, as I have discussed, there are few opportunities for effective shared rule and while IGR are hailed as important mechanisms for such cooperation, there is no guarantee nor legal requirement for

the central government to take into consideration the viewpoints of the ACs. As a member of the Spanish state, Catalonia remains a structural minority, thus it is only logical that a conscious effort on the part of the central government must be made to ensure Catalan influence and participation in state decisions. This has already been underlined as a crucial component by the PSOE's incumbent minister for territorial policy and was enthusiastically supported by PSC interviewees who believed the inclusion of Catalonia 'in building the will of the state', was a necessary component in advancing the existing territorial model (Interview with PSC MP 1). Drawing upon other plurinational federations, several interviewees suggested that Spain could learn lessons from Canada and Quebec, namely 'the acceptance of asymmetry' (Interview with PDeCAT MP 1) as well as guaranteed respect for minority languages:

> A French speaking citizen of Canada can address their institutions in French even if it is not in Quebec, but it is necessary? Maybe it is not a primary need, but it is necessary if you want French-speaking citizens of Canada to believe that Canada is the state of [English and] French speaking people. I'm talking about these kinds of policies…it is possible in Spain and we can imagine these policies that would make Catalan people feel recognised in a state like ours [Spain] (Interview with PSC MP 1).

The Canadian experience with opt-out clauses was also mooted as a potential device that would, as in the case of Quebec, emphasise the asymmetrical principle considered necessary in plurinational federal systems, but equally ensuring some sort of differentiated status for Catalonia (Interview with PDeCAT MP 1). This, for instance, would be a welcome mechanism in the ambit of education given the increasing intensity of complaints that have been amassed over the years as a result of central government encroachment in this policy jurisdiction.

Another important tool in ensuring that minority nations become stakeholders in the state is through the institutionalisation of a territorially representative second chamber. The Spanish Senate, predominantly organised along provincial rather than AC lines, has in recent years sought to entrench its role as a territorial chamber, namely in advancements to grant a role for the ACs in the nomination of judges for the TC. Nevertheless, as was discussed earlier, this process can be overruled by party political senators in the event that an AC-proposed judge does not secure the required support.

The Senate, despite its nominal title as a 'territorial chamber' plays a limited role in representing the ACs and thus also requires reform to ensure the accommodation,

recognition and empowerment of Catalonia within the Spanish state. Much like reform of the House of Lords in the UK, Senate reform has been mooted by several political actors over the years, but as a consequence of the divergent positions of different political actors, as well as lack of consensus and lukewarm support from both state-wide and AC-specific minority parties, little progress has been made, leading one scholar to term Senate reform 'mission impossible' (Roller 2002). Among interviewees, there was general consensus that the chamber should be reformed, but enthusiasm for reform was rather muted, save for *Catalunya en Comú-Podem* representatives: 'A plurinational state has to have a plurinational territorially representative chamber' (Interview with *Catalunya en Comú-Podem* MP 1). In the words of another representative:

> The senate should be a real territorially representative chamber. Right now, it is not. It does not make sense as it is at the moment to have Senators elected by provinces, there should be autonomic Senators. Here, another vision would be that they would be chosen by the [autonomous] parliaments or the governments and that the Senate has the specific function to be a true second chamber and act like a territorially representative chamber (Interview with *Catalunya en Comú-Podem* MP 2).

For pro-independence representatives, Senate reform was, unsurprisingly, not high on their agenda. On the one hand, this relates to the priority of independence rather than reforming the Spanish state, but on the other, is rooted in the fear that Senate reform would not necessarily benefit Catalonia and its preference for bilateralism: 'we are scared of reform because we think it would be a step backwards' (Interview with PDeCAT MP 1). Representatives support Senate reform on the condition that Catalonia's preference for bilateral relations is not replaced by a multilateral forum in which its voice is the same as, or drowned out, by other ACs.

In this vein, other institutional mechanisms such as minority vetoes or double majority rules may serve as useful tools that would empower minority nations while concomitantly ensuring them a stake in the interests of the state. Veto powers for the historic nationalities were mooted in the 1998 *Declaration of Barcelona* and already exist in the Spanish system with regards to the Basque economic model and its five-yearly quota laws concerning the Basque contribution to the Spanish state.[112] C's, as discussed earlier, contest the Basque

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[112] The negotiations involved in the renewal of the agreement necessitate mutual agreement between both the Basque and Spanish governments and in essence 'gives both Spanish and Basque delegations equal veto power' and reinforces the 'bilateral relationship between equals' sought by the Basque government (Gray, 2016: 126).

economic model believing it to privilege the Basque Country over other ACs and consider deepening asymmetry as inhibiting the equal status of all ACs. Contrary to this opinion, there is reason to argue that rather than putting the Catalans in a position to dominate the Spanish majority, veto powers or double majority rules, could conversely be seen as putting the Catalans on a more equal footing.[113]

Judicial litigation has become a central feature of the development of the Spanish experience with autonomy and while it is not uncommon for the contours of a decentralised system to be shaped by the jurisprudence of constitutional judges, in Spain a number of problems abound concerning the nomination of judges and thus the separation of powers within the democratic system. As was previously discussed, the nomination process for judges to the Spanish TC is dominated by the Spanish Parliament and thus results in the politicisation of the judiciary insofar as judges are proposed by political parties not so much for their professional competency but rather their ideological leaning. Indeed, for several interviewees, the lack of independence and impartiality of the Spanish judiciary stems from the Franco dictatorship and thus represented Spain's 'inconclusive' (Interview with *Catalunya en Comú-Podem* MP 2) or 'imperfect' (Interview with CUP MP) transition whereby there was no proper rupture, 'elites passed from the dictatorship and adopted the label "democrat", but they were the same people, judicial, police and political elites' (Interview with ERC MP 1). Although, it is easy to dismiss such complaints as a skewed party-political position, as for example, was done by a PP representative, the Council of Europe (2018) has repeatedly emphasised that the politicised nomination process of Spanish judges undermines their independence and impartiality.

There was general consensus amongst interviewees, save the PP, that reform was required of the nomination process of judges, not just for the TC, but the entire Spanish judiciary. In discussions about the perception and role of the TC, one interviewee noted, 'there is no guarantee a Catalan judge will sit on it' and thus urged reform in relation to including Catalonia, as one of the historic communities of Spain, in the nomination process (Interview with PDeCAT MP 1). A similar point was made by a PSC representative who considered the judiciary, 'the less federalised aspect of Spain' and thus believed that ACs should be given a concrete role 'in the election of several high-ranking public servants', such as constitutional judges (Interview with PSC MP 1). Such proposals, which would see

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[113] This, for example, is the argument used to defend Quebec's demand for a special veto power (see Kymlicka, 2014: 34).

Catalonia empowered to nominate or even appoint constitutional judges, would result in a more accommodative and empowering autonomy model.

Some of the institutional arrangements detailed above have a markedly consociational flavour. As discussed in Chapter Three, consociationalism, prescribed and mooted as a tool to achieve conflict management and empower minorities, broadly entails four specific arrangements: coalition government, territorial autonomy, proportionality and minority vetoes. Save autonomy, Spain has not institutionalised these consociational arrangements, but, in light of recent events, moves towards a consociational model may help resolve some of the current and most pressing tensions.

Spain's transition to democracy, as well as the initial development of the territorial system, which necessitated bilateral negotiations between ACs and the central government, chimed with the consociational idea. In order to garner consensus and generate support for the democratisation process, political elites were involved in bilateral and multilateral negotiations, to the extent that, 'the consensual agreement made explicit in the 1978 Constitution can be interpreted as an unwritten pledge to extend the procedures of political dialogue and consociationalism as guiding principles for future developments of internal accommodation' (Moreno, 2007: 88). As a majoritarian democracy, Spain has travelled far from some aspects of the consociational approach. As Swenden (2006: 262) notes, 'the Spanish centre lacks any *consociational* features. Although the regions have gained substantial self-rule, the composition of the national executive, the Senate, Constitutional Court and civil service does not systematically protect the interests of the historic communities, let alone of all the 17 regions' [emphasis in original]. In periods of minority government, however, which as shown in table four has been a familiar characteristic of Spanish politics, arrangements have been made between Spanish and minority nationalist parties, necessitating periods of continuous political dialogue, negotiation, bargaining and compromise. Consociational thinking and practices work to temper majoritarian democracy and as such make it more federal and thus accommodative of minority demands. Supporting minority governments in Spain has worked well for Catalonia in terms of the devolution legislative competences and increased fiscal powers, and for one interviewee 'ensured a good relationship…[between Catalonia and Spain]…because it worked well for Catalonia, but hasn't been bad for Spain either' (Interview with PSC MP 2).

The practice of decentralisation in Spain, which has an inherently majoritarian flavour, has undermined the consensus-driven approach taken during the transition, and, more

importantly, poses a threat to the future stability of the Spanish state. Minority nations and their secessionist projects are often blamed for the instability of states, but, as this chapter has shown, it is often the majoritarian thinking and anti-federalist practices that endanger the continuation of the state. The consociational model purports to be a 'kinder, gentler' form of democracy, and while the theory is not without its detractors, recent events in the relationship between Catalonia and Spain demonstrate a need for self-discipline on both sides, but also increased concern for consensus-based decision making at the Spanish level (Lijphart, 2012: 306). In plurinational states, consociational techniques are necessary to facilitate consensus and 'to counter and temper the unitary thrust of democracy and make it more "federal"' (Forsyth, 2007: 156). Spain's central institutions, as well as the normative thinking behind them, are more majoritarian than consociational, yet consociational practices are not entirely alien to Spanish politics. More, however, must be done to increase the voice of Catalonia in state institutions that would not only ensure better recognition and empowerment of Catalonia, but would relieve tensions from some of the existing inbuilt pressures and provide mechanisms to manage some of the potential tensions between the devolved institutions and the central administration.

5.7 Concluding Reflections

This chapter has examined the development of territorial politics in Spain and Catalonia, paying particular attention to the further autonomy and secessionist demands of successive Catalan governments and how these have been managed by the Spanish government. Taking this analysis into consideration, a number of observations as relates to the Catalan and Spanish experience of autonomy, plurinationalism and secessionism can be made.

First, the Spanish model of autonomy, despite some of the identified limitations, has served Spain, Catalonia as well as the other 16 ACs well in a number of areas: facilitating the entrenchment of a liberal democratic system and enabling the devolution of a significant chunk of public policy. In spite of the exaggerations of PP representatives who describe Catalonia as one of the most decentralised sub-state territories in the world, it is clear that Catalonia has control over a rather significant portion of public policy. To this end, Catalonia was not only central to the development of the Spanish autonomy system, but has, incrementally, become a very powerful and autonomous sub-state entity.

Second, despite the benefits of the State of Autonomies there are a number of limitations which undermine the model of autonomy institutionalised in Spain. The most pressing drawback relates to the centralising tendency of successive Spanish governments betrayed in both rhetoric and action which have included identifiable symmetrisation processes designed to dilute the claims of the historic nationalities. Not only does this go against the constitutional order of 1978 but lends credence to complaints that the accommodation of minority nations' self-determination aspirations is not possible within the extant autonomy framework. This is made worse by the lack of sensitivity towards the plurinational nature of the Spanish state which is denied by those political parties associated with the centre-right, such as the PP and C's. In addition to these limitations, the reliance on litigation as opposed to seeking negotiated and political solutions and compromises to demands for further autonomy or secession are a cause for concern in a plurinational democratic setting. In fact, while the Spanish government's recourse to the courts under Rajoy was perceived as the best strategy to inhibit the potential secession of Catalonia and thus keep the state together, it has further soured centre-periphery relations and paradoxically poses a greater challenge to maintaining the extant borders of the Spanish state.

Third, in a similar fashion to Scotland, the future territorial layout of Catalonia and Spain can be broadly defined in three potential scenarios: recentralisation, reformulation and disintegration. From the analysis discussed above, no political party overtly advocates a recentralisation agenda, but the re-election of the PP or the election of a C's government would seriously challenge the existing autonomy model, not discounting the threat of recentralisation. The PSOE and *Podemos* are the two parties which most strongly advocate territorial reform, albeit this differs in relation to managing Catalan demands for a referendum on secession. Both parties propose the federalisation of the Spanish state, but, as a result of numerous hurdles, including the lack of consensus among politicians and the public alike on federalism, as well as the cumbersome process of constitutional change, it is unlikely that such radical change will be implemented any time soon.

Independence remains the constitutional preference of the incumbent Catalan government as well as a number of political parties, civil society organisations and a significant proportion of the Catalan population itself. Pro-independence parties welcomed the change of government in June 2018, but while under the PSOE meetings have resumed between the Catalan and Spanish governments and the PSOE are much more open to

territorial reform than the PP, pro-independence parties, at least in the short term, have no intention of changing their constitutional course.

Finally, the Spanish experience with autonomy underlines the need for more innovative thinking with regards to accommodating, empowering and recognising minority nations. As in the case of Scotland and the UK, this must involve changes both in rhetoric and mind-set as well as institutional developments that are designed to not merely contain further demands but create an environment in which minority nations can flourish. In Catalonia, this is fundamental to ensure opportunities to rebuild trust and create a much more hospitable environment for both minority and majority communities. Hence, an important reform in Spain is not related to any tangible institution or mechanism, but the way the state is viewed and understood by political elites. At an institutional level, it is clear that Catalans support a deepening of the autonomy model, but while this may result in the devolution of further powers, equally important is a commitment to asymmetry, considered a necessary condition for the successful survival of minority nations and their plurinational hosts. Furthermore, change must also be effected with regards to shared rule mechanisms, particularly the development of more efficient mechanisms that would ensure the inclusion of ACs in central government decision-making processes. In this regard consociationalism offers important lessons for Spain. Such a move, given recent events in Catalonia, may seem way beyond current thinking, but political elites should be aware that steps towards a more accommodative, imaginative and innovative model are necessary if the Spanish state is to continue to hold together, even in the short term.

6. Chapter Six: Comparative Discussion

6.1 Introduction

The previous chapters analysed the ways in which accommodation strategies have been pursued by successive Spanish and UK governments, the merits and limits of these approaches, the potential scenarios for the future terrain of each case and, in line with the theoretical framework set out in Chapter Three, what could be done to offset the limitations of extant autonomy regimes.

This penultimate chapter pulls together the findings from the preceding data chapters, drawing attention to some of the similarities and differences between both cases and the approaches employed by state governments to manage the evolving demands of the nationalist and independence movements in Scotland and Catalonia. Taking into account the limitations of the UK and Spanish autonomy models, I sketch a thematic analysis of the main themes that emerged from the analysis and illuminate some of the most important elements required in the crafting of a more coherent and accommodative model of autonomy. The chapter concludes with a comparison of the three potential scenarios that look set to characterise the territorial future of both the UK and Spain.

6.2 Comparing Strategies for Accommodation

As discussed in Chapter Two, there are a number of institutional responses a state may take in order to accommodate plurinationalism within their borders. The UK and Spain have taken similar and distinct approaches to these various institutional repertoires. Below, I analyse the experience of the three most important elements of the territorial strategies employed by the UK and Spanish governments: symbolic recognition, self-rule and shared rule (see table six).

6.2.1 Symbolic Recognition

Symbolic recognition is an important component of accommodation strategies for sub-state groups in a plurinational state (Kymlicka 2001a; Norman 2006; Swenden 2013). Such

recognition may take the shape of the recognition of nationhood for minority nations, the acknowledgement of the plurinational character of the state in its constitution as well as in other state symbols such as flags and anthems. Recognition of nationhood for minority nations, for instance, is an important symbolic gesture that may in turn further strengthen the bonds that bind a state together. But, so too is recognition of the state's plurinationality. This, for example, underlines the willingness of the state to accommodate its internal diversity, protect its national minorities and ensure the continued existence of the state (Keating, 2001: 107).

The relative ease with which the UK has recognised its plurinational character is rooted in the formation of the state as a union-state as opposed to a prototypical unitary state. The union of 1707 incorporated Scotland into the political, albeit unitary framework of England, but Scotland retained significant freedom in terms of autarchic institutions. The UK itself recognised this pluralism through the name and symbols of the state whereby, the UK's name reflects 'its plurinational composition, while the union flag is no more than the superimposition of the flags of the component nations' (ibid: 104). The acceptance of the UK's plurinational makeup and thus of differentiation between the concepts 'nation' and 'state' has also facilitated the identification of the existence of a Scottish *demos*, as opposed to a monist interpretation, as is the case in Spain, of a single *demos*.

Contrary to the UK, Spain has been historically uncomfortable with recognition of its plurinationality. The Constitution effected in the aftermath of the transition to democracy, recognised the existence of 'Spaniards and peoples of Spain' as well as 'the right to self-government of the *nationalities* and regions of which it [Spain] is composed'. Yet, while there is a commitment to internal self-determination and the protection of multiculturalism, including other languages spoken in the state, the Constitution falls short of recognising its plurinationality. Instead, the Constitution propagates a mononational view of the state in which Spain is conceived as a traditional nation-state with the existence of only one *demos*, the Spanish *demos*, to whom 'national sovereignty belongs'. As a result, claims for the existence of a Catalan nation and Catalan *demos* are highly contested, evident in the refusal to confer nationhood on Catalonia or to transfer the power to hold an independence referendum. Unlike the UK, where there is general agreement on the plurinationality of the state, Spanish political elites are divided between those who support acknowledgement of Spain's plurinational status, including constitutional recognition, as well as those who consider such recognition as anathema to Spain's traditional constitutional order.

Table Six: Comparing Strategies for Accommodation

	UK	Spain
Symbolic Recognition	Recognition of Scotland as a nation. Acknowledgement of UK as a plurinational state.	Constitution enshrines some recognition of distinctiveness e.g. historic nationalities and co-official languages in certain ACs. Constitution acknowledges the existence of only one nation, the Spanish one. Some reference among political elites (PSOE/*Podemos*) to plurinationality of Spain, but vehemently rejected by others (PP/Cs). Spanish language as the only official language of the state.
Self-Rule	Significant powers devolved in 1999, as well as in updated Scotland Acts 2012 and 2016. Institutionalisation of a retaining model of devolution. Increase in fiscal autonomy. Asymmetric approach to devolution.	Potential to devolve a number of significant policy briefs. Initial asymmetrical devolution but has gradually evolved to a more symmetrical system. Central government encroachment on AC policy briefs through Organic Laws. Limited fiscal autonomy for the ACs, except Basque Country and Navarre.
Shared Rule	No territorially representative second chamber. No mechanisms to ensure influence of sub-state nations at central government level. IGR forums such as JMC. Secretary of State for Scotland with full cabinet ranking. Sewel Convention.	Senate is limited in its role as a territorially representative chamber. Secretary of State for Territorial Politics. Other languages can, at certain times, be used in the Senate but not in Congress. IGR forums such as sectoral conferences and Conference of the Presidents.

6.2.2 Self-rule

Self-rule is broadly defined as the decision-making powers within the jurisdiction of sub-state national or regional parliaments (Mueller 2017). In Spain, self-rule was very much framed as a necessary concession to secure the support of minority nationalists during the

transition. This has also been the case as the autonomy system has evolved whereby further powers have been granted to the historic nationalities in return for their support during periods of minority government in Parliament. The open-ended model on the division of powers in the Constitution allowed for the development of an asymmetrical path, considered a requirement to differentiate Catalonia, the Basque Country and Galicia from the newly created ACs and thus guarantee their participation and support in the development of the system. Yet, while the Constitution provided for a rather flexible and quite substantial division of powers along asymmetric lines, successive Spanish governments have sought to curtail the development of asymmetry and instead symmetrise the division of powers. As well as this, a recurring feature in the Spanish experience of autonomy has been one of central government encroachment in AC jurisdiction which has gradually intensified tensions between the central government and ACs, namely the Basque Country and Catalonia. This centralising approach is rooted in the predominant understanding – albeit venerated ideal – of Spain as a homogenous nation-state with a symmetrical model of autonomy.

Scotland, much like Catalonia, has also become a very powerful sub-state territory. In a similar vein to the Spanish experience, the decision to devolve autonomy was not necessarily related to any overarching concern with the accommodation or empowerment of Scotland as a minority nation within the UK but was rooted in attempts by the Labour Party to further entrench its electoral dominance in Scotland and thus side-line the pro-independence SNP. In contrast with the Spanish model, the *Scotland Act 1998* sets out a rather clear distinction between the competences of both orders of government and institutionalised a retaining model of devolution; the Scottish Parliament controls all powers except those reserved to Westminster. In addition to this, the Sewel Convention provides that the UK Parliament will not normally legislate on devolved matters without the prior consent of the Scottish Parliament, thus inhibiting the ability of London-based departments to encroach upon devolved competences. The powers of the Parliament have increased over the years but in contrast to Catalonia, this has not been to secure party support in the state legislature, but rather a reaction to the electoral success of the SNP and thus attempt to stifle support for independence. All in all, the devolution of further powers has enhanced autonomy in Scotland and further entrenched the asymmetrical design of devolution. Hence, while asymmetry has never found much favour in Spain amongst the main state-wide parties, it remains a fundamental component of UK devolution, further cementing Scottish

distinctiveness within the UK state.

6.2.3 Shared Rule

Shared rule, which refers to the participation of sub-state entities in the decision-making processes of the central government, has been a neglected dimension of power in both the UK and Spain (Mueller 2013). Devolution to Scotland was finally granted after a sustained period of campaigning, but was concerned solely with self-rule. There were discussions prior to the re-establishment of the Scottish Parliament vis-à-vis relations between the different orders of government post-devolution, but emphasis was on self-rule rather than increasing the voice of Scotland – or the other nations – at the centre. Prior to devolution, and in the absence of self-rule for Scotland, a number of instruments were put in place to increase the voice of Scotland at the centre, including the overrepresentation of Scotland in the House of Commons and the establishment the Scottish/Scotland Office and Secretary of State for Scotland.[114] Apart from this, however, opportunities for Scottish influence at the centre have been significantly limited. In terms of IGR, informal and bilateral relations exist as too does the JMC. As discussed in Chapter Four, while the former seems to work well, the latter is characterised by a hierarchical structure that does not serve as an effective lever of input or influence for the constituent nations on central government policy making. In addition, none of the UK's component units yield a veto power over central government policy spheres and while for some the Sewel Convention may represent an indirect veto, it is 'more a means of protecting self-government in areas of devolved competence than a way to exert influence over Westminster policy that affects devolved territories' (McEwen, 2016: 231).

Shared rule in Spain is also a limited affair. The Senate is described in the Constitution as a 'the House of Territorial Representation', but its capacity to act as such is circumscribed by its functions (or lack thereof) and composition which is largely based on provinces rather than ACs. In addition, as is the case in Scotland, there is a lack of appropriate mechanisms and institutions to ensure that both nationwide and regional interests are represented and protected in central government policy spheres. A number of IGR forums have been established, but these are significantly limited in their capacity to serve as mechanisms to

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[114] In 2005, as a result of devolution, the number of seats for Scotland in the House of Commons was reduced from 72 to 59.

either provide input or influence over central government decisions.

6.3 Examining the Limits of Territorial Autonomy

As discussed in the preceding chapters of this thesis, territorial autonomy has been framed as an important tool particularly in plurinational states for a number of reasons. These include, *inter alia*, as a tool for conflict resolution, a device to protect minorities and their interests, a mechanism to ensure equilibrium between unity and diversity and a way to extend and deepen democratic principles and practice. More recently, however, as a result of the complex interplay of centrifugal and centripetal forces, territorial autonomy has come under increased pressure and intense scrutiny. This section, therefore, through both a normative and empirical lens, sketches a thematic and comparative analysis of some of the most significant and pressing limitations of the autonomy models in the UK and Spain.

6.3.1 A Plurinational Culture

As discussed in earlier chapters and has been examined in the scholarly literature, plurinational states, by implication of their cultural, ethnic, linguistic or religious diversity, are distinct from their mononational counterparts (Basta et al 2015; Burgess and Pinder 2007; Gagnon and Tully 2001; Gagnon et al 2003; Lluch 2014; Seymour and Gagnon 2012). As a result, plurinational states encounter a number of specific challenges shaped by the diversity of the state, including what measures should be adopted to accommodate national diversity and render the pursuit of independence by sub-state territories obsolete. To this end, the development of a 'plurinational culture' is an essential component to help bolster and guarantee the stability and territorial integrity of the plurinational state while at the same time, providing space and institutional structures that protect and promote the distinctiveness of minority groups.

The discussion on a plurinational culture put forward in this chapter draws upon existing debates on liberal nationalism, federalism and multinational federalism. In this vein, a plurinational culture refers to relations between the central state and sub-state entities, as much at a normative level, that is the values and principles that guide and underpin these centre-periphery relations, as in institutions themselves. Building on the works of James

Tully (2000) who advocated 'the ethics of hospitality' and Charles Taylor (1994) who advanced the thesis of 'the politics of recognition', Gagnon (2014: 80) posits that centre-periphery relations, should not, as is often the case, be taken for granted and instead should be predicated on the institutionalisation of 'equal, respectful power relationships among national communities, and enable stakeholders to focus on relations of non-domination among different orders of government'. A hospitable political environment, reciprocal recognition, territorial autonomy and effective shared rule mechanisms are essential components of a plurinational culture to help facilitate a permanent dialogue between different levels of government within a multilevel plurinational state as well as ensure a flexible centre-periphery relationship. Key to this success is the maintenance of dialogue between the different groups and levels of government in a plurinational state. As Pfeffer (2015: 153) puts it, 'despite the fact that different groups will not always agree with each other, it is important that they agree to remain in dialogue with one another.'

Spain and the UK have used territorial autonomy as the principal mechanism to accommodate the Catalan and Scottish territories, but this had not led to the entrenchment of a plurinational culture. There are, as was discussed in the previous chapters, identifiable elements of plurinational awareness in both cases, but as discussed below, many of the values and principles that undergird a plurinational culture – sensitivity to national claims, compromise and trust, to name just a few – are lacking in relations between the different levels of government. In this vein, it is unsurprising, as pointed out by Requejo (2015: 163), that when compared to other plurinational states, including, Belgium, Bosnia, Canada and India, both the UK and Spain fall behind these states in the accommodation of national minorities in terms of decentralisation and official recognition.

Symbolic recognition is a key aspect of 'crafting successful territorial strategies for a plurinational state' that demonstrates 'that national political elites are willing to identify the state as plurinational and recognise that it encompasses multiple, but possibly complementary identities' (Swenden, 2013: 71). As posited below, the entrenchment of a plurinational culture requires states to move beyond symbolic recognition, but this remains an important component to underline the commitment of the state to protect its sub-state entities and engender a plurinational interpretation of the state, as much among political elites as ordinary citizens.

On the recognition of the plurinational nature of the state, Spain and the UK have pursued dissimilar strategies. While the former has yet to reinterpret the state along

plurinational lines, the acceptance, recognition and celebration of the UK's plurinational nature has been an uncontroversial feature of the British political landscape for much of modern political history. Interestingly, however, while in comparison to Spain, the UK has been much more overt in embracing its plurinational status, this has not entailed a more sensitive approach to central government thinking. As discussed in Chapter Four, this paucity of plurinational sensitivity is often betrayed by the unitary and majoritarian approach taken by central state representatives, described by one interviewee as a 'political and cultural bubble or philosophy' in which 'there is an inbuilt narrative or perception that we [Scotland] are a region, just a small part or annex of something bigger' (Interview with SNP MSP 3). Thus, while the UK has sought to embrace symbolic recognition, made easier by the absence of a codified constitution, centre-periphery relations remain characterised by insensitivity on the part of the central government towards the national distinctiveness of Scotland. The unwillingness of the UK government to compromise on Brexit, despite the overwhelming Remain vote in Scotland, further lends credence to this argument.

Recognition in Spain has proved to be a much more complicated affair. The framers of the Constitution sought to entrench some sort of recognition of the distinctiveness of the Basque Country, Catalonia and Galicia, but this remained rather implicit, disguised by a strongly pro-decentralisation but mononational interpretation of the state. 40 years after the transition to democracy, the lack of recognition afforded to the plurinational nature of Spain remains a controversial topic. Indeed, as discussed in Chapter Five, while a number of political parties in Catalonia and the Basque Country as well as those state-wide parties on the ideological left advocate official recognition of Spain's plurinationality, other political parties, such as C's and the PP, remain vehemently opposed to any reform that would confer legitimacy on the nation-building processes of the historic nationalities, namely Catalonia. This absence of official recognition, combined with outright hostility on the part of C's and the PP, impedes the entrenchment of a plurinational culture and accommodation of Catalonia within the extant political system. Decentralisation has been the primary tool to accommodate Spain, but as shown by recent events, in the absence of official recognition of Catalonia's national status, support for secession is likely to continue to grow (Interview with PSC MP 1).

The use of autonomy at the expense of official recognition in Spain has fuelled rather than diluted further demands for constitutional recognition in Catalonia. This is compounded by the fact that asymmetry, both in terms of the distribution of powers and according special

status to certain ACs, has been oft-viewed with suspicion among Spanish elites. This is not entirely unique to the Spanish case, but has been further antagonised by the seemingly incessant attempts by successive Spanish governments to symmetrise powers and curtail the asymmetrical development of the State of Autonomies. In so doing, processes of symmetrisation and recentralisation have undermined and thwarted the development of a truly plurinational culture. As discussed in Chapter Five, some interviewees justify symmetry because of 'efficiency' (Interview with PP MP) or to ensure 'equal parity of rights' (Interview with C's MP), but as discussed by Kymlicka (2001a: 105), this opposition to asymmetry amongst the majority national group 'is rooted in a latent ethnocentrism- i.e. a refusal to recognise that the minority has a distinct national identity that is worthy of respect.' The development of territorial politics in Spain upholds Kymlicka's thesis.

In the UK, asymmetry remains the central characteristic of the UK's territorial landscape, but the discussions vis-à-vis the repatriation of powers post-EU withdrawal underline the precarious nature of devolution as relates to the centralising tendencies of the UK government. It is a truism that EU relations are a reserved matter, that is, outside the legislative and executive competences of the Scottish government and Parliament, but EU withdrawal will have a profound impact on the devolved territories, which after all, have developed wholly within the framework of the EU. The UK government's approach, however, has, contrary to any plurinational spirit, not sought compromise or consensus from the devolved nations, despite the latter's willingness to do so (Anderson 2017a). Tellingly, the UK government rejected this approach and while it may seem possible to justify this on grounds that foreign affairs remain a reserved matter, this is to misunderstand the importance of bargaining, consultation and deliberations in plurinational states, whereby the concerns, demands and wishes of minority nations are marginalised, or as has been the case in the UK as relates to EU withdrawal, ignored, because of the fact that national minorities are condemned to structural inferiority.

In Spain, the absence of dialogue over the Catalan government's proposal to hold an independence referendum also underlines the absence of a plurinational culture. As posited in Chapter Three, liberal nationalists advocate territorial autonomy as a way to protect and promote minority groups and keep existing states together. However, while liberal nationalists do not champion secession over territorial autonomy, there is acknowledgement that when plurinational states are not successful in preventing increasing support for secession, the central government should not seek to obstruct debate on secession (Kymlicka

2001a). Rather, as was the case in the UK, the central state should be willing to enter into good faith negotiations with the sub-state entity in question, ultimately allowing 'for the possibility of secession in accordance with norms of democracy, justice and rule of law' (Norman, 2006: 175). Attempts to shut down debate on secession are not only incompatible with democratic norms and plurinational justice, but from an empirical viewpoint, may hasten rather than impede 'processes towards secession in less happy ways' (Tierney, 2009: 251). Spain and Catalonia are cases in point.

Demands for dialogue on secession jar with the constitutional vision of Spain endorsed by the main Spanish political elites, but such differences, as was the case in the UK, should not preclude discussion on the topic. Rather than seek to secure a political and compromised solution, the default reaction in Spain has been to forego dialogue in favour of recourse to the courts. The persistent use of the TC, however, has not led to any long-term judicial containment, but instead 'has diminished the legitimacy of the Court and its role as a neutral arbiter' (Interview with CUP MP). This, paradoxically, has engendered rather than prevented political instability in the Spanish polity. The adjudication of courts, while important, should not inhibit nor replace dialogue between different governments, particularly in plurinational states in which courts and their decisions are oft-perceived as instruments of the majority community (Tierney 2004). The Spanish TC's litigation on the Catalan Statute and independence related legislation, as well as the UKSC's decision on the Sewel Convention lend credence to this argument.

Building on the work of liberal nationalists and those who advocate multinational federalism as a tool to institutionalise structures to protect and promote national minorities within a liberal democratic framework (Burgess 2012b; Gagnon 2010), this section has illuminated a number of requisites essential to the development of a plurinational culture. A plurinational culture is undergirded by a number of normative values and principles that are fundamental to informing centre-periphery relations, but also with regard to the design of central institutions. In Spain and the UK, the development and entrenchment of a plurinationally sensitive mind-set in which a commitment to respecting national minorities and their ethnonational distinctiveness is key, has been impeded by the predominant unitary and mononational interpretation of the state. Drawing upon some of the points detailed here, central to a plurinational culture is willingness on all parts of the state to engage in dialogue and continuous conversation to ensure the development of flexible intra-state relations which are essential to engender and substantiate trust and loyalty between the different levels

of government. To accompany this almost permanent renegotiation of the state, central institutions, such as intergovernmental forums and upper chambers must also serve as viable institutions in which there is reciprocal recognition and structures to ensure effective self-rule and shared rule.

6.3.2 Empowerment

Simone Chambers (2002: 99) posits that 'voice, rather than votes, is the vehicle of empowerment'. Although Chambers was writing about the context of widening the public sphere to ensure the inclusion of marginalised voices in political life, the same thesis is also relevant with regards to minority nations. In this vein, minority nations do not simply require an autonomous parliament in which a regional or national *demos* can vote for sub-state parties – although this is an important point of departure – the same legislatures, and by implication minorities, must also be given a stronger voice and at the centre, that is, in the deliberations of central government.

Self-rule is the predominant strategy prescribed to ensure voice at the periphery. This involves the establishment of constitutional, electoral, legal and political arenas in which minority nations are free to determine themselves. Coupled with this is the development of asymmetric arrangements which not only provide for the abovementioned spaces, but endow the minority nation with a special status, setting it apart from other sub-state entities within the framework of the state. While there are, however, a number of merits in decentralising power to minority nations, and thus empowering them with regard to specific policy areas, self-government entails only limited empowerment inasmuch as minority nations are hindered by the actions and policies of central governments. In this sense, self-rule arrangements have been designed to contain rather than empower minority nations. This is evident in the cases of Scotland and Catalonia which, despite wielding significant autonomy, are limited in their advancement within extant structures by state governments which seek to fashion the state in the eyes of the majority community and remain hostile to the territorial aspirations of national minorities.

At first glance, there is merit in stating that Scottish devolution, while limited, allowed for enhanced empowerment. The exclusion principle used to define the powers in the original *Scotland Act 1998* alongside asymmetry can be drawn upon to illustrate this point. On the former, the Scotland Act posited that all powers were devolved to Scotland unless

explicitly reserved to Westminster, not only empowering Scotland insofar as the powers that had already been agreed to be devolved but also that any new powers to emerge would be within the purview of the Scottish Parliament (Brouillet and Mullen, 2018: 63). In addition to this, devolution further entrenched the UK's experiment with asymmetry. Territorial arrangements for Scotland, Wales and Northern Ireland were designed to meet the exigencies of each case at hand, resulting in distinct autonomy arrangements for each of the three territories and rejecting the notion, as has been the case in Spain, that a 'one size fits all' strategy can work to accommodate the constitutive components of a plurinational state.

Yet, while there is some evidence to demonstrate support for the empowerment theme, there are a number of counterclaims which underline the argument that the rationale behind devolution was to contain rather than empower. Indeed, this was briefly discussed in Chapter Four in which a number of interviewees, particularly from the Labour Party, made it explicitly clear that while they believed devolution was good for democracy through providing Scotland with an autonomous parliament, the policy was not shaped by concern for the accommodation of Scottish distinctiveness or the empowerment of Scotland in majority-minority relations. Instead, devolution was an attempt to further entrench the electoral dominance of Labour and by implication stymie the SNP and its pro-independence agenda. The oft-cited remark by Labour's then Shadow Secretary of State for Scotland, George Robertson, that devolution would 'kill nationalism stone dead' underlines this point (Watt 2011). The choice of a proportional electoral system for the Parliament, described by Donald Dewar as 'the best example of charitable giving this century in politics' equally betrays the containment rationale (HC Deb, 6 May 1998: c803). While presented in a positive light as model that would engender a more inclusive party system in which smaller parties would be better represented, the surreptitious aim behind the electoral system was to prevent the SNP from every securing the majority required to propel its independence agenda.

The establishment of the Sewel Convention could also be hailed an example of Scottish empowerment, although more recently its status has been called into question. The Convention was deliberately created to police Westminster intervention in devolved affairs, compelling the former, in spite of its status as retaining formal legal power notwithstanding devolution, to seek the consent of the devolved parliament and assemblies to legislate on devolved affairs. The Convention, therefore, is of considerable importance, particularly when compared with Spain, whereby in the absence of any agreement akin to Sewel, central

governments have religiously encroached upon devolved competence jurisdiction. Recent developments in the UK, however, caution against the empowerment thesis. In the aftermath of the 2014 independence referendum and perceived as a positive sign that Westminster was finally catching up with the ramifications of devolution, the *Scotland Act 2016*, following the recommendation of the Smith Commission, included provisions that recognised the Scottish Parliament as 'permanent' and placed the Sewel Convention on statutory footing. The move, however, as confirmed by the judgement of the UKSC in the *Miller* case, did not entail the entrenchment of Sewel as a legally binding principle. There is an argument, as posited by Keating (2018: 48), that the UKSC's decision merely 'confirmed what we already knew', but it simultaneously spotlighted the vulnerability of devolution as a political project, affirming that devolution, 'at root [is] little more than the delegation of powers which can be revoked unilaterally at any time'.

The risk of unilateral action by the central government and thus precariousness of autonomy was further revealed in the UK government's EU (Withdrawal) bill, which initially sought to take control of all powers retuning to the UK from Brussels, irrespective of the retaining model of devolution enshrined in the Scotland Act. The UK government framed its position as necessary to ensure common frameworks across the country, but in invoking 'the national interest' revealed a propensity for centralisation, rather than differentiation, undermining and potentially undoing the fundamental principles and decentralising tendency precipitated by devolution. In this vein, rather than using EU withdrawal as an opportunity to reaffirm the state's commitment to respecting plurinationalism and thus Scottish distinctiveness, particularly important in light of the firm majority vote in Scotland to remain in the EU, the UK government's preferences instead rendered autonomy in Scotland even more vulnerable in the emerging post-Brexit landscape.

In a similar fashion to Scotland, autonomy for Catalonia and the other historic nationalities and newly created ACs was less about empowerment and more about finding a solution palatable to those who wanted profound reform and those who were hesitant to change. This was confirmed in a number of interviews in which there was acknowledgement that autonomy was a compromise that would accommodate Catalan demands for internal self-determination, albeit it was more 'a solution to keep Catalonia happy and silence demands for more self-government' (Interview with ERC MP 2). While other interviewees disagreed with this sentiment, one posited that autonomy was not necessarily about accommodation, empowerment or recognition but rather 'efficiency…the reality has to be

that it has to be implemented from the point of view of efficiency' (Interview with PP MP). Hence, while the system of Catalan autonomy has evolved over the years and Catalan nationalists remained aspirational in enhancing autonomy arrangements, the predominant strategy for managing autonomy has not been influenced by an overarching concern with the accommodation and empowerment of minority nations, but the development of a system of decentralisation designed to dilute rather than enhance any distinct sense of ethnonational distinctiveness.

As discussed in Chapter Five, one of the biggest tensions between the Catalan and Spanish governments is the lack of clarity on the division of powers provided for by the Constitution. The powers assigned to Catalonia, as well as the advances secured during periods of PP and PSOE minority government clearly amount to extensive self-government, but the messy system of competence jurisdiction has increased disputes between the different orders of government, necessitating the involvement of the TC to mediate and resolve such disputes. This markedly contrasts with Scotland and the UK whereby hitherto there has been remarkably little recourse to the courts.

Moreover, while there was an initial acceptance of an asymmetrical division of powers, over time central governments have not merely sought to symmetrise the territorial system, but have also become outright hostile to an asymmetrical division of powers. This hostility towards asymmetry, predominantly embodied by the PP and C's, is shaped by the territorial rather than plurinational understanding of the state, whereby an equal distribution of powers among all ACs is envisioned. As discussed in Chapter Three, this territorial vision is inherently problematic in a plurinational state in which asymmetrical autonomy arrangements are necessary to cater for the cultural and linguistic distinctiveness of minority nations which by implication of being a minority in the state are alienated from the dominant majority culture (see Gagnon 2010). Symmetrisation or recentralising programmes evidently affect all ACs, but for minority nations the effect is much more profound and implicates lasting ramifications for the existence and future survival of these distinct communities. In short, the recentralising and symmetrising approaches of central government have had the effect of delegitimising and enfeebling rather than empowering Catalonia and its claims to ethnonational distinctiveness.

In Spain, recentralisation and symmetrisation have been widely pursued through central governments' use of Base Laws, Organic Laws or spending power. Under the guise of the general or national interest, successive Spanish governments, both the PP and PSOE,

have interfered in the competences of ACs, demonstrating a disregard for the importance of self-rule powers to empower minority nations as well as a 'denial of the federalist philosophy inherent in the Constitution and the Statutes of the Autonomous Communities' (Máiz et al, 2010: 79). As posited in Chapter Five, one of the most recent and controversial examples was the Rajoy government's educational reform (LOMCE) which was opposed by Catalonia on grounds that it reduced AC autonomy in setting the curriculum and required those ACs with more than one language to teach fewer hours in the vernacular language. The enactment of LOMCE underscores the lack of empowerment of Spain's minority nations and further reveals the lack of plurinational culture in Spain; LOMCE betrays a liberalism I understanding of the state in which individual rights transcend collective rights and the culture of the minority, in this case the Catalan language, is dismissed and rendered subordinate to the majority culture and language.

The activation of Article 155, which suspended autonomy in Catalonia in the aftermath of the unilateral declaration of independence by President Puigdemont also reveals the lack of empowerment of Catalonia, alongside the vulnerability of self-rule in Spain. Article 155 cannot lead to the abolition of Catalan autonomy, but this measure allows for the suspension, substitution or sequestration of already decentralised powers. Article 155, however, is rather ill-defined (Bossacoma and López Bofill, 2016: 127). The Article states that the Spanish government may take 'all measures necessary to compel the community to meet said obligations', yet there is no detail on what taking 'all measures necessary' entails. This is problematic because these measures are thus stipulated by the central government and state institutions, which as a result of their mononational and territorial interpretation of the state, are inhibited in assessing the long-term political, legal and constitutional ramifications of their actions on the ACs themselves. Here, a direct comparison can be drawn with the Sewel Convention which although used in a completely different context, is also lacking in detail when defining the term 'not normally'. Hitherto in the UK context this has been solely interpreted by the UK government and its particular interpretation of the convention and unitary functioning of the state. In this vein, the concerns and wishes of the minority are superseded by the majority.

Empowerment is an important aspect of accommodation strategies. The evidence presented here shows, however, that while the UK and Spain have moved power downwards and created powerful autonomous sub-state entities, this empowerment has been hindered by the centralising tendencies of central governments which continue to act unilaterally or

in a majoritarian fashion irrespective of the wishes of the minority. The UK and Spain may have shown a willingness to decentralise power, but they have been slow in providing and developing attempts to seriously empower their sub-state entities. What is more, opportunities to heighten existing empowering mechanisms have been inhibited by the actions of central governments or state institutions, thus autonomy strategies become territorial schemes for containment as opposed to genuine empowerment. This lack of empowerment not only jars with the pursuit of plurinational justice but emphasises the precariousness and vulnerability of self-rule arrangements in plurinational states.

6.3.3 Voice at the Centre

Self-rule is an important tool to ensure the empowerment of minority nations within plurinational states, but so too is including minority nations in the apparatus of central government and state institutions (Elazar 1987; Kymlicka 2001a; Swenden 2013). Such mechanisms, including a territorially representative second chamber and effective forums for IGR, are essential to facilitate dialogue, foster trust and build bridges of solidarity between the different orders of government. IGR thus play a very important role in plurinational states, but, as a result of the competing nationalisms of different groups, are much more 'conflict laden' than their mononational counterparts (Swenden, 2006: 3). Guaranteeing a voice at the centre for minority nations is a crucial aspect to heighten the aforementioned values and principles and supplement self-rule strategies; demonstrating to minority nations that their aspirations, interests and wishes are best served by continued membership within the plurinational state rather than independence. Spain and the UK, however, lag behind in terms of heightening the voice at the centre of Scotland and Catalonia, which not only impedes the development and entrenchment of a more plurinationally sensitive political culture, but risks further unravelling the already tenuous bonds that are currently struggling to hold the states together.

In the aftermath of the independence referendum and along the lines of the proposals advanced by the Smith Commission, new powers devolved to Scotland in the *Scotland Act 2016* created new policy interdependencies between the Scottish and UK government in policy areas such as social security. While not unusual in federal or regionalised systems, policy and institutional interdependence is a new dynamic in the UK and presents a challenge to the development of the system, particularly in light of the inexistence of shared

rule mechanisms to facilitate dialogue and cooperation between the different governments (McEwen and Petersohn 2015). The House of Lords in its current format is not a chamber that represents the devolved territories and while this change has been mooted in the past (see Royal Commission on the Reform of the House of Lords 2000), reform has been overshadowed by debate about the chamber's composition. Mechanisms which do exist, however, such as the JMC, are inefficient as effective means of ensuring cooperation and collaboration between governments and as tools to exert influence over central government policy. This was confirmed by interview data, but there was agreement across the different parties that while the hierarchical structures of the JMC inhibit any real exertion of influence, the lack of willingness on all sides to work together was an additional impediment.

Existing IGR mechanisms in the UK are heavily influenced by their unitary heritage, not helped by the ongoing monist and hierarchical thinking on devolution peddled by the UK government. In this view, IGR underline the thesis that 'devolution is but a peripheral concern for the UK government' (Interview with SNP MSP 3). In lieu of providing space to engender a genuine and democratic dialogue as well as a sense of belonging and trust among the different levels, existing mechanisms merely represent the centralisation of authority and reinforce the idea that majority communities and central governments in plurinational states are unreceptive and disinterested in the genuine accommodation, empowerment and recognition of the aspirations and wishes of minority nations.

IGR in Spain suffer from similar problems, but while scholarship on IGR in the UK is almost completely lacking in positivity, recent scholarship in Spain has been somewhat positive (Colino 2009; Expósito 2017; León 2017). Sectoral conferences are the most prevalent multilateral intergovernmental forum, but while these forums cut across a number of concurrent policy areas, ACs, not limited to Catalonia, continue to see such conferences as instruments of the central government to intervene and coordinate AC legislation rather than an opportunity for ACs to exert influence over central government decisions (Interview with PDeCAT MP 2). This has had the effect of further generating mistrust between the different orders of government, but also partly explains the rapid growth amongst Catalans for independence, a growing number of whom regard the pursuit of independence an easier feat than reform of extant Spanish constitutional apparatus (Interview with PDeCAT MP 1). This, compounded with the fact that the Senate is largely designed along provincial not AC lines, underlines that while IGR are considered an essential feature of plurinational states in order to supplement self-rule arrangements and secure a sense of inclusion among minority

nations, in Spain, as in the UK, they have perversely become mechanisms of exclusion. IGR structures have become tools of disempowerment not empowerment.

In the UK, the lack of concern afforded towards shared rule was shaped partly by the campaign for a Scottish Parliament, which focused solely on self-rule, and by party political congruence in the aftermath of the first election in 1999. In addition, the asymmetric design of devolution, as was also the case in Spain, necessitated bilateral negotiations, hence little attention was paid to increasing the voice of Scotland at the centre beyond the presence of Scottish MPs in the House of Commons. As discussed in the data chapters, bilateral IGR are considered by both Catalonia and Scotland as better than multilateral forums, representing a more effective channel through which they can heighten their influence with central government as well as elevate their status as an equal political subject. In both Spain and the UK, however, while bilateral relations may serve a purpose to embolden claims of equality from minority nations, they remain weak channels through which either Scotland or Catalonia can exert real pressure to influence or determine central government decisions or policy. IGR in both cases remain inadequately robust to act as effective channels for minority nations to ensure that their voices are heard and listened to.

Besides ineffective intergovernmental instruments and the absence of a truly territorial second chamber, neither Scotland nor Catalonia have a veto power over central government legislation and have no guaranteed appointment role to state institutions, such as the Constitutional or Supreme Courts. The lack of shared rule is often disguised by the number of parliamentarians representing minority nations in central parliaments, but in the cases of Scotland and Catalonia, party incongruence has increasingly illuminated the paucity of opportunities and mechanisms available to minority nations to ensure their voice is listened to in central government deliberations.

Despite general acknowledgement that shared rule is an important strategy to increase the voice and inclusion of minority nations in a state as well as increasing their stake in it too, the UK and Spain have been slow to institutionalise any genuine shared rule mechanisms to achieve the aforementioned. This has not only had the effect of decreasing opportunity for the participation of minority nations in the affairs of the state, but may also help explain increasing support for secessionism, particularly in Catalonia. IGR have developed and evolved in both cases, but rather than create forums to enable bargaining and compromise, and thus foster a sense of co-ownership and partnership within the state, intergovernmental structures are rigid and impose what is perceived as an immutable

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framework that simply extends the control and monist thinking of the central government. The experiences of preparing for EU withdrawal and the debate over the Catalan independence referendum show that the absence of shared rule further complicates relations between the different governments, but where they do exist, these are not designed to offer flexibility in meeting the complex challenges of plurinational states. Increasing the voice of minority nations in both the periphery and centre is a salient prerequisite for plurinational states to survive, yet hitherto, shared rule seems to have been nothing short of a mere afterthought.

6.3.4 Partnership

Equal partnership is a common theme in the analysis of minority nations in plurinational states and is a central point of comparison between the Scottish and Catalan cases, as well as the responses this has engendered by the UK and Spanish states (Gagnon 2014; Kymlicka 2001a; Requejo 2005). Unsurprisingly, the term equality means different things to different political actors, but although the contexts of the Catalan and Scottish cases differ, there is an overarching concern with the place and status of these nations within the wider state.

Both Scotland and Catalonia, shaped by their history as independent or semi-independent territories, construe their position in the plurinational states of Spain and the UK as one in which they have a right to be considered equal partners. This is rooted in their interpretation of sovereignty, which they posit should not be considered indivisible but should be shared (Keating 2001). This more fluid interpretation of sovereignty, in which authority is shared across multiple levels, is an integral component of the EU, and for some interviewees was a justification for advocating secession from the UK and Spain while supporting continued membership of the EU (Interview with SNP MP 6 and ERC MP 1; see also Cetrà and Liñeira 2018). In addition, the actions of the central governments also impact upon the position of Scotland and Catalonia. In both cases, central governments promote a hierarchical territorial model in which, contrary to the aspirations and wishes of minority nations, Scotland and Catalonia are considered subordinate members not co-equals. As a result, minoritarian preferences are superseded by the preferences of the majority, undermining the role of minority nations as legitimate political actors and inhibiting their full participation in the state. The debate over Brexit in the UK and the organisation of an

independence referendum in Catalonia illustrate this point.

It is well-established that devolution involved the creation of hierarchical structures in which the Scottish Parliament was subordinate to the Westminster Parliament, enshrined in the doctrine of parliamentary sovereignty. This hierarchical and imperialistic understanding of devolution was further illuminated in the *Miller* case in which the UKSC took an explicitly Diceyan interpretation of the notion of sovereignty, reasserting that it was Westminster not Holyrood that was sovereign. This, for many, was unsurprising given that mention of the Sewel Convention is often prefaced by caveats forcefully asserting the supremacy of Westminster, but it did refocus attention on Scotland's place in the union. In the words of Nicola Sturgeon (2017a):

> The claims about Scotland being an equal partner are being exposed as nothing more than empty rhetoric and the very foundations of the devolution settlement that are supposed to protect our interests – such as the statutory embedding of the Sewel Convention – are being shown to be worthless. This raises fundamental issues above and beyond that of EU membership.

As was discussed in Chapter Four, the union between England and Scotland was interpreted in Scotland as a political partnership between equals. The predominantly 'English' interpretation, which jars with the Scottish vision, not only remains to this day, but has resurfaced and been reinforced by the UK's unilateral approach to EU withdrawal. The debate on the status of Sewel makes this clear as too does the rhetoric from the UK government. The Secretary of State for Scotland, for instance, not only argued that Sewel was not relevant with regards to EU withdrawal because Brexit was an extraordinary event, but further posited 'Scotland is not a partner in the UK; it is part of the United Kingdom' (HC Deb 14 June: c1129).

Equal partnership was a key theme during the 2014 referendum campaign, with the SNP advocating independence on the basis that Scotland could recast its political relationship with the rest of the UK. In the aftermath of the referendum, despite rosy rhetoric from pro-union politicians that Scotland is an equal member of the union, complaints of a 'democratic deficit' have remerged in response to what some Scottish politicians perceive as the imposition of an English-oriented Brexit on Scotland (Interviews with SNP MSP 8 and Green MSP 2). The one-nation policy in relation to EU withdrawal endorsed by May has clear parallels with the approach taken by Thatcher in the 1980s in which unionism is conflated with unitarianism and is interpreted in Scotland as a violation of any equal sense

of partnership among the nations of the union. As a result, Scotland is not conceived of as an equal partner and the future of the union itself remains in jeopardy.

In Catalonia, terms such as 'democratic deficit' are also bandied around by Catalan nationalists (Interview with ERC MP 1). While in the UK there is at least some rhetoric that refers to equal-to-equal relations between Scotland and the rest of the UK, this is not the case in Catalonia whereby complaints about the lack of an equal partnership are perceived not only as institutional subordination, but oppression (Interview with ERC MP 2). The inability of Spanish elites to accept, or for those who do accept, advance, a plurinational understanding of the Spanish state perpetuates the unitary interpretation of the Spanish polity in which neither the historic nationalities nor the other ACs are considered equal partners. Indeed, the pro-plurinational rhetoric of the incumbent PSOE, while a step forward in fostering a plurinational culture in Spain, has been met with strong resistance from parties on the right of the ideological axis which have, as a result, hardened their stance vis-à-vis recognition of plurinationality and the accommodation of Catalonia within the territorial system. The institutional inferiority of Catalonia was reinforced by the TC's 2010 judgement and for many represented the imposition a new constitutional order that undermined the 1978 constitutional pact (Interviews with *Catalunya en Comú*, ERC and JxCat MPs). The lack of political dialogue to solve some of the legitimate grievances of the Catalan government, the refusal of the Spanish government to engage in debate on a referendum and the forceful reaction of authorities in the October referendum bolster the image of Catalonia as nothing more than a subordinated province.

In both Scotland and Catalonia, the central governments' conception of political decentralisation is not one of building a working relationship between and among co-equal partners, but rather of institutionalised domination in which the central government retains supremacy over devolved and decentralised institutions. While, in theory, this is the reality of a devolved system which does not divide sovereignty among the state's constituent components, in plurinational states such as Spain and the UK, such domination has pernicious effects which not merely undermines democracy and plurinational justice – as championed by liberal nationalist scholars – but poses a direct threat to the continued existence of the state. As the cases discussed here show, minorities which do not feel adequately recognised or accommodated as equal partners within the state will look for other ways to ensure recognition and treatment as full partners, including independence.

In the UK, debate over EU withdrawal has reinforced the institutional domination

argument and bolsters the Scottish government's complaints that the UK as a partnership of equals is merely fiction. The history of relations between Scotland and the rest of the UK has seen the former recognised as a legitimate political actor, unlike Catalonia in Spain, but this recognition does not entail the ability to participate in the decision-making processes of the central government or be treated as a co-equal in the political partnership. The fact that the substantive Scottish majority vote to remain in the EU is superseded by the slight majority vote to leave in the larger and thus more dominant England, underlines this point.

Seeking unanimous consent over certain decisions is an important feature in a plurinational society, evidenced by power-sharing arrangements, including veto powers, which exist in a number of plurinational states including, Belgium and Bosnia. Yet, while withdrawal from the EU is indisputably a critical decision that given its potential ramifications for the territorial structure and hence constitutional future of the UK should have been administered along the lines of power-sharing principles, this was not the case. Instead, Scotland, alongside the rest of the UK, will leave the EU, reinforcing the opinion that Scotland and its decision to vote Remain is nothing short of an 'afterthought' and 'irritation' for the UK government (Interview with Green MSP 1).

In Spain there is little consideration of Catalonia as an equal partner in the state. This is further inhibited by the perception among a growing number of pro-independence and right to decide Catalans that their territory is not treated as a legitimate political entity, let alone a co-equal partner in the Spanish state. This, for instance, is legitimised further when analysing the rhetoric of the central government in dismissing calls for a referendum on independence. In complete contrast to the UK, even under the most unitary Conservative PMs, Catalonia is explicitly denied a right to determine its own political future. This, as was discussed earlier, further demonstrates the absence of a plurinational culture in Spain, but equally jars with the principles of plurinational justice and self-determination as advanced by liberal nationalist scholars. Far from participating on a level playing field, Catalonia, akin to Scotland, is subject to a system of domination in which the practice of a more sensitive plurinational approach has been traded for institutionalised dominance by the central government.

6.3.5 The Crisis of Accommodation in Liberal Democracies

Describing the prevailing situation in Catalonia and Spain, one interviewee spoke of

'the perfect storm' in which a number of crises – democratic, financial, political and ultimately territorial – has precipitated growing support for independence in Catalonia (Interview with *Catalunya en Comú* MP 1). Yet, while there is an argument to state that plurinational liberal democratic states are under threat, not just from below by minority nations, the future existence of the later is also in peril, astutely described by Gagnon (2014), as an 'age of uncertainty'. This era of unpredictability is shaped by majority communities and the rhetoric and policies of central governments, which, in an attempt to institutionalise their dominance in the political arena, have failed to adequately cater for the accommodation, empowerment and recognition of the self-determining aspirations of minority nations. As a result, 'national minorities feel that national majorities are unreceptive to the most important of their national and identitary claims' and in the face of such circumstances, have looked towards independence as a possible solution (ibid: 7).

As this thesis has shown, accommodation is the most coherent and democratic strategy to cater to the demands and wishes of minority nations, while concomitantly ensuring the continued existence of the host state. The increasing vociferousness of minority groups in recent years has reinvigorated attention with accommodationist strategies insofar as countries in all corners of the world have sought to refashion the structures of the state in order to create a model of enriching coexistence. However, as the cases of the UK and Spain illustrate, even the most economically developed and democratically entrenched states continue to face struggles vis-à-vis the accommodation of minority nations. In this vein, it is fair to conclude that much more is required to ensure that central governments, and by implication majority communities, adequately respond to the aspirations and demands of minority nations.

The analysis presented in this thesis clearly demonstrates the prevailing crises unfolding in the UK and Spain with regards to the accommodation of Scotland and Catalonia. Despite decades of relatively harmonious relations, recent events in both states have reignited debates on the place of minority nations within plurinational states and refocused attention on majority-minority relations which in both cases continue to be characterised by the dominance of the former over the latter. As a consequence of their slow response in institutionalising a more coherent form of accommodation that does not seek to contain minority nations but rather justly accommodate, empower and recognise them, the UK and Spain are at a constitutional crossroads.

Devolution has remarkably altered the territorial landscape of the UK state, but while

this has worked well for a number of years, the experience of the Scottish independence referendum, and pressure for a second referendum, as well as the ramifications of the UK's withdrawal from the EU, in spite of the emphatic vote in Scotland for Remain and the refused consent of the Scottish government for the UK government's EU (Withdrawal) bill, will radically alter the system, albeit there is no consensus in which direction. Constitutional issues have occupied political agendas for almost a decade, precipitated by the rise of the SNP and its vision for independence. As a result of this and to convince Scots to reject independence, autonomy arrangements in Scotland have evolved and in light of Brexit will experience a fourth iteration of devolution. This ad-hoc development of constitutional change has limited a holistic approach to territorial reform and while this has meant the self-governing powers of Scotland have gradually increased over the years, the status of Scotland within the union has yet to be settled. Further, central government and state institutions have yet to seriously catch-up with the changes introduced by territorial politics. This is an indisputable concern but is made worse by the fact that the incumbent UK government is committed to pursuing a unitary approach to withdrawal, reminiscent of pre-devolution times. This exclusive approach has inhibited cooperation with the devolved administrations and bolstered by the London-based hierarchy of IGR poses a grave threat to the already fragile union.

Recent events in Catalonia also present an intractable challenge to the continued development of the State of Autonomies and the existence of the Spanish state itself. Akin to Scotland, the Spanish experience with decentralisation has been relatively harmonious, although central governments have increasingly sought to symmetrise the decentralisation process in an unjust and ultimately unsuccessful attempt to dilute claims of distinctiveness from the historic nationalities. Such attempts, however, have religiously backfired and have merely emboldened the nationalist movements in different ACs to pursue further demands for territorial reform. This was most evident in the reform of the Catalan Statute, which sought change for Catalonia as well as Spain, in the hope that the latter would become a much more recognisable plurinational state inasmuch as Catalonia would be accorded the status of nationhood. The 2010 judgement of the TC thus put Catalonia and Spain on course for a constitutional collision and in the absence of any willingness to reform from the central state, or indeed an alternative to the mononational vision peddled by the Rajoy government, the Catalan independence movement was propelled centre stage and precipitated the origins of the territorial crisis which continues to prevail today. Unlike the UK, the response in

Madrid has been to simply dismiss, ignore or denounce the claims for reform or referendum from Catalonia, compounded by the refusal of the central government to even enter into dialogue on the issues. Events in 2017 – which involved the unofficial referendum, the heavy-handed response of state forces to the referendum, the unilateral declaration of independence, the suspension of autonomy and the incarceration of a number of pro-independence politicians and civil society leaders, while others fled to neighbouring countries to escape imprisonment – underline the complexity of the situation.

The stability of the UK and Spain remains in the balance. Neither state has effectively developed a plurinationally sensitive political culture in spite of attempts to manage and accommodate the states' national, cultural, social and linguistic diversity, while the other themes identified above remain largely contentious. Autonomy arrangements have not stood still in either case, but the predominant strategy of muddling through has come under increasing strain in recent years, the result of centrifugal and centripetal pressures. In light of this, the penultimate section of this chapter, drawing upon the themes identified above and the theoretical discussions laid out in Chapter Three, seeks to move beyond the rather limiting territorial arrangements already in place to ensure the institutionalisation of a much more coherent and accommodative territorial model.

6.4 Forging a Coherent Model of Accommodation

Writing in 2014 with regards to the development of the Catalan independence movement in the face of explicit opposition by the Spanish government, Gagnon (2014: 76) posited: 'the current situation prevailing, for instance, in Spain requires that political and social players be uncommonly imaginative; political models that respect national diversity must be devised; institutions must be reimagined on a more democratic and equitable basis.' Several years later, the political situation in Spain has become much more complex and in desperate need of rejuvenation. This is also the case in the UK, whereby an equally complex albeit less confrontational political situation is unfolding and much like in Spain, the territorial integrity of the UK state remains in the balance. In light of this, the penultimate section of this chapter compares and examines what could be done to help relieve some of the inbuilt tensions that permeate relations between the different orders of government in both cases. As discussed in the preceding chapters, the UK and Spanish approaches to accommodation, while hitherto successful in keeping both states intact, have been

increasingly challenged in recent years necessitating a rethink and examination of the purpose of the state and the design of its structures.

6.4.1 A Plurinational Culture

The development and entrenchment of a plurinational culture is an important component in ensuring the accommodation of minority nations within plurinational states. In addition to this, and underlined by the analysis presented in this thesis, the development of a better and more plurinationally sensitive political culture is key to the advancement of a more coherent, accommodative and empowering autonomy model. As has been discussed, both Spain and the UK have taken dissimilar approaches to the recognition of plurinationality, but while the UK remains much further ahead than Spain, a plurinationally sensitive political culture is lacking. In both countries, central governments are influenced by a unitary rather than plurinational vision which not only impedes and even denies the existence of a federalising tendency but has also muddied relations between the different orders of government. This, as a result, has undermined positive rhetoric concerning equality and partnership (at least in the UK) and has further sewn seeds of mistrust between the minority and majority communities.

A much more plurinationally sensitive approach to politics, which would necessitate a much more consensus-based approach to decision-making, as advocated by consociationalist scholars, is thus required in both the UK and Spain. In the UK, there are some signs of a plurinational culture, but the recent controversy over Brexit has increasingly spotlighted the unitary approach of the UK government, which has hitherto taken a monist, dated and exclusive rather than inclusive approach to the design of withdrawal policy, treating the devolved administrations as consultees rather than partners in the state. In Spain, the development of a plurinational culture would have to involve some sort of official recognition and consensus among political elites on the plurinational nature of the state. This would equally involve change in the mind-set of the central government and state institutions engendering a more inclusive approach to politics in which minoritarian preferences are not transcended by the will of the majority. The development of a plurinational culture is as much about institutions as it is about the thinking and philosophy behind central state governmental policy.

The development of a plurinational culture was described by one interviewee as 'being

more like Switzerland' (Interview with ERC MP 1). Although not strictly a plurinational state, Switzerland's pluricultural and plurilingual traits have much in common with the two cases studied in this thesis. For Burgess (2006: 82), the evolution of Switzerland represents 'a unique admixture of political institutions and an indigenous political culture rooted in the spirit of *Bundestreue* – of reciprocity, mutual trust and understanding, tolerance, dignity, partnership and respect for and recognition of minorities – that values consensus, conciliation, compromise and consent above crude majoritarian calculation'. The assortment of values and principles identified by Burgess are integral components for a plurinational culture and there is much to be learned for both the UK and Spain by studying Switzerland as a case study. The focus on bargaining, negotiation and compromise as well as Switzerland's approach to consensus democracy, whereby there is a requirement for 'unanimity among the Cantons with respect to certain particularly sensitive questions', would avoid the presumption of central government dominance that has come to characterise politics and relations between Scotland the UK, Catalonia and Spain (Pinder, 2007: 9).

Moves away from a unitary, majoritarian and in the case of Spain mononational understanding of the state towards a more plurinational, decentralised and consensual approach is a necessary move for the Spanish and UK states. In this vein, the states would not only come to be bastions of plurinational respect and justice, but moreover would demonstrate a willingness to reform, thus dampening, although not eradicating, the secessionist tendencies of the Scottish and Catalan movements. As pointed out by Kymlicka (2001a: 118), the removal of secessionist parties and secessionism is an intractable goal and in fact is a perverse standard by which to measure the success of a plurinational federal political system. Instead, central governments and majority communities should focus on building and modelling a political system that rebuilds and fosters trust between and among the different communities and orders of government. Plurinational states need to be much more flexible in the development of politics in the state, embracing rather than rejecting the need to continually evolve and rethink the state, including its *telos* and political structures.

Support for secession in Scotland and Catalonia has gradually increased in recent years, but while it is easy to consider the rise in secessionism a consequence of decentralisation, that is, a slippery slope to secession, the actions of the central government must also be taken into account. Grievances from Scotland and Catalonia do not merely focus on demands for further autonomy but relate to what they see as unjust and hierarchical treatment of the minority nations by the central government. It is thus imperative that if the

UK and Spanish states seek to gain the trust and loyalty of minority nations as well as their continued membership of the state, majority-minority relations must move beyond the existing hierarchical models and institutionalise a new relationship in which consensus rather than dominance characterises relations.

6.4.2 Empowerment

A plurinational culture is key to the development of multinational federalism in the UK and Spain. Linked with this is the topic of recognition, including acknowledgement that a plurinational federal political system is composed of different *demoi,* rather than one *demos* and that some of the most important liberal values, such as equality and justice, require rethinking and remoulding from the predominant monist interpretation to a much more pluralist understanding. In line with better recognition of the plurinational nature of the state, plurinational states must also ensure a clear, fair and asymmetric division of competences and powers. In plurinational states, the allocation of competences necessitates an asymmetrical division of powers in order to protect the identities and heritage of minority nations (Keating 1999). This also reinforces the idea of political union between minority nations and majority communities as a partnership of co-equals in which diversity and national distinctiveness are not merely tolerated but celebrated as integral characteristics of the state itself (Gagnon 2014).

While in the UK recognition of nationhood and support for asymmetry are relatively uncontroversial topics, in Spain this is most clearly not the case. Successive Spanish governments have sought to recentralise competences from ACs to the central government, and while this is often under the guise of economic efficiency, such symmetrisation processes seek to dilute claims to distinctiveness from the historic nationalities, thus weakening demands for plurinational recognition from the minority nations. The lack of recognition of Catalonia, processes of recentralisation and inimicality towards asymmetry are plausible factors which have hastened the increase in support for secession in recent years. Hence, as well as a better plurinational understanding of the state, a commitment to an asymmetrical decentralisation of powers is required. In Spain, such a commitment would have to ensure that the interference of the overweening central government upon the competences of the ACs is limited. This would also be achieved by a clearer division of competences in the Constitution which would provide clear jurisdictions for the different

orders of government and would thus reduce the number of disputes between ACs and central government.

Plurinational states face a difficult challenge in finding an equilibrium between majority and minority communities and thus centre and sub-state aspirations and wishes. Hence, while in Spain there has been hesitance by PSOE and outright rejection by PP governments to entrench recognition and deepen asymmetry, when this has occurred it has been subject to 'a majority political backlash' by the wider Spanish majority community (Basta, 2017: 56). Yet, while there is evident hostility towards entrenching a special status for Catalonia, the process through which asymmetry has evolved – through *quid pro quo* scenarios – has been vehemently criticised by some within Spanish society, which perceive Catalonia and the Basque Country as having an unfair advantage over other ACs. This is rooted in the nation-state interpretation of Spain propagated by the Constitution which denies the recognition of a Catalan *demos* and thus distorts any understanding of Catalan claims for asymmetry as a necessary requisite to protect its cultural heritage and national identity. Therefore, what is required in Spain is not just recognition of plurinationality and a commitment to asymmetry, but also a less opaque and more consensual model of coexistence which would better accommodate Catalonia and assuage complaints from the majority community.

In Scotland, there is relatively little controversy surrounding explicit recognition or asymmetry. Devolution, however, was designed to contain rather than empower Scottish aspirations for autonomy (and indeed, independent nationhood) and while the powers of the Scottish Parliament have gradually increased in recent years, the Brexit debate has once again refocused debate on the capabilities of Holyrood as well as the ability and robustness of devolution settlements to weather radical change such as leaving the EU. The default position of the UK government, which was to take control of all powers returning from Brussels irrespective of the allocation of competences in the devolution acts, demonstrates the vulnerability of the devolution settlement to be unilaterally altered without the consent of Scotland. Thus, as much in Spain as in the UK, central governments must see political decentralisation not as the central government relinquishing control over policy areas, but as a necessary feature of modern, democratic and just plurinational states. A model of coexistence in plurinational states should be informed by some of the values and principles identified in the preceding section but should also use decentralisation as a tool to empower minority communities. Through proper recognition, a fair and clear distribution of

competences and powers and a commitment from central governments to work with rather than at the expense of governments in minority nations would go a long way to resolving some of the tensions that currently characterise relations between Scotland and the UK and Catalonia and Spain.

6.4.3 Voice at the Centre

Guaranteeing the empowerment of minority nations is achieved by the entrenchment of asymmetrical self-rule as well as ensuring the participation of minority nations in the decision-making processes of the central government. It is a truism that enhanced autonomy should result in decreased influence at the centre, as for example is the case in the UK House of Commons and the implementation of English Votes for English Laws, but in neither Spain nor the UK are Catalonia or Scotland guaranteed a role at the centre. Scotland and Catalonia are not represented as territorial entities in the second chambers, have no entrenched veto power and are guaranteed no role in the appointment of personnel to state institutions, such as the TC or UKSC. The latter point contrasts with other plurinational states such as Belgium and Canada. The Belgian Constitution, for example, provides for six French and six Dutch speaking judges to sit on the Constitutional Court (Swenden, 2006: 81), while in Canada, three of the nine judges that sit on the Supreme Court must come from Quebec (Tierney, 2004: 211).

The UK and Spain have second chambers, but these are not organised along territorial lines. Consequently, central government decision-making processes and institutions are not obliged to take into consideration minority nation preferences. Reform of the House of Lords and Spanish Senate into territorially representative chambers would be a welcome change in the UK and Spain that would not only ensure a guaranteed role for Scotland and Catalonia at the centre but would further deepen democracy and in turn bolster the democratic legitimacy of the extant upper houses. In state institutions, Scotland and Catalonia remain marginalised minorities which as a result of territorial arithmetic can be simply ignored by majority communities and governing parties. This, for instance, was the case in the Spanish Senate when Catalan autonomy was suspended despite the majority of Senators representing Catalonia voting against the measure (Interview with ERC and PDeCAT Senators). In the UK, clear examples include the SNP's proposed double majority rule for the EU referendum and amendments to the EU (Withdrawal) bill as relates to the repatriation of powers which

despite being supported by a clear majority of Scottish MPs were voted down by other non-Scottish parliamentarians (Interview with SNP MSP 2). The demands, viewpoints and wishes of minorities are rendered obsolete by the combined votes of the majority community.

Recasting the House of Lords as a territorially representative chamber to provide a space in which the aspirations, interests and wishes of the UK's four nations can be debated and deliberated would be a considerable advance in deepening the UK's commitment to plurinational justice and improving the democratic legitimacy of the House of Lords. In Spain, reforming the Senate into a chamber that represents the ACs rather than provinces would further improve the standing of the institution and warrant increased influence and voice for the state's ACs at the centre. In the UK and Spain, the existence of a territorially representative chamber would underscore the commitment of the plurinational states to minority accommodation, assuring more than a representative role for minorities.

In addition to the establishment of a second chamber as a multilateral cooperative forum, IGR in both cases also need radical reformulation in order to replace the hierarchical structures that currently exist and ensure that a more inclusive, consensus-based approach prevails. Relations between minorities and majorities are often a key measurement in determining the success of plurinational states thus the organisation of IGR is a crucial component. Governments in both the UK and Spain have created forums to facilitate IGR but the dominant presence of the central government which organises meetings, sets the agenda and chairs proceedings, inhibits the development of these forums as instruments of influence for minority nations. Instead, IGR should be reformulated as mechanisms that bring together the different governments to discuss, debate, bargain and negotiate central government policy and decisions that have implications for the sub-state entities. This way, IGR would fortify the interconnectedness of the existing states, providing an arena in which agreements could be reached through a process of bargaining and negotiation rather than central government imposition.

In the UK, IGR were slightly reformed in the aftermath of the EU referendum, but apart from a change in nomenclature, the JMC remains a forum in which the devolved administrations are mere consultees. As a consequence of EU withdrawal, IGR will be crucial to manage the ramifications of territorial politics of Brexit, particularly the messy task of disentangling competence jurisdictions on repatriated powers and ensuring coherent frameworks that do not endanger the UK's own single market. To this end, the only viable

way forward is to radically redesign IGR to ensure the development of a more coherent system that continues to be a forum for the dissemination of information, but also moves beyond this to become an arena in which the different orders of government can work together, negotiate and where necessary compromise. Moreover, as discussed in Chapter Four, the creation of a UK Council of Ministers, modelled along the British-Irish Council to bring together the devolved parliaments with the Westminster Parliament would also be a beneficial addition to the UK's extant IPR architecture, fortifying relations between parliaments as much as governments.

IGR in Spain oscillate between a number of forums, but as in the UK, the central government is the omnipotent player. Increased tensions between the Catalan and Spanish governments in recent years have rendered IGR a difficult if not impossible task between these two entities, but it is precisely because of this conflict that improvements are urgent. As is the case in Scotland, bilateral relations should remain an integral component of Spanish intergovernmental architecture, but emphasis should also be placed on multilateral forums to enable the smooth delivery of concurrent polices as well as effective procedures for conflict resolution. This point is of equal importance in both cases studies in this thesis, whereby a more inclusive approach should be taken towards policy-making, and those policies and approaches which could potentially inflame existing tensions or infringe upon devolved competence jurisdictions should be avoided.

In addition to reforms of second chambers and IGR, the role of minority nations at the centre can equally increase as a result of other mechanisms such as veto powers (for example, over constitutional change), the inclusion of minority nations in central government delegations and securing an appointment role for sub-state entities in appointing personnel for state institutions. Neither Scotland nor Catalonia wield any veto power over constitutional change and do not have any guaranteed role in appointing personnel to state institutions. Representatives from devolved governments in both cases have in the past formed part of delegations representing the state at the supranational level, but this role is relatively limited and does not include powers to negotiate separately from the line taken by the central government (Interview with SNP MSP 1). As the UK leaves the EU and rounds of negotiations begin on securing international trade deals with other countries, there is potential for the UK government to increase the role of the devolved administrations by involving them in the negotiation processes of signing trade agreements. With the devolution of further powers to the devolved territories and a need for more efficient IGR to secure the

common frameworks necessary to safeguard and manage the UK's internal market, bringing devolved governments on board in trade negotiations would be a welcome development. This, for instance, would not only ensure closer coordination and cooperation among the plurality of political orders, but would avoid the top down decision-making approach that has hitherto characterised IGR and would provide the devolved governments with a real opportunity to contribute to and influence central government policy.

Part of the problem of the UK and Spain relates to the influence of majoritarian principles and outlook that characterise the political system. In plurinational states, however, the idea of a single *demos* endorsed by the majoritarian approach is highly controversial and thus an unfeasible way for the state to be organised or function. An alternative approach as we have seen is consociationalism and while this thesis is not suggesting that the UK or Spain should become fully-fledged consociations, there are a number of important lessons that can be learned in order to move beyond the constitutional stalemate prevailing in both countries and rebuild confidence and trust in central government and central state institutions. The mechanisms mentioned above do just this and would ensure a much more inclusive approach to governing in which there is political inclusion at an institutional level and the interests of minority nations are not just heard but listened to.

6.4.4 Partnership

The notion of partnership is a central tenet of liberal nationalist scholarship. Minority nations, it is posited, do no solely seek accommodation and empowerment within the plurinational state, but equally desire recognition as an equal partner (Gagnon 2014). In both Scotland and Catalonia, there is an indisputable wish for this recognition, yet central governments have been less forthcoming. In the words of Tierney (2004: 327):

> Even when the plurinational state constitutionally entrenches territorial decentralisation; even when the state endeavours to be democratic and inclusive; and even when the dominant national identity is presented as multicultural and multilingual; at a fundamental level such a vision still possesses homogenising tendencies which serve to undermine the alternative nation-building processes and national visions which are central to the existence of sub-state national societies.

Decentralisation processes in the UK and Spain created the necessary working relationships between the different orders of government (although this has been much more strained in Catalonia than in Scotland), but what is missing from extant relations is a sense

of partnership predicated on mutual respect and equality in which the sub-state units are not treated as mere subordinates or offshoots of the central government and state institutions, but as equal partners. For one SNP interviewee, 'involving us [Scottish government] and making us part of the process' would demonstrate 'a genuine commitment to partnership' and dissipate the 'us versus them' mentality that hitherto characterises centre-periphery relations (Interview with SNP MSP 9). A similar point was made in Catalonia in which mechanisms to ensure the participation of ACs 'in making the will of the state' were considered the most optimal route to ensure effective shared rule and forge a more equal sense of partnership between Catalonia and the central state (Interview with PSC MP 1).

As discussed in Chapter Four, the terms of union with England allowed Scotland to enter into political partnership with the former as an equal partner in 1707, albeit this was a Scottish not English interpretation. Over the centuries, however, the relationship has transmuted from this perceived equality to one in which Scotland is the mere junior partner. The SNP's case for independence remains predicated on the idea of renewing the relationship between Scotland and the rest of the UK, described in the White Paper on independence as an opportunity to have 'a new, updated partnership of equals between the people of Scotland and the rest of the UK' (Scottish Government, 2013: 29). During the campaign, pro-union politicians made much noise about the UK as a 'family of nations', but rhetoric of equal partnership was equally employed by the same politicians, including party leaders in Scotland and parliamentarians in Westminster (Cameron 2014). In spite of these warm words, however, developments since the vote to leave the EU have reignited debates about the hierarchical structures of territorial politics.

Under Sewel, the Westminster Parliament would 'not normally' interfere in devolved matters unless permitted to do so by the Scottish Parliament. For the UK government, bolstered by the UKSC's judgement on Sewel, Brexit represents an extraordinary circumstance, but the plurinational nature of the UK renders unilateral action by the UK government a risky and problematic affair, particularly in terms of strengthening claims that the union represents an equal partnership. If 'not normally' is simply dictated by the UK government's own interpretation, then the convention itself, is moot. Instead, Westminster needs to move beyond this unitary conception and see the devolved nations not merely as constituent components of the state, but as integral and equal partners in the UK.

Having gone through an existential crisis in 2014, the union is once again under strain. The actions of the UK government, however, demonstrate that lessons have yet to be learned

in relation to the territorial organisation of the state and addressing the widening gulf between the role and status Scotland envisages at the centre of the state and the role it currently plays. What is required in the UK and ties in with the preceding sections on fostering a more plurinational culture and empowering minority nations, is a fundamental re-conceptualisation of the UK state and the relationship of its constituent nations with the centre to secure the right form of partnership between the plurality of political orders. For Scotland, this should be nothing short of recognition of equal partnership which would entail an increased role for the Scottish government at the centre and would end the hierarchical and domineering relationship that remains in play today. There is no agreed approach on how this could be achieved but moves in a federal or confederal direction would certainly help to offset some of the principal complaints of minority nations vis-à-vis equality and partnership (Anderson 2016b).

Unlike in the UK, relations between the Spanish state and the Catalan government have reached an impasse in recent years. In a similar fashion to Scotland, grievances in Catalonia are shaped by the absence of a sense of partnership whereby Catalonia would be treated on the same level pegging as the Spanish government. In Spain, the existence of 16 other ACs, including two other historic nationalities, provides a competitive dynamic that exists in the UK but is less pronounced. Equal partnership, however, as much as in Scotland as in Catalonia, is about reciprocal recognition and effective shared rule to increase the voice of Catalonia at the centre. This would require a recasting of intergovernmental forums, both bilateral and multilateral, as well as reform of the Senate along territorial lines to ensure a vehicle for the voice of Catalonia to be heard and listened to.

Given the almost complete breakdown of relations in recent years, there is a sense of urgency for the Spanish government to be much more genuine and indeed imaginative in the ways it interacts with Catalonia. This, for instance, would necessitate mutual respect for self-government institutions, and thus refrainment from policy encroachment, as well as pursuing a much more inclusive approach to governing including reforming IGR to ensure that existing forums become mechanisms that foster inclusive debate to enable ACs to influence central government policy. Moreover, recourse to the courts should be considered, by both orders of government, as a measure of last rather than first resort. In this light, governments would have to work together, in the spirit of good faith and compromise, to resolve political problems, but do so in a fair, transparent and equal manner. This would not just meet the necessary prerequisites of a plurinational federal political system, as well as be

in line with liberal nationalism, but would further strengthen the bonds of cooperation and trust between the different governments.

Nurturing a sense of equal partnership is an integral component to the development and entrenchment of the UK and Spain as plurinational states. It is no secret, as discussed by liberal nationalist scholars, that seeking equal-to-equal relations with state governments is an overriding objective of minority nations (Kymlicka 2001a; Gagnon 2014; Nootens 2013; Norman 2006; Requejo 2003; Seymour 2004). States, however, in spite of decentralising power or institutionalising some form of official recognition for national minorities, have been slow in taking up the mantle to develop a sense of equal partnership. In the UK and Spain this is rooted in and shaped by the monist and unitary interpretation of the state by political elites which unfairly dismiss and disregard the wishes of minority nations in favour of their own majoritarian positions. Given the tradition of institutionalised domination and by implication exclusion of minority preferences in the UK and Spain, moving beyond this towards a more equal and shared sense of partnership is no mean feat. Recent events in Scotland and Catalonia demonstrate, however, that the continued loyalty of these minority nations cannot and should not be taken for granted.

6.5 Scotland and Catalonia beyond 2018

The UK and Spain are states in constitutional flux. In the latter, events in the latter half of 2017 reignited latent tensions and further deepened the widening gulf between the Catalan and Spanish governments, while in the UK, EU withdrawal will not only alter political dynamics across all four territories but could potentially precipitate the secession of Scotland. In both states, territorial politics remains a moving target.

The UK's withdrawal from the EU has already tarnished relations between the Scottish and UK governments, namely as a result of the UK government's approach to triggering Article 50, withdrawal negotiations (in which the devolved governments have played no formal role) and the ongoing preparation for the repatriation of powers. In addition to this, the aftermath of EU withdrawal looks set to be equally challenging, compounded by the fact that different political parties hold the reins of power in Westminster and Holyrood (and Cardiff and Belfast), with diametrically opposing constitutional visions. In Spain, the elevation of the PSOE to government in June 2018 increased the potential for a thawing of

tensions between the Spanish and Catalan governments but demands for an independence referendum have not dissipated. Unlike the previous administration, territorial reform is high on the agenda of the Sánchez government, but while the latter has restored bilateral relations in an attempt to reinstate dialogue between the two entities, the PSOE government remains resolute in its opposition to an independence referendum. This is further compounded by the legal charges brought against former ministers and senior officials involved in the organisation of the referendum. The constitutional future of both cases remains as uncertain as it is unknown.

Drawing upon the analysis discussed in the preceding chapters, there are broadly three potential scenarios for the constitutional landscape of both countries in the near future: recentralisation, reformulation and disintegration.

6.5.1 Recentralisation

Autonomy arrangements in Spain and the UK are precarious in nature and thus at risk of recentralisation. The aggressive reassertion of parliamentary sovereignty by Theresa May's Conservative government, and indeed the Leave campaign more generally during and after the EU referendum, has reignited fears of a recentralising agenda shaped by the unitary understanding and vision endorsed by leading political elites in the upper echelons of the UK state. Despite rhetoric championing a UK approach to EU withdrawal, which would as a consequence of the differing results necessitate discussion and compromise between the different orders of government, the PM has hitherto failed to secure consensus among the devolved administrations. Instead, the UK government has sought to assert its authority on the devolved governments, reinforcing the vulnerability of devolution and the hierarchical nature of autonomy in the UK.

As discussed in Chapter Four, the UK government has somewhat softened its approach with regards to the repatriation of powers but to date the Scottish government has yet to approve of the UK government's approach or legislation. There is agreement among the different orders of government that there will be a requirement for common frameworks as relates to certain repatriated powers in order to ensure policy consistency and/or coordination. What is unclear, however, is the manner in which these common frameworks will be reached. Both the Scottish and Welsh governments have called for clarity on this

approach as well as advanced a number of ideas which posit that common frameworks must be the result of negotiation, compromise and consensus from all parties involved and not, as has been the UK government's approach hitherto, diktat. In the absence of reform, as discussed in the preceding section, the UK government risks not only undermining the fundamental and foundational principles of devolution but could seriously jeopardise the continued existence of the union itself. Sandford and Gormley-Heenan (2018: 10) sum up the importance of this point: 'at present, the danger lies in the contrast between the previous pattern of generous concessions to the devolved administrations, and non-interference by the UK government, and a future unilateral (even if temporary) reassertion of central sovereignty to accommodate the consequences of Brexit.'

In Spain, there is an equal if not increased risk of recentralisation. While the incumbent PSOE government advocates further territorial reform, both the PP and C's favour bringing the Spanish experience of decentralisation to a firm halt, with support for the recentralisation of certain powers. As has been discussed, recentralisation has been a firm feature of Spanish politics as both PP and PSOE governments have sought to rein in the powers and distinctiveness of the historic nationalities to engender a more equal distribution of competences among all ACs. Recentralisation also became a common feature under the Rajoy governments, sold as a necessary strategy in order to balance the books of ACs during the years of recession (Muro 2015). While there is no denying that there was a need to tighten the strings of the public purse, in Catalonia such financial recentralisation was perceived as an ideologically and politically motivated strategy rather than any deep concern with balancing the books.

In addition to this, the application of Article 155 was considered firm proof of the vulnerability of autonomy arrangements in Spain, which could be overturned by a vote in the Senate, and of the recentralising impulse that is inherent in Spanish territorial politics. As a number of interviewees pointed out, the recentralisation agenda of the Rajoy government was an unequivocal factor in precipitating the growth of support for independence throughout Catalonia. Yet, despite the restoration of Catalonia's self-government institutions and attempts by the PSOE government to uphold dialogue in seeking a political solution to what is after all a political problem, Sánchez has made clear that he is not averse to reapplying Article 155 if progress is not made (Ortega 2018). To exacerbate this further, both the PP and C's not only support the reapplication of Article 155 and are overt in advocating this approach, but also support the recentralisation of important

policy areas such as education which they accuse the Catalan government of using as a tool of 'indoctrination' in favour of independence (Sanmartín 2018). The parties unsurprisingly reject the language of centralisation, but there is a clear concern that the election of a PP or C's government would negatively impact current autonomy arrangements.

6.5.2 Reformulation

Autonomy arrangements in both the UK and Spain have evolved over the last few decades and as a result of recent events will continue to do so in the near future. Arrangements in Spain have been ripe for reform for a number of years, but the lack of consensus among political elites has inhibited any progress on this front. Alongside *Podemos*, the newly appointed socialist government are the most vociferous advocates of territorial and constitutional reform, with support for a number of changes including, reform of the Senate, naming the ACs in the Constitution, an overhaul of IGR and reform of financial arrangements. In addition, the incumbent government also supports the creation of a new Catalan Statute (Díez 2018), but as was made clear in interviews for this thesis, support for this is limited to the PSC, PSOE and *Podemos*.

The PSOE's preference is for the transition towards a fully-fledged federal system, which advocates believe, akin to those proponents of federalism in the UK, would relieve some of the tensions that have grown over the years as a result of political decentralisation and the growing salience of identity politics. The path towards federalism, however, as much in Spain as in the UK, is fraught with impediments, not least the lack of support among political elites and the public alike. In the meantime, however, the Sánchez government has shown a willingness to listen to the grievances of the Catalan government and has already sought to recast and reform intergovernmental machinery so as to ensure better relations between the two governments. In addition, the PSOE oversaw the restoration of the Generalitat and has sought to temper the acrimonious relations that characterised the Rajoy government's relationship with Catalonia, through engaging in dialogue, albeit this remains limited on the issue of an independence referendum.

The problem is, however, that while much noise has been made about the reinstatement of dialogue between the Catalan and Spanish governments, if the parameters of dialogue are unilaterally decided by the central government, which would preclude any discussion on the issue of an independence referendum, then there is little prospect for a

palatable solution for both sides. It is important, therefore, not to overstate the effect of the Sánchez administration; a state of cautious optimism should prevail. The PSOE, after all, have only 85 seats in Parliament. Moreover, as discussed in Chapter Five, while there is support for territorial reform in Catalonia, primarily constitutional recognition and reform of Catalonia's fiscal arrangements, the debate continues to revolve around the celebration of an independence referendum, staunchly opposed by the PSOE. As in the UK over Brexit, there is a fundamental clash between the conception of sovereignty in Spain and Catalonia. In this regard, territorial reform may appease some grievances in Catalonia, but seeking an agreed solution to settle Catalonia's future territorial status, remains high on the agenda and will involve some difficult, but necessary conversations.

Territorial reform will also be a feature of the UK's post-Brexit landscape with Scotland poised to experience its fourth iteration of devolution. The Scottish government's proposals for a differentiated Brexit, which would not necessarily look out of place in the UK's already highly asymmetric territorial layout, was firmly rejected by the UK government, with the added caveat that as a result of EU withdrawal the devolved administrations' powers would increase. In addition to this, the Scottish government (2016: 1) has called for 'a fundamental review of the UK's constitutional arrangements' to eschew any attempts at recentralisation by Westminster as well as to better facilitate policy delivery in Scotland and tailor such policies to Scottish-specific needs. Thus, in addition to calling for the direct repatriation of those powers currently under the purview of the EU, the Scottish government has also called for the devolution of further powers on matters such as employment law, equalities legislation, health and safety regulations and consumer protection laws.

As discussed in Chapter Four, EU withdrawal is hailed by pro-union parties as an opportune moment to think seriously about devolved settlements as well as the purpose of the union itself. It is clear that as a result of withdrawal the powers of the Scottish Parliament will grow, but the hesitance on the part of the UK government to cede immediately those powers which are legally already devolved underlines that the repatriation of powers will be anything but a smooth process. The need for common frameworks will require reform of intergovernmental machinery, but as noted in the previous section, the UK government's penchant for control may significantly affect relations between the different governments and the future of the union, too.

6.5.3 Disintegration

The third and final scenario discussed in this chapter is the prospect of state disintegration. In the UK, the independence issue was not settled by the 2014 referendum and in light of Brexit, the issue was placed back on the table, supported by a vote in the Scottish Parliament in March 2017 to call for the transfer of power from Westminster to Holyrood to hold a second referendum. In light of the SNP's electoral performance in the 2017 general election, in which anti-independence parties won 21 of the SNP's previously gained 56 seats, the Scottish government shelved any immediate plans for a referendum but has consistently argued that as a consequence of EU withdrawal, a second referendum must be held.

The UK government, in line with tradition, did not wholly reject the Scottish Parliament's call for another referendum, although Theresa May, clearly having learned the lesson of the previous vote, is indisputably less forthcoming than her predecessor. Yet, while it is true that Brexit may be the trigger for a second vote on Scotland's constitutional status, EU withdrawal equally complicates the issue. On the one hand, during the 2014 referendum campaign, the future status of Scotland within the EU was a central issue, with opinion divided as to whether or not Scotland would remain inside or outside the EU in the event of an affirmative vote for independence. Prominent politicians, including the leader of the Scottish Conservatives, Ruth Davidson, for instance, argued forcefully against independence as a way to ensure continued Scottish membership in the EU, claiming '[i]t's disingenuous … to say No means out and Yes means in, when actually the opposite is true. No means we stay in' (Davidson 2014). EU withdrawal thus changes the context of a second independence vote, hence the UK government's hesitance in agreeing to it.

On the other hand, as was underlined by the results of the 2017 election, while support for independence has remained steady around the 40-45% mark, the prospect of another referendum campaign as well as further constitutional upheaval, is an unattractive prospect to many voters in Scotland, including those who voted for independence in 2014 and for the SNP at the 2015 and 2016 elections (Curtice 2017). Added to this is the fact that the SNP's policy of independence in Europe is strongly opposed by a portion of the SNP's membership; Euroscepticism is not a uniquely English phenomenon. The fall in support for the SNP at the 2017 election has temporarily removed the referendum issue from political debate, but the ramifications of Brexit, with specific focus on how the UK government treats

the devolved administrations in the aftermath of withdrawal, may very well precipitate an opportunity for Scots to once again go to the polls. The result of that vote, as would be the case in Catalonia, is far from being a foregone conclusion.

In the absence of an agreed solution to the Catalan independence quagmire, the prospect of state disintegration remains increased. Exacerbating this prospect is the fact that pro-independence politicians and civil society activists remain in prison facing charges of up to 25 years for the role they played in organising the 2017 vote. As mentioned above, while the change in government in Madrid may herald an advance in relations between the Catalan and Spanish governments, the PSOE remains wedded to the idea of indivisible sovereignty and thus opposed to any referendum on independence. Paradoxically, however, the intransigence of Spanish political elites to recognise Catalonia as a political entity and facilitate a negotiated referendum, preceded by a campaign in which both sides put forward their cases, as took place in Scotland, may hasten rather than impede territorial breakup. The reinstatement of dialogue is clearly a very important step in re-establishing and improving relations between the Spanish and Catalan governments, but failure to engage seriously on the independence issue not only imperils future relations with Catalonia but endangers the continued existence of the Spanish state itself.

The Catalan independence movement, as previously discussed, is anything but homogenous. Political parties and civil society organisations are united by the same goal, but the means of achieving this differ. A negotiated solution, which would involve a state-approved referendum, remains the most favoured solution, but no pro-independence party has completely rejected the unilateral route. Opinion remains divided across and within pro-independence parties on this issue, but for some, the intransigence of the Spanish state in organising a referendum renders the pursuit of a negotiated solution obsolete; unilateralism is framed as the only solution (Interview with CUP MP). In the absence of an agreed solution with Spanish authorities, the unilateral option remains on the table, but while it is clear that this is not the most desired route to ensure the creation and international recognition of an independent Catalan republic, it would incontrovertibly shake the already wobbly pillars of the Spanish state.

The scenarios sketched here show that the future constitutional layout of the Spanish and UK states lie among three options: recentralisation, reformulation and disintegration. Recent events in Scotland and Catalonia have already had significantly destabilising effects on the territorial settlements entrenched in each case, but demonstrate that any resolution of

current constitutional quagmires will have clear ramifications for the evolution of territorial politics. In both cases, circumstances are conducive to further territorial reform, but the direction of travel remains unknown. Moves towards any of the three scenarios discussed here will depend on the future context and circumstances in both countries, namely the consequences of EU withdrawal in the UK and the negotiation of an independence referendum in Catalonia, as well as the outcome of the trials of those pro-independence politicians held in prison. Only time will tell.

7. Chapter Seven: Conclusion

This thesis has examined the evolution of territorial politics in the UK and Spain with particular focus on the development of politics in Scotland and Catalonia vis-à-vis autonomy and secession. As discussed in the Introduction, this concluding chapter serves three purposes. First, it provides an overview of the thesis. Second, it summarises the findings of the research by revisiting the main research questions. Finally, I identify some of the implications and limitations of the study, as well as potential avenues for future research.

7.1 Overview and Contribution of the Thesis

In recent years the study of territorial politics has undergone a renaissance. In a new book published on territorial politics in 2018, the editors discuss this resurgence of interest, noting 'given the territorial flux in the modern system of nation-states – with the creation of new states and the dissolution of others – it should not come as much surprise that the study of territorial politics has enjoyed something of a renaissance in the last thirty-odd years' (Hepburn and Detterbeck, 2018: 2). This study, having examined the evolution of territorial politics in the UK and Spain, contributes to this evolving research agenda. In addition to this, the research also builds upon previous studies related to the nationalist movements in Scotland and Catalonia as well as deepens knowledge, both normatively and empirically, in relation to how plurinational states manage and accommodate national minorities within democratic political systems.

As discussed at the beginning of this thesis, a study of the UK and Spain is not novel. Recent events in both cases, however, have further illuminated the evolving nature of territorial politics as well as the challenges plurinational states face in the management of national minorities within extant state structures. In this vein, this thesis has charted the historic development of territorial politics in both the UK and Spain, as well as analysed its more recent evolution, taking into account the political difficulties, potential outcomes and spill-over effects of seismic political events, namely EU withdrawal and Catalan demands for an independence referendum, that continue to be debated in the current political systems and whose ramifications will have lasting effects for years if not decades to come. It has done so through a combination of normative and empirical research, including the theories

of liberal nationalism and multinational federalism and interviews with the main political actors within the Scottish and Catalan political systems.

Having taken stock of the different autonomy arrangements in both countries, mapped the evolution of territorial politics in Scotland and Catalonia as well as compared the different strategies employed by the UK and Spanish governments, this thesis build on and contributes to a number of areas of existing literature. First, the analysis offered in this thesis provides a detailed and in-depth assessment of the autonomy arrangements within Scotland and Catalonia anchored within a wider discussions regarding the territorial strategies employed by successive Spanish and state governments. Given the heating up of territorial tensions in both cases in recent years, and as discussed in the preceding chapter, such tensions are set to continue in the foreseeable future, a detailed account of the arrangements employed in both cases offers a number of pivotal insights to better understand the specific nuances of each case, particularly how political communities and elites envision and perceive institutional arrangements as well as wider implications for the management of self-determining aspirations, both internal and external, in plurinational states. In this vein, the thesis also contributes to a better understanding of the dynamics between majority and minority nationalisms in both cases, as well as the wider theoretical debate. As discussed in Chapter Two, the study of majority nationalism within plurinational contexts has yet to receive sustained attention. The research in this thesis thus contributes to this important area of study through placing the territorial strategies employed by successive Spanish and UK governments under the scholarly microscope.

Third, as pointed out in Chapter Three, multinational federalism, while theoretically sound remains lacking in detail in terms of its application to real world political examples. This thesis, therefore, has contributed to this endeavour through adding empirical flesh to multinational federalism's theoretical bones. It does so through developing a better understanding of the main limitations of autonomy strategies currently used in Spain and the UK to manage the autonomy and secessionist demands of their national minorities in Scotland and Catalonia. What is more, in drawing upon some of the discussions from the wider literature related to comparative politics and conflict studies, the analysis illuminates the importance of moving beyond prescribed models of autonomy in order to examine other mechanisms and avenues to offset potential limitations and thus ensure the entrenchment and development of a more coherent model of autonomy that satisfies both minority and majority communities.

Finally, linking the points detailed above and drawing upon the normative and empirical discussions in the thesis, the research posits a number of potential scenarios for the future evolution of territorial politics in both cases. In so doing, the thesis contributes to ongoing empirical discussions concerning the future trajectory of the UK and Spain, Scotland and Catalonia. The scenarios sketched here caution against complacency that plurinational states such as the UK and Spain are destined to hold together in perpetuity and further underline the importance in engaging in frank yet constructive discussions undergirded by a plurinational and federal spirt in order to ensure the development and entrenchment of a more accommodative and resilient territorial model. In the next section, I summarise the main findings of the thesis in relation to the main question and sub-questions of the study.

7.2 Main Findings: The Research Questions Revisited

This thesis has examined the recent evolution of territorial politics in the UK and Spain, with specific focus on Scotland and Catalonia. In taking stock of the autonomy models in these territories, I have discussed some of the principal limitations of extant arrangements, particularly in relation to the accommodation, empowerment and recognition of national minorities and their autonomy-enhancing and secessionist aspirations. Moreover, and drawing upon both normative and empirical discussions, I have provided some suggestions vis-à-vis potential reform of territorial arrangements to ensure the development and further entrenchment of a more coherent and accommodative plurinational model of autonomy.

This section presents a summary of the findings of this study by reviewing the three sub-research questions of the thesis. The first sub question, '*How have the UK and Spain responded to demands in Scotland and Catalonia for autonomy and secession?*' was addressed through analysis of both the historical and more recent approaches taken by successive Spanish and UK governments to deal with the autonomy and secessionist demands of the Scottish and Catalan movements.

The UK is very much a state comfortable with its plurinational makeup and has used a combination of symbolic recognition, self-rule and shared rule to manage the evolving demands of the Scottish nationalist movement vis-à-vis autonomy and more recently, secession. Unlike Spain, symbolic recognition has been a central strategy to recognise the

distinctiveness of Scotland within the parameters of the UK. This is evident in state symbols, but also in the recognition of Scotland as a nation with a legitimate *demos*. The creation of the Scottish Office and Secretary of State for Scotland and the overrepresentation of Scotland in the House of Commons (until 2005) demonstrate the UK's experience with shared rule, albeit this was and remains weak, particularly when compared to other plurinational states. Calls for improved shared rule mechanisms have thus far gone unheeded. The UK government sought to potentially correct this imbalance through the creation of the JMC, but as discussed in this thesis, this intergovernmental forum continues to perpetuate the hierarchical, UK-government centred approach that characterises IGR in the UK. Self-rule has been used by successive UK governments to not only manage the autonomy-associated demands of the Scottish nationalist movement, but to impede support for secessionism, as was the case with 'the vow' in the 2014 referendum campaign. The nature of the UK Constitution allows for a flexible approach to autonomy and as a result the powers of the Scottish government and Parliament have increased since the advent of devolution in the late 1990s.

Spain, on the other hand, contrasts with the UK approach. There are points of similarity, but this is mainly limited to self-rule provisions; there is an almost complete absence of meaningful symbolic recognition. This is a result of the historical approach towards minority nationalism in the Spanish state. While the UK has long recognised the existence of competing nationalist movements within the state and the importance of recognising the distinctiveness of these different territories, the Spanish state-building experience sought to create an ethnically homogenous state. There have been, as discussed in Chapter Five, stages of decentralised rule, but until the late 1970s these were infrequent periods. The decentralisation programme rolled out in the aftermath of Franco's death in the late 1970s has been the principal tool for successive Spanish governments to manage competing nationalist programmes in Spain, but these structures were designed to contain rather than empower what became known as the historic nationalities. A key feature in the management of plurinationalism in Spain that has been mostly eschewed in the UK relates to the role of the judiciary. The UK's experience with devolution is characterised by relatively low levels of litigation while the opposite is true in Spain. This, in part, is a result of the open-ended model of autonomy provided for in the Constitution, but is also the consequence of the legalistic approach taken by the Rajoy government to manage demands for secession in Catalonia. Recourse to the courts, however, has not resolved the situation

and in fact has merely further muddied the waters, rendering any political solution to what is essentially a political problem a difficult objective to achieve.

To answer the second sub-question of this thesis, '*How effective have existing autonomy arrangements in the UK and Spain been in accommodating, empowering and recognising Scotland and Catalonia's ethnonational diversity?*', I drew upon the normative debates developed in Chapter Three as well as the academic literature, interview data and document analysis carried out specifically for this thesis.

A number of strengths in relation to the UK's autonomy model for Scotland were identified including the flexibility of the UK's constitution which facilitates a pliable rather than rigid autonomy model able to evolve to deal with challenges thrown up as a result of devolution itself or further demands for autonomy. Accordingly, devolution for Scotland has indeed created a very powerful parliament and government insofar as Scotland remains one of the most autonomous sub-state territories among the genus of federal and regionalised states throughout the world. The development and consolidation of autonomy in Scotland has not been completely free of acrimonious debate, but has largely avoided reliance on the legal system to solve disputes. In this vein, different orders of government have been forced to work together, irrespective of their opposing constitutional visions or ideological underpinnings.

At the same time, however, a number of limitations to existing autonomy arrangements were identified. The UK's experience with devolution can be largely characterised as muddling through, dealing with issues and demands as they appear with very little concern for the long-term implications of decisions or what this means for the future existence of the devolved territories as well as the UK itself and its status as a union-state. Muddling through, as discussed above, has been beneficial to both the Scottish and UK governments in terms of facilitating a flexible approach to autonomy, but concomitantly underlines the vulnerability of devolution arrangements, namely as a result of Brexit. The repatriation of powers to the UK post-withdrawal has already courted significant controversy, a primary consequence of the UK government's centralist approach which seeks to, in true Brexit fashion, 'take back control' of these competences before deciding on their devolution, thus undermining the fundamental principles of Scotland's retaining model of devolution. In light of this, the repatriation of powers will necessitate precision with regards to the jurisdiction of the different powers and competences; muddling through is no longer an option.

Linked with this is the lack of shared rule and plurinational culture in the UK. On the former, very little attention has been paid to the absence of shared rule in the UK, masked by the goodwill approach to IGR and the lack of consensus over reform of the House of Lords. Developments in the *Scotland Act 2016*, which includes concurrent powers over social security for example, have already illuminated the need for proper consideration of shared rule in the UK, but this has become of increasing importance in preparation for EU withdrawal. Indeed, the experience of the JMC has already clearly demonstrated the inability of extant IGR arrangements to manage the implications of withdrawing from the EU. In this vein, the absence of effective shared rule procedures not only risks further complicating fraught relations between the Scottish and UK governments, but such unprecedented stress could potentially bolster the SNP's arguments for independence, thus risking the future continuance of the union. This is further compounded by the absence of a plurinationally sensitive political culture, which based on analysis of the UK government's approach to EU withdrawal hitherto, has given way to a more heightened concern with parliamentary sovereignty and party unity. The emboldened rhetoric in relation to parliamentary sovereignty is evidently rooted in the pro-Leave rhetoric of the Brexit campaign to 'take back control', but further betrays the competing constitutional interpretations at the heart of the UK's constitutional debate. This, as was noted in Chapter Four, is nothing new and has existed as long as the union itself, but contaminates evolving debates on the constitutional futures of the UK and Scotland as well as centre-periphery relations.

The Spanish decentralisation project has also been a dynamic affair, fruit of the open-ended territorial model in the Constitution in which democracy and decentralisation became mutually reinforcing phenomena. For Catalonia, this involved extensive autonomous powers over a number of important ambits; powers that in light of *quid pro quo* scenarios in the Spanish Parliament during periods of minority government, have been expanded, most notably in fiscal affairs. The Spanish transition to democracy also concerned some cognisance in relation to shared rule, albeit the Senate remains representative of provinces as opposed to ACs. In addition, IGR are hierarchical structures, which despite being more formal and more frequent than the UK, are not designed as arenas of co-decision or to ensure the systematic influence of ACs in central government policy making.

One of the biggest tensions with regards to the Catalan model of autonomy relates to the problem of convoluted recognition which sees only a tacit recognition of the specificity of Catalonia endorsed in the Constitution. Indeed, this was further underlined by the TC's

judgement on the reform of the Catalan Statute of Autonomy in which the term nation was moved to the Preamble rather than included in the Statute itself, depriving it of legal significance. The denial and outright hostility of recognition of Spain's plurinationality is not widely shared among all political elites, but indisputably impedes the development of a more sensitive and coherent model of autonomy designed to empower as opposed to just contain those sections of society seeking recognition as a nation. This is further underlined in the consistent attempts on the part of Spanish elites to symmetrise the autonomy model in an effort to dilute claims of distinctiveness primarily from the historic nationalities and their demands for further autonomy. Recourse to the courts has also been a common characteristic of the Spanish experience with autonomy. There is no doubt that constitutional courts play an essential role in policing disputes among the different orders of government found in multilevel states, but in Spain this has had the effect of politicising the judiciary and impeding the necessary bargaining and negotiations between the Catalan and Spanish governments to find political solutions to political problems. As a result, the model of autonomy enacted in Catalonia not only impedes the empowerment of Catalonia as a national minority within a plurinational state, but precludes recognition of political legitimacy, let alone of equal partnership.

To answer the third sub-question '*Are there other mechanisms that may be employed to ensure the development of a more coherent model of autonomy for Scotland and Catalonia?*', I drew upon some of the most important themes that emerged from the data analysis and examined, from both normative and empirical viewpoints, and in line with the theory of multinational federalism, potential reforms that would result in a more plurinationally sensitive, just and coherent model of autonomy for Scotland and Catalonia. This, as this thesis testifies, has become all the more important in light of recent events in both cases in which the decisions, policies and strategies of the central government are made and are set to continue to be made without proper consideration or understanding of their implications on sub-state territories.

The UK and Spain are identifiable plurinational states, but the existence of a plurinational culture is lacking. This is rooted in the lack of official recognition (more so in Spain) and the focus on self-rule at the expense of shared rule as a territorial strategy to accommodate national minorities. There is, as the chapters in this thesis attest, cognisance of some of the values and principles that undergird a plurinational culture, but central states have tended to overlook the importance of these in the development of a political culture

that chimes with the aspirations and wishes of both minority and majority communities. In the UK and Spain this is undermined by the unitary and crudely majoritarian approach endorsed by central state elites vis-à-vis national politics, often overlooking or in some cases actively working against the aspirations of minority communities. To offset the perverse effects of the inherent monist approach pursued by UK and Spanish elites, a more open, deliberative and consociational approach to politics is required. At the same time, a commitment to, or at very least understanding of, the importance of asymmetry for national minorities as well as a willingness to discuss secessionism, irrespective of legal constraints in the Constitution, would provide for a more benign and plurinationally sensitive political space. Actions to the contrary are rooted in the quiescent ethnocentrism of the majority community. The development of a more plurinationally sensitive political culture is thus considered imperative, particularly with regards to managing momentous decisions such as leaving the EU, or, as in the case of Spain, to reduce the increasingly polarising strategies of the Catalan and Spanish governments vis-à-vis territorial politics, namely secession.

The theme of empowerment was threaded throughout analysis of autonomy arrangements in Scotland and Catalonia, particularly as relates to the rationale behind decentralisation as a mechanism to contain rather than empower minority nationalism. In Spain, this relates to the absence of provisions, such as the Sewel Convention in the UK, to police the interference of the central government in sub-state territory competences, often invoked under the guise of the 'national interest'. UK government encroachment on Scottish policy jurisdiction has been a relatively uncontroversial area between the two orders of government, but in the ongoing discussions on EU withdrawal, the UK government has used 'the national interest' as justification for its centralising approach to managing repatriated powers, posing a grave risk to devolution in Scotland and thus the future existence of the UK itself. In both cases, therefore, there has to be increased respect for the autonomy of sub-state territories and central government to meet the prerequisites of plurinational justice and to help restore and bolster the bonds of trust among different communities.

In line with seeking to further empower national minorities within the plurinational state, which very much focuses on self-rule and the actions of the central government, increasing the voice of minorities at the centre to ensure they have a role in central government decision and policy making processes is also an important move. As in most federal states, this would require a territorially representative second chamber. Reform of the House of Lords in the UK and the Senate in Spain is a well-debated and researched topic,

but moves towards becoming a more federal and territorially representative chamber remain hesitant. Reform in this direction, however, would help provide a multilateral intergovernmental forum, thus empowering minorities through giving them a voice at the centre to systematically contribute to central government policy and decisions. In addition, and important for both cases, IGR are in need of reform. IGR in Spain are a more formal affair than in the UK, but the hierarchical nature of existing forums as well as the perception that they are talking shops as opposed to arenas of real co-decision and influence, undermine their legitimacy, particularly in the eyes of the historical communities. More formal structures in the UK would be a welcome addition to the UK's extant intergovernmental, and interparliamentary furniture and would help bolster relations and redefine relationships between the devolved and central governments. Such intergovernmental restructuring will become increasingly important over the coming years as the UK navigates EU withdrawal. Formality, as the case of Spain and Catalonia demonstrates, is of itself not a tool to ensure collaboration, thus as much in Spain as in the UK, IGR require greater transparency as well as a willingness on all sides to work together.

The final theme discussed relates to the notion of partnership, more specifically, forging a partnership of equals among the different communities within a plurinational state. Discussions on the absence of partnership are not unique to either the UK or Spanish cases but have become more pronounced in recent years as a result of the increasing attention paid to territorial politics and the constitutional futures of the states in question. The absence of partnership is rooted in the majority interpretation of the political partnership between the state and sub-state entities, which as well as peddling an antiquated notion that sits uncomfortably in a plurinational setting, fosters distrust among the different orders of government. Hence, employing some of the measures above, such as widening the role of sub-state entities in central state institutions or in central government decision-making processes would go a long way to demonstrate a commitment to recognising and respecting the plurality of the state and increasing the stake and thus loyalty of national minorities within it.

7.3 Implications, Limitations and Avenues for Future Research

The final section of this chapter discusses the implications of the main findings as relates to the wider literature, limitations of the study and potential avenues for further

research. Having examined the evolution of territorial politics in the UK and Spain, this thesis contributes to existing literature on both empirical and theoretical levels. On a more empirical level, it has contributed to what was termed above as the 'renaissance' in studies on territorial politics, specifically its evolution in the UK and Spain. As two paradigmatic cases of plurinationalism, the study has sought a better understanding of the evolution of territorial strategies in managing plurinationalism in the UK and Spain, and seeks to contribute new knowledge on these cases, with particular focus on recent developments in both cases. Taking into consideration recent events, such as the referendum on EU withdrawal in June 2016 and the controversial independence referendum in Catalonia in October 2017, as well as the initial ramifications of these events, at least until the latter half of 2018, this thesis further develops our understanding of managing plurinationalism with reference to the most recent events.

On the theoretical contribution, this work builds upon previous studies as relates to the theories of liberal nationalism and multinational federalism. In particular, it adds further empirical flesh to the theoretical bones of multinational federalism; draws upon different elements of power-sharing theories from comparative politics to further develop what a more coherent plurinational model of autonomy would look like and how this would work in the cases of the UK and Spain. In this vein, this research is important not only in terms of strengthening knowledge with regards to already established plurinational states, but provides important lessons for emerging and new models of political organisation in other plurinational states. On that note, a number of wider implications of the study can be identified.

First, this thesis is testament to the evolving nature of territorial politics, but also to the importance of flexibility in constitutional and territorial arrangements to facilitate the successful management of plurinational states. This Friedrichian conception, as discussed in Chapter Two, is often overlooked by students of federalism, but is crucial when examining how to manage accommodation within plurinational settings, particularly states that opt for a stepping stone as opposed to a big bang approach towards federalism. As the case of Spain shows, a rigid, or in Friedrich's (1968: 7) parlance 'static', design and conception of politics vis-à-vis national minorities and territorial autonomy inhibits the development of territorial arrangements and is ill-conceived inasmuch as it may accelerate state disintegration. At the same time, as the UK case demonstrates, flexibility entails benefits but also has its problems, particularly when short-term exigencies are prized over long-term implications or decisions

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on devolved settlements are made without proper consideration or even understanding of their implications. The challenge for plurinational states, therefore, is to ensure a stable equilibrium between flexible and rigid constitutional arrangements, something, as this thesis shows, is no mean feat.

A second implication of this study relates to research on majority nationalism and the management of accommodation for national minorities and majority-minority relations. The focus on majority nationalism, as discussed in other studies (Gagnon et al 2011; Lecours and Nootens 2009), is often understudied, shaped by a perception that 'the state's association with nationalism in liberal democratic societies ended at the turn of the twentieth century' (Lecours and Nootens, 2011: 4). This study demonstrates, however, the importance in analysing the actions, interests, identity, policies and perceptions of central governments (mostly made up of the majority community). It highlights, for instance, that while much of the onus in existing studies is often placed on the actions of minority groups in precipitating demands for enhanced autonomy or secession, the role of central governments should not be understated. Indeed, the research in this thesis underlines this point. Rather than implementing a coherent model of autonomy which satisfies the self-determining aspirations of national minorities, central governments have instead chosen to create structures that perpetuate their domination over sub-state entities, thus intensifying intra-state tensions and mobilising movements demanding better autonomy structures and/or independence. Majority communities cannot demand nor expect loyalty from minority communities when extant structures institutionalise domination and contain rather than empower national minorities.

Building on work by McGarry and O'Leary (2009), a third implication of this study is that plurinational federal political systems are a worthwhile endeavour, with the potential to create and maintain a democratic, durable and just state to the benefit of both minority and majority communities. The UK and Spain are 'holding together' systems whereby devolving power in these states was an attempt to provide an electoral and legislative arena in which sub-state self-determining aspirations could be contained and hence secession prevented (Stepan 1999). Secessionism, as the cases of the UK and Spain attest, has not been entirely abated but it is clear the plurinational model is the best response to managing this, albeit a more coherent model of autonomy is required. Important to note, however, is that, in contrast to the general reaction by Spanish central elites, and as astutely argued by Kymlicka (2000: 27), the success of plurinational states should not be measured by the absence of secessionist

movements, but instead by the ways in which the state seeks to accommodate and recognise its national minorities. This, for instance, is an important implication for the cases under study here, but also provides an important lesson for other plurinational states currently examining federal models, such as Myanmar and Syria.

Finally, not only do constitutional arrangements in plurinational states require flexibility, but, as developed in this thesis, they are dependent on the evolution of a plurinational culture as well as non-traditional mechanisms for accommodation, as found in power-sharing systems. The development of a plurinational culture is important not just with reference to the deepening and consolidation of democracy in diverse societies, but more so in informing how central state institutions and governments interact with minorities as well as think through the implications of policy decisions on sub-state territories. As discussed supra, this is a feature of rhetoric in the UK and Spain, but the challenge remains to translate this into political practice. Moves in a more consociational direction, while oft-limited to post-conflict societies, represent a potential solution, providing a relevant, flexible and more innovative model to help relieve inbuilt tensions and manage other complex challenges present in plurinational contexts. Autonomy, as has been shown, is an indisputably important tool in accommodating and empowering national minorities, but as argued by Basta and Simeon (2015: 325) 'is seldom enough'. Plurinational states must move beyond current approaches to create more innovative, inventive and just models of accommodation and autonomy, bolstered by a genuine plurinational culture.

Notwithstanding the discussion related to the contribution and implications of the study above, there are a number of limitations. First, the methodological approach of this thesis focused on only two cases which therefore inhibits the generalisability of the results. The analysis is specific to the cases of the UK and Spain and so cannot be generalised to other cases in which contextual factors will be different to the ones traced in this thesis. However, as pointed out by Gerring (2007: 248), limited generalisability does not mean that the findings of a particular study are not generalisable at all. It is hoped, therefore, that the analysis presented here contributes to existing studies to tell us something broader about the accommodation of national minorities in plurinational states, including a framework to help identify some of the limitations of extant autonomy models and potential solutions to create a more coherent and accommodative plurinational autonomy model. A second limitation refers to the fact that the cases in this thesis are Western liberal democracies. The use of autonomy as a model for the accommodation of national minorities is not circumscribed to

the Western hemisphere, and in fact, cases found elsewhere around the world, such as Bosnia, India and Iraq, are often more complicated insofar as violence has been a characteristic in these countries' experience of diversity management. As a result, there is difficulty in generalising these results to other non-Western and democratically-questionable cases.

Building on the research in this thesis, there are a number of potential avenues for further research. Firstly, broadening the research to include other Western and non-Western countries would help further flesh out some of the main nuances and factors vis-à-vis the accommodation of minorities in plurinational states. Indeed, an admixture of Western and non-Western cases would not only widen the number of factors taken into account given the different context-sensitive factors in each case, but would contribute to further expanding some of the much needed empirical evidence to bolster the theory of multinational federalism.

A second avenue relates to the study of when autonomy arrangements are likely to succeed or fail in the accommodation of minorities as well as the prevention of state disintegration. As the theoretical discussion in Chapter Three shows, particularly the focus on the paradox of autonomy, despite the small literary industry that has emerged on the topic, the debate remains inconclusive. Future research is thus necessary in order to explore when and why autonomy works, taking into account the factors studied in this thesis, such as institutions, as well as other internal and perhaps even external influences.

Finally, it is worth noting that the cases under study in this thesis continue to be at the forefront of debates on the management of national minorities in plurinational states. Notwithstanding the contribution of this thesis in analysing the evolution of territorial politics in the UK and Spain and advancing knowledge related to the accommodation of minority nations in plurinational states, like any thesis I have only been able to take a snapshot of a specific moment in history. The decisions taken already as well as those to be taken in the very near future regarding these topics will have important implications for the future development and existence of the UK and Scotland, Spain and Catalonia and thus provide plenty of scope for further research. The future constitutional trajectories of both the UK and Spain remain unknown. Only one thing is certain: territorial politics will remain in a state of flux.

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