

Catalonia's March Toward Self-Determination

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In the last few years Catalonia has witnessed an extraordinary political transformation. Turning their backs to what was a secular struggle for political autonomy within Spain, an overwhelming majority of Catalans now favor holding a referendum on Catalan independence where a majority would cast a positive vote for separation from Spain.

Table 1 reproduces the results of two surveys conducted for Cadena Ser, one of the biggest radio broadcasters in Spain, this September and one year ago. Four out of five individuals favor holding a referendum on self-determination. Less than 15 percent are opposed to it. As a matter of fact, this level of support for such a referendum has been constant over the last years – as attested in the report on a political referendum that has been published by the Advisory Council on the National Transition set up by the Catalan Government and that compiles a long temporal series of surveys undertaken by a very diverse number of media and opinion poll institutes (CATN 2013).

Table 1 shows also that, when asked about whether they would support or oppose independence for Catalonia in a referendum, one half of the population would vote yes, one fourth would vote no and the rest of those surveyed would either abstain or express no opinion. The majority in favor of independence hardly budes even when individuals are offered a fiscal pact similar to the generous tax-and-spend arrangements in place in the Basque country – pointing to the fact that pro-independence positions go beyond purely economic or fiscal motivations. Similarly, almost one half of Catalans continue to prefer independence even after they are told this could hypothetically lead to being excluded from the European Union. In short, the Catalan movement toward self-determination has become widespread, has strong democratic roots and cannot be simply reduced to a fiscal revolt by a rich region battling an economic crisis.

To shed light on the causes and nature of the Catalan movement toward self-determination, this article is organized as follows. In sections 1 and 2 we examine the roots of Catalan demands for self-determination and its recent political manifestations. Section 1 offers a brief summary of the history of Catalan demands for autonomy. Section 2 discusses how those demands evolved into a struggle for straightforward self-determination in the last years. Section 3 maps out the legal and political dimensions of the process that lies ahead.

1. A LONG HISTORICAL MARCH TOWARD CATALAN AUTONOMY

Today's conflict between Spain and Catalonia is often portayed by the Spanish side as a case of a part wanting to detach itself from the whole: alleging real or perceived grievances against the capital, a self-centered province uses the threat of separation to blackmail the state into making concessions that run counter to a presumed common good. Catalans describe instead their present difficulties with Spain as just the latest episode in the centuries-old friction between two human communities with different worldviews and conflicting political cultures – two national realities that were linked by history in an unequal partnership and have never found a way to fit together in harmony.¹

When trying to present their case to the world, Catalans are at a disadvantage. They must start by asserting, and then proving, their existence. Spain, on the other hand, is taken for granted –not only as a political entity but as a social, cultural and historical reality. Indeed, a common claim of

¹ In a speech to the Cortes on May 13, 1932, the prominent theorist of Spanish Republican nationalism, José Ortega y Gasset, acknowledged that the relationship between the two could be at best one of mutual tolerance: "Yo sostengo que el problema catalán [...] es un problema que no se puede resolver, que sólo se puede conllevar".

Spanish nationalists is that theirs is "the oldest nation in Europe".² It is true that, in the mid-fifteenth century, the medieval kingdoms of Aragon –led since its inception by the Catalan House of Barcelona– and Castile came under the joint rule of their respective monarchs. A royal marriage does provide a practical symbol of unity, but the fact is that each of those kingdoms kept its independence and continued to be governed separately and according to its own laws.³ It would take centuries for Castile's avowed expansionist designs over the whole peninsula to be realized, gradually turning a collection of royal possessions into a unified state. Some observers hold that Spain as we know it is in fact a fairly recent creation.⁴

In 1516 a Flemish prince, Charles V, inherited the Iberian kingdoms together with several other territories in Europe. Betting on the future of the American enterprise, which was being launched as a Castilian monopoly, he set the stage for his heir, Philip II, to make Castile the center of the empire. Castilian bureaucracy relentlessly promoted a pattern of administrative and political homogenization for the whole Peninsula. As Spain's grip on Europe declined in the seventeenth century, due to imperial overreach and the re-emergence of France, political tensions flared up

² Most recently, for instance, President Mariano Rajoy: "... creo en la nación española, la nación más antigua de Europa, con más de quinientos años viviendo juntos..." Quoted, among others, by *La Voz de Galicia*, April 8, 2013.

³ "The union of the Crowns of Castile and Aragon as a result of the marriage of Ferdinand and Isabella had left Catalonia with its system of government formally unchanged." (Elliott 1989: 73) "The new Spain was [...] a plural, not a unitary, state, and consisted of a series of separate patrimonies governed in accordance with their own distinctive laws." (Elliott 1990: 78)

⁴ "The modern centralized Spanish state was [...] in large measure the creation of nineteenth-century liberalism. It developed centralized institutions and modern national law codes on the basis of the "Spanish nation", which became a constant reference". [...] "...there was no flag until 1843, no real national anthem, few new national monuments, a very weak national school system, and no genuine universal military service". (Payne 1999: 7)

among the different peoples under the Spanish king. In 1640 both Portugal and Catalonia rebelled against royal power and for independence. In the case of Catalonia, the war ended in a political stalemate with Castile (and the loss of Roussillon and Conflent to France). However, seventy years later, the War of Succession led to the defeat of the Catalan army, the imposition of absolute rule by the Bourbon dynasty, and the banning of all Catalan institutions, including its powerful, five-centuries-old parliament.

The unified Spain that had finally been created by right of conquest in the eighteenth century was a backward society, with the state living on the wealth wrested from a shrinking empire. The decadence was made more obvious after the loss of most of the American colonies in the early nineteenth century. From then on, the history of Spain can be told as the story of a society's inability to evolve from a failed empire to a workable nation-state.

The only relative exceptions to the general decline were the so-called historic nations. The industrial revolution only took hold in Catalonia and the Basque country in the nineteenth century. In Catalonia, the economic recovery would allow a rebirth of a culture that had been, and would remain, persecuted. And from there, a budding political project would emerge. Even though in those days Europe's borders were being redrawn and new states were appearing as nations struggled to pull themselves free from crumbling empires, Catalonia chose to carry on within Spain for two reasons: the military strength and authoritarian tendencies of Spain reminded Catalans of the terrible consequences they suffered the last time they defied the state; and, in those days of economic nationalism and captive markets, the need to have access to the Spanish market for their industrial products. Still, Catalans pursued a modicum of cultural and political autonomy through different strategies. They led an attempt to establish a federal state under the first republic of 1873-74 – which was quickly put to rest by a military coup and the

restoration of the Borbouns to the Spanish throne. Challenging the corrupt electoral system of that period, they finally obtained a minimal level of administrative autonomy in the pre-World War I period. In the wake of World War I and Woodrow Wilson's international doctrine on the right of self-determination, the Catalan regionalist movement launched a campaign for a fully-fledged autonomous status. The campaign, that finally failed due to Spain's resistance, eventually triggered the imposition of a military dictatorship in 1923 and the outright repression of Catalan language and culture.

With the collapse of the monarchy and the introduction of democracy and the Spanish republic in 1931, the Catalan question came back to the fore. For the Republic to prevail over its many enemies –the royalists, the military, the church establishment and a small but pesky group of newcomers, the fascists– the Catalans' participation was essential. In exchange, the Spanish republican parties agreed to give Catalonia a measure of autonomy in the form of a self-rule charter, the first *Estatut*. Even though that concession came without an honest acknowledgement of the national exception, thereby upsetting the Catalan public, many in Spain considered it excessive and led to the first military insurrection (in 1932) against what many saw as the breakup of Spain. This was the prelude to another coup, in 1936, and the start of a three-year civil war. That the "Catalan question" was an important motivation for those supporting the military uprising is clear from their own statements.

Most Catalans stood by the Republic and lost again. With the occupation by Franco's *nacionales*, another dark period began for Catalonia. All their re-established institutions were dissolved, and anything that might suggest that Catalans were anything other than ordinary Spaniards, beginning with their language, was ruthlessly persecuted. Once again, Catalans had no choice but to work quietly to redress their economy while trying to preserve as much as they could from their

culture, often in clandestine ways. This was the state of affairs at the time of Franco's death in 1975.

2. THE PROMISES OF CONSTITUTIONAL RULE

After Franco's death a new regime that was acceptable to the other Western European nations had to be installed in Spain. For the forces of change to prevail over a still-powerful Francoist old guard, Catalans and Basques needed to be brought on board. A permanent demand of those communities was the recognition of their national character and the need to give it a political expression. That principle had been endorsed by all in the Spanish pro-democracy movement during the dictatorial period, but when the time came to make it effective, the political players leading the transition in Madrid proved to be as intrinsically centralist as their predecessors. The notion of various national communities coexisting as equals within the state was strongly resisted, and the result was the ambiguous wording that finally found its way into the 1978 Constitution. In an article that would prove to be open to conflicting interpretations, a distinction was made between the constituent "regions" and "nationalities", while the Spanish state reserved for itself the title of "Nation".⁵

Many Catalans chose to read into that a recognition of their historic rights and, consequently, the acceptance of a differential status for their community, allowing it to develop on its own terms and in line with its specific needs. A charter laying down the bases for the effective exercise of Catalan self-government, a second *Estatut*, became an organic law in 1979. This was thought to

⁵ Art 2 of the Constitution reads: "La Constitución se fundamenta en la indisoluble unidad de la Nación española, patria común e indivisible de todos los españoles, y reconoce y garantiza el derecho a la autonomía de las nacionalidades y regiones que la integran y la solidaridad entre todas ellas."

mark the beginning of a mutually beneficial relationship with the state, and Catalans honestly set out to fit in the new order. It was hoped that nudging a self-absorbed Spain to open up to European influences and promoting the country's economic prosperity and political stability would bring along the necessary societal change on which to build such a relationship.

But, if a deal had ever been struck, Spain soon gave signs of wanting to go back on it. As early as 1981, an attempted coup was interpreted as a signal from the military to scrap the idea of a differential treatment for Catalans and Basques. In 1982, the two parties that held the majority in Spain –though not in Catalonia– agreed on a process leading to the virtual equalization of all "autonomous communities". Diluting the meaning of political autonomy by spreading it out among 17 entities, most of them artificially created only months before, was their way of rejecting the principle of genuine self-government for the historic nations.

This indicated a fundamental disagreement about what the new organization of the state was about. When signing up for the Spanish project in 1978, Catalans had thought that it would eventually evolve into a federal-style arrangement, in which most matters would come within the exclusive jurisdiction of the re-established Catalan parliament and government, and that a bilateral relationship would be instituted with the central state. Now it was becoming apparent that from the Spanish point of view, autonomy meant little more than decentralizing part of the administration and farming out the onerous provision of services like health and education, while the central government would still have the last word on all essential policy-making, not least through its control of the collection and allocation of fiscal revenues.

Those two opposing views of the shape that the post-Franco regime should take would not converge in the next thirty years. On the contrary, throughout that period Catalans found

themselves having to spend a lot of energy defending some basic notions that they thought had been settled for good. A pattern emerged of constant encroachment on self-government through laws and regulations, in an effort to exert control over areas that were supposed to be beyond the state's jurisdiction, always in a way that suited the central government's interests.⁶ Even more worrying was the realization that the Catalan cultural exception was not going to be accepted by unitary Spain. The traditional hostility towards the Catalans' distinct personality, expressed most visibly in their language, had clearly not died away.

Despite a climate of growing disenchantment, frequent attempts were made by the Catalan side to put things on a different track, with little success. Until, in 2005, the Catalan Socialist Party, then leading the tripartite coalition in power in Catalonia, saw an opportunity after a presumably more receptive government had been elected in Madrid under Mr. Zapatero's fellow Socialists. On the strength of the promise made by Mr. Zapatero in november of 2003 to support a new Estatut approved by the Catalan parliament, all political parties in Catalonia were enlisted –except the PP, which opposed the idea and worked to sabotage it from the start– in an effort to draft a new self-rule charter incorporating the quasi-federal concept of devolution that the Catalan side had always advocated. Moreover, to guarantee the autonomy of the Catalan government against the central state's systematic interventionism, the new Estatut was drafted employing very detailed, almost cumbersome wording.

Even before its contents or its purpose were known, the idea of a new *Estatut* for Catalonia was met with suspicion all over Spain, where it was viewed as a separatist ploy. The fiercest attacks – coming mostly, but not only, from the PP– included calls to boycott Catalan products and found

⁶ For the most recent and exhaustive analysis on the legal encroachment of the central state, see the report published by the Institut d'Estudis Autònoms (2013).

considerable popular support among large sectors of Spanish society. The process carried on nevertheless, in full compliance with the procedure laid down by Spanish law. The Catalan parliament debated and agreed on a consensus text taking into account the more tepid thinking about self-government advocated by the Socialist party. That was submitted to the Spanish Cortes, where, presaging what was to follow, several important elements from the original were struck down. This watered-down version would then be resignedly endorsed by Catalans in a referendum in which the low turnout was a first sign of their disappointment with the whole process. The new *Estatut* was duly signed by the King and thus became an organic law of the state, but that didn't keep the PP from challenging it on constitutional grounds.

In 2010, ending a five-year period of uncertainty, Spain's Constitutional Court, -- with one vacant position and three members serving with expired mandates due to the lack of agreement of Spain's two main parties to appoint new judges --, gave a ruling. Alleging technical adjustments needed to align the text with the 1978 Constitution, several articles were totally or partially invalidated, while others were seriously undermined by an interpretation that was contrary to their original spirit. In the end, the resulting *Estatut* was no better than the previous one, and in any case it didn't solve any of the problems that had called for the revision. But, beyond the more practical aspects, there was in the Court decision an ugly undercurrent that went to the heart of the matter. It was expressly stated that the term "nation" used to refer to Catalonia in the preamble had no legal value. And to rub that in, the new text included eight references to the "indissoluble unity of the Spanish nation". This meant denying Catalans any collective rights as a people and shutting the door to any possibility of a bilateral relationship with the central government.

What was essentially a unionist proposal, in so far that it aimed to find a practical solution to the state organization by defining the place of an autonomous Catalonia in a decentralized Spain, had been misinterpreted as a step towards separation. So everyone in Spain was happy with the court's decision. By pulling the teeth out of the *Estatut*, it was thought, the latest Catalan scheme had been derailed, and the intractable "Catalan question" had been put off at least a few years. This was a serious mistake. If accepted in its original form, the new *Estatut* would have guaranteed the continuation of the Spanish enterprise. Of course, the price of unity would have been some loss of the control enjoyed by the Madrid-centered establishment. So, for the powers that be in the capital, the dilemma was between ceding part of that control, as Catalans were proposing, or taking a hard line, even if that meant antagonizing the Catalan people and risking an escalation of tension. Madrid chose the latter. What they failed to realize was that the new *Estatut* represented a strict minimum for Catalans to go ahead with the Spanish venture. The message from the Court had been to set the limits to Catalan self-rule and, in fact, to what Catalans could expect from their belonging to Spain. This naturally generated in Catalonia a spate of indignation. Catalans felt they had been cheated when they agreed to a game where the deck was stacked against them. And it was all the more irritating because almost five years and much energy had been wasted in the *Estatut* project.

Although pro-secessionist sentiment had been growing since the rebuttal of the new *Estatut* in the Spanish Cortes (see Figure 1), the Constitutional Court's decision marked a decisive tipping point. Starting in the fall of 2009, Catalans had been organizing, without any institutional support, local referenda on independence that involved more than half a million voters. In July 2010, barely two weeks after it had been issued, close to a million people marched in protest in Barcelona with the theme "We are a nation, it is for us to decide". From then on, more and more

Catalans would come to the conclusion that the Spanish way had been shut for them and choose to start on a separate road.

Catalan political representatives were taking good note of those developments. A new administration under President Artur Mas was elected in November 2010. These were times of crisis and the economy had taken center stage. It was deemed essential to put more resources to the service of Catalan society by stopping the constant drainage of funds from Catalonia to the central government. This was an issue around which every social and political group in Catalonia was in agreement, and Mr. Mas made a commitment to propose to the central government what he called a new fiscal pact with the state.

But by then the Catalans' exasperation had been growing far beyond the financial aspects, creating a gradual but steady shift in public opinion. Pro-independence feeling that only a few years before barely represented one sixth of the electorate was fast becoming the majority option. On September 11, 2012, most of the 1.5 million who marched in the Catalan National Day demonstration that made headlines around the world were openly demanding independence.

Only a few days later Mr. Mas made a last-ditch attempt to put across his proposal of a negotiation on the fiscal pact, which was contemptuously spurned by Spanish President Mariano Rajoy. This prompted Mr. Mas to call a snap election with only one major campaign promise: the Catalan people would be given the chance to vote in an official referendum about their future relationship with the Spanish state. Although Mr. Mas's coalition didn't win by the landslide it expected, this was because many voters opted for a more openly pro-independence party. All in all, the elections of November of 2012 gave a two-thirds parliamentary majority to the parties in favor of holding a referendum – the remaining third being equally split between those that

opposed any consultation and the socialist party, which wants to hold a referendum mainly to promote a federal reform of the constitution.

3. THE PATH AHEAD

After issuing a parliamentary declaration stating that Catalonia is sovereign to decide its future, the Catalan government has started to lay the necessary groundwork to hold a referendum in 2014. As part of the process, the regional government has promoted several political initiatives: 1/ it has set up a group of experts in the form of an Advisory Council for the National Transition (CATN) to examine the legal and institutional steps that are needed to hold a referendum; 2/ it has convened a broad civic platform, that now includes the main Catalan trade unions, a major part of the business community and a broad swath of social and civic associations, including representatives of immigrant communities, that has agreed to support the right to hold a consultation; 3/ it has recently committed itself (with the support of two thirds of the parliamentary seats) to set a date and a question for a referendum to be held in 2014; 4/ it has informed the Spanish government about these steps and has invited it to agree on the celebration of a referendum.

As thoroughly discussed in the first report issued by the Advisory Council (CATN), holding a referendum on self-determination is legitimate and legally possible. As of today, the legitimate use of the principle of self-determination is defined by two main bodies of legal and jurisprudence doctrine. On the one hand, the opinion of Canada's Supreme Court on the case of Quebec (followed by the Clarity Act), where the Court acknowledges that even if the Quebecois government cannot "invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation", Canada has "no basis to deny the right of the

government of Quebec to pursue secession”.⁷ The ideals that inspire this opinion lie behind the recent agreement between Scotland and Britain on the Scottish referendum of September 2014. On the other hand, an opinion issued by the International Court of Justice in 2010 on the case of Kosovo states that the international law does not forbid the right of self-determination provided it is done through peaceful and democratic means.

The Spanish legal order provides at least five channels to consult the Catalan people on their opinion about the future status of Catalonia. Three of them depend on the explicit will of the Spanish government, which may directly authorize a (non-binding) referendum in Catalonia (art. 92 of Spanish constitution), delegate the power to hold one to the Catalan government (art. 150.2), or reform the constitution (through the procedure established in art. 167 and already employed in the summer of 2012 to constitutionalize the deficit limits agreed by the EU). At this point, however, the Spanish government has declined to respond to the request of the Catalan government one way or another. In fact, the Spanish government has not even entertained the possibility – raised by a reduced minority of Spanish intellectuals and journalist – to engage in some form of meaningful dialogue or negotiations that could accommodate the demands of Catalan society.

In turn, the Catalan government can hold referenda directly through two means: according to the current Catalan law on referenda; and using a new law (now under discussion in the Catalan Parliament) on political consultations.⁸ In both cases, however, the central state could always challenge the law (or its application) before the Constitutional Court: given the dubious

⁷ Canada Supreme Court. Reference re Secession of Quebec. File No: 25506. 1998.

⁸ The distinction between referenda and political consultations follows a sentence of the Spanish Constitutional Court of 2008.

independence of this court (the current president was a former member of the Popular Party and has published a book that contains demeaning remarks about Catalans), the likelihood that the Catalan referendum could be technically blocked is high.

As pointed out before, both the Catalan government and the Catalan parliament have committed themselves to hold a referendum in 2014 – simply responding to massive popular demands, as confirmed by continuous polls. If, for purely political reasons, the Spanish government blocks it, the Catalan government could (and in fact it has already stated that it would) resort to holding fresh parliamentary elections. Those elections would then work “as if” they were a referendum, that is, the electoral campaign would most likely pivot around the exercise of self-determination and the will of Catalans to become independent or not.

Although the Spanish Senate is empowered by the art. 155 of the constitution to suspend an autonomy, the likelihood this could happen seems low as of today. It would certainly not solve a problem that would come in all the elections (local, Spanish, European) to be held in the future. There are two things that make the current Catalan movement strong. First, it is a truly popular movement that has developed spontaneously and independently from political parties. As such, it cannot be put back into the bottle through some kind of opaque deal among political elites. Second, it is an extraordinary civic and peaceful movement, as attested most recently by the demonstration of September 11, 2013, where 1.6 million people held hands along 400 km from northern Catalonia till the region of Valencia demanding independence in a festive, orderly manner. This has nothing to do with the violent and exclusionary activities that sometimes have accompanied other national popular movements in Europe. On the contrary, the Catalan process toward self-determination invokes, both in its form substance and forms, the true spirit of

democracy. It therefore calls for a generous political response from Spain – in the form of a political referendum on the future status of Catalonia.

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TABLE 1. CATALAN PUBLIC OPINION ON THE PROCESS OF SELF-DETERMINATION

1. Catalan Public Opinion on Referendum for Self-Determination

	YES	NO	Doesn't Know/ Doesn't Answer
September 2013	80.5	14.6	4.9
September 2012	75.3	16.0	8.7

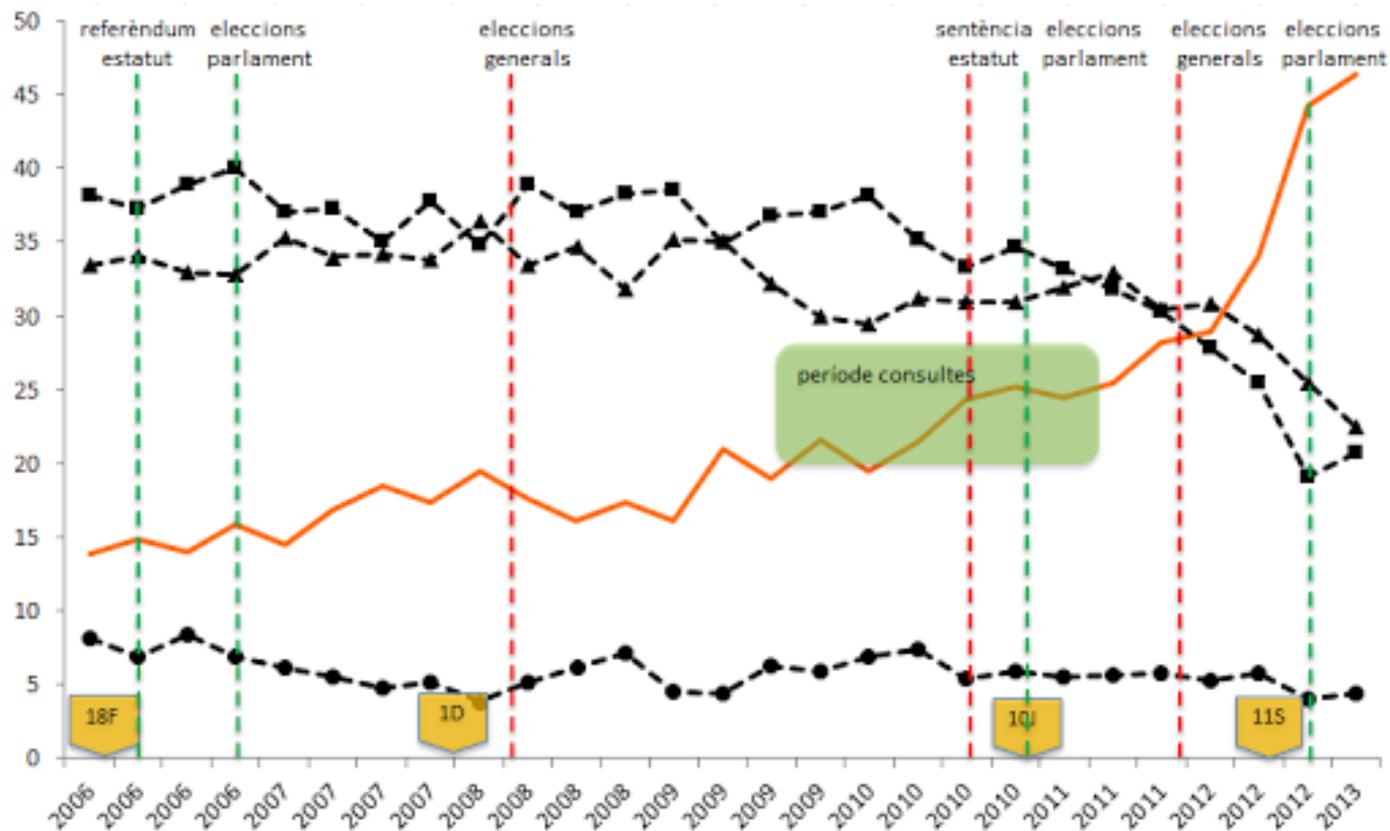
2. Catalan Public Opinion on Independence

	YES	NO	Abstain	Doesn't Know/ No Answer
September 2013				
a/ Would you vote for independence?	52.3	24.1	7.7	15.9
b/ ... even if Spain offered fiscal pact?	46.8	27	na	na
c/ ... even if Catalonia were excluded from EU?	47.4	27	na	na
September 2012	49.6	26.6	5.9	17.9

Source:

http://www.cadenaser.com/espana/articulo/52-catalanes-favor-independencia/csrsrpor/20130911csrsrnac_2/Tes

FIGURE 1. THE EVOLUTION OF CATALAN PUBLIC OPINION OVER TIME, 2006-2013



Percentage saying Catalonia should be

_____ an independent state

▲--▲--▲ a federal state within Spain

■--■--■ an autonomous community

●●●●● a region

Source: www.elpatidescobert.cat