

II Countries and Regions, 14 Constitutional Crisis in Spain: The Catalan Secessionist Challenge

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The Catalan Secessionist Challenge

Introduction

In the past few years, a strong secessionist movement has emerged in Catalonia, one of the most economically advanced regions in Spain. Its leaders have encouraged and actually performed acts of legal disobedience to reach their ultimate goal: separating Catalonia from the rest of the country. They have developed the argument that the Spanish Constitution (as interpreted by the Constitutional Court) is unfair to the extent that it does not permit Catalans to decide in a referendum whether to exit from Spain. Separatist leaders therefore think it justified for citizens and political representatives to take the necessary steps to guarantee the Catalan people's "right to decide" their future, and to implement secession if the majority of voters express their support for it.

The Spanish authorities have reacted in various ways to the political and institutional actions Catalan separatists have engaged in. There is no doubt that the situation reached a critical point in the fall of 2017, when Catalonia's regional parliament formally declared independence from Spain on October 27 and a Catalan Republic was proclaimed. The strength of the national Constitution has been put to a test by this extraordinary episode.

In this chapter, I will describe and comment on the key events that have led to the current state of affairs. I will then highlight some features that the Catalan secessionist movement exhibits, which make it a variety of political populism. And I will end (p. 228) with a brief note on the difficulties of working out a constructive solution to overcome the constitutional crisis.

The Constitutional Framework

In order to understand the current political situation in Catalonia, it is first necessary to say a few words about the Spanish Constitution and the quasi-federal order it has established.¹

After the end of Franco's dictatorship (1936-1975), free elections were held in Spain in June 1977. The democratic parliament formed as a result of the elections decided to enact a new constitution for the country. During the parliamentary deliberations, it was clear in everyone's mind that one of the biggest issues on the constitutional table concerned the distribution of power between the central government and the regions.

Two territories, in particular, had traditionally exhibited a strong nationalist sentiment: Catalonia and the Basque Country. Historically, nationalist groups in both territories had struggled to secure regional autonomy. Under the Constitution of the Second Republic (1931-1936), Catalonia in 1932 and the Basque Country in 1936 were granted political powers through "Statutes of Autonomy," after popular referenda were held in those regions. Franco's dictatorship put an end to regional self-government. The political forces that worked for decades to undermine the dictatorship and bring back democracy were in agreement that both individual liberties and regional autonomy were to be restored.² So it was uncontested that the new democratic order to be set up after Franco's death would have to accommodate regional self-government. The Catalan and Basque nationalist parties present in the Spanish parliament in 1977 certainly pressed for it.

As a result, the Constitution finally adopted in 1978 laid down the conditions under which political power would be decentralized. Catalonia and the Basque Country were the first territories to be awarded self-government in 1979. Other regions came later. In the end, all the territory of Spain was divided into seventeen self-governing units called "Autonomous Communities" (*Comunidades Autónomas*). Each Community has its own parliament, government, and public administration, which exercise their competences in various spheres of social, economic, and political life. Not all the territories enjoy the same degree of authority, however. Some Communities have greater powers (p. 229) than others. Although reforms were introduced in the 1990s to reduce the differences among the Communities, Catalonia still enjoys a higher level of autonomy than most other territories (regarding, for example, private law, language, police, and prisons).

The Catalan regionalist parties, moreover, have often played a key role on the Spanish national stage. When general elections have been held in Spain and the dominant political party (either the Socialist Party or the Popular Party) has not obtained an absolute majority of the parliamentary seats in Congress, agreements have typically been negotiated with the Catalan (and the Basque) regionalist political forces to gather the necessary votes to appoint the prime minister and his cabinet. On many occasions, such forces used their seats in Congress to exercise considerable political influence, thus helping shape the public policies that the central government implemented for the country as a whole. The Catalan (and Basque) nationalist parties have also used their bargaining chips to safeguard regional self-government and to introduce reforms to increase its scope. This has been the case, for example, in connection with fiscal matters.

The 2006 Statute of Autonomy of Catalonia

A new period in the evolution of Spanish constitutional politics began in the early 2000s, when some political parties in Catalonia decided to enact a more ambitious Statute of Autonomy, after more than two decades of regional self-government.³ There was also talk in many political and academic quarters on the need to amend the Spanish Constitution, in order to better articulate the distribution of competences and the relationships between the state and the regions, reform the Senate, strengthen the links between the constitutional

legal order and the European Union, and eliminate a constitutional provision on succession to the Crown that discriminates on gender.

When the Socialist Party won the elections in 2004, the new government under José Luis Rodríguez Zapatero proposed some constitutional reforms along such lines. It failed, however, to obtain the necessary agreement of the Popular Party in the opposition. To amend the Constitution, the general rule is that a supermajority of three-fifths of both Congress and the Senate is required. So the plan to modify the Constitution had to be abandoned for lack of parliamentary support.

It was in that scenario that the Catalan government headed by Pasqual Maragall, with the support of the Socialist Party and the central government, started the procedures to reform the Catalan Statute of Autonomy. A draft of a completely new Statute was produced by the Catalan parliament in 2005. The draft was then sent to the Spanish legislative assembly, which introduced some relevant changes. The main party in the (p. 230) opposition, the Popular Party, voted against the new Statute. Actually, it decided to launch a frontal attack against it. It organized a campaign throughout Spain, collecting signatures to petition the government to hold a nationwide referendum whose ultimate goal was to block the passage of the Catalan Statute. The Popular Party gathered 4 million signatures. (Spain had a total population of 45 million at that time). Many Catalans felt indignant about this political move. The speeches uttered during this campaign were sometimes full of prejudices against Catalan self-government. Prime Minister Rodríguez Zapatero refused to hold such a referendum. The final text of the Statute of Autonomy, after its approval by the Spanish Parliament, was submitted to the Catalan people in a referendum that took place on June 18, 2006. Although voter turnout in the referendum was low (around 49 percent), the vast majority of citizens who went to the polls voted yes (74 percent). So the Statute was finally enacted into law.

The Statute, however, was problematic from a constitutional perspective. To a large extent, it tried to introduce changes that only a constitutional amendment could bring about. The Popular Party thus decided to challenge the Statute before the Constitutional Court. Unfortunately, it took a long time (four years) for the Court to hand down its decision.⁴ When it did, it declared that some parts of the Statute were unconstitutional, as most scholars had already warned they were. Other parts were saved through interpretive techniques, while others were found to be perfectly constitutional. It bears emphasizing that the Court was unanimous as to the unconstitutionality of the provisions that were declared invalid. Dissenting opinions were filed, but what the dissenting judges said was, while they agreed with the majority on the invalidity of the provisions that were annulled, they were of the view that other provisions should also have been struck down.

It is important to note that for the Statute of Autonomy to be reviewed by the Court, it was not necessary for the Popular Party to bring a constitutional challenge. Nonpolitical actors would have triggered the Court's jurisdiction anyway. In particular, ordinary judges handling specific controversies could have raised many questions to the Court. So there was no need for the Popular Party to bring an abstract review challenge, with all the political drama that such an action entails.⁵

The Court's decision, in any event, contributed to Catalan disappointment. Even if the decision was rather technical and did not deviate significantly from the existing case law, many citizens found it hard to accept that a Statute of Autonomy that had been approved in a popular referendum could be partially struck down by a judicial body. The Court, moreover, was rather clumsy when it refused to give its constitutional imprimatur to the idea that Catalonia is a nation, an idea that the Preamble of the Statute expressed. The Court could have found subtle ways to accommodate this notion within the Spanish (p. 231) constitutional order. When the Court's decision was announced in the summer of 2010, a

huge demonstration was organized in Barcelona in protest. People shouted in the streets: “We are a nation. We decide.”

The Rise of the Secessionist Movement: The Elections of November 2012, and the Popular Consultation of November 2014

It is against this background that one has to understand the rise of the secessionist movement in recent years. It is also important to bear in mind that Spain was gravely hit by the global economic crisis that started in 2008. Both the Catalan government and the Spanish government had to take drastic measures within their spheres of competences to confront the situation. Among other things, they had to raise taxes and cut public expenditures, which harmed many people. In addition, various corruption scandals affected the Popular Party, which was governing Spain since the 2011 elections with Mariano Rajoy as prime minister, as well as the main Catalan nationalist party at that time (*Convergència i Unió*), which had won the Catalan elections in 2010 and had placed Artur Mas in the presidency of the Catalan government. For all these reasons, many citizens in Catalonia were frustrated and angry at their political representatives. It is noteworthy that in June 2011, crowds surrounded the Catalan legislative assembly and made it difficult for the political representatives to enter the building. The Catalan president and the president of the Catalan Parliament had to use a helicopter to get there.

In such circumstances, two powerful associations in Catalonia (*Assemblea Nacional Catalana* and *Omnium Cultural*) started to organize demonstrations in the streets to advance Catalonia’s independence. They enjoyed the support of the Catalan government and public media (especially Catalan public television). The most impressive meetings and marches took place in the context of the festivity of the Catalan *Diada Nacional*, which is celebrated on September 11 every year. In 2012, the associations gathered many people in Barcelona under the banner, “Catalonia, the next European state.” The following year, they organized a human chain in favor of independence, that ran from the north to the south of Catalonia. Similarly massive events were arranged the following years.

The Catalan parliament was soon sensitive to this popular current in favor of secession. The elections held on November 25, 2012 produced a parliamentary majority in favor of organizing a referendum on independence. The Catalan president, Artur Mas, was committed to this plan. In January 2013, a parliamentary resolution was passed proclaiming that the Catalan people were “sovereign” and had the “right to decide” their future. A referendum on secession was consequently to be called. (The Constitutional Court later invalidated the resolution in part, and reinterpreted the rest of it in light of constitutional principles).⁶

(p. 232) The problem with such an initiative is that the Spanish Constitution provides that a referendum can only be authorized by the state, with the support of the absolute majority of Congress.⁷ This being so, the Catalan Parliament approved a resolution to request the Spanish legislative assembly to transfer to the Catalan government the authority to organize a referendum on the future status of Catalonia. The vast majority of the members of the Spanish Congress voted against the proposal: 299 voted against, while only 47 voted in favor, with one abstention. The two big parties, the Popular Party and the Socialist Party, were in agreement in their opposition to the referendum. They were against it for political reasons. They argued that it is not possible under the existing Constitution, as interpreted by the Constitutional Court, to hold a referendum on secession. A constitutional amendment would have to be passed to eliminate this obstacle.

Indeed, the Court had ruled in the past on a similar issue, when Juan José Ibarretxe, then president of the Basque government, wanted to hold a referendum to decide the future status of the Basque Country. The regional parliament had enacted a law in 2008 fixing the date of the referendum and the questions to be posed to the Basque citizens. The Spanish government under Rodríguez Zapatero brought a constitutional challenge to the law. In its decision, the Court held that it is not possible to submit to a popular vote a question that affects the foundations of the constitutional order, so that a decision in a particular direction requires the amendment of the Constitution.⁸ To modify the Constitution, the procedure established in articles 167 and 168 needs to be followed. According to these articles, a referendum is sometimes required, depending on the norms or institutions to be amended. But the referendum must take place at the end of the process, after a parliamentary supermajoritarian agreement has been reached. It is not possible to introduce an additional referendum at a preliminary stage, the Court reasoned.

As a reaction against the refusal by Congress to give its green light to the Catalan proposal to call a referendum on independence, the Catalan legislative assembly enacted a statute that regulated “popular consultations,” which could be convoked by the Catalan government on its authority. Such consultations were actually the same thing as referenda, just under a different name. On the basis of that statute, President Artur Mas issued a decree for a popular consultation on independence to be held on November 9, 2014. The central government under President Mariano Rajoy requested that the Constitutional Court suspend the operation of the statute and the decree. The Court did so. It later ruled, unanimously, that both acts were unconstitutional, for (p. 233) no relevant differences could be observed between a referendum, on the one hand, and the popular consultation that the Catalan statute had designed, on the other.⁹

In spite of several judicial rulings against it, a so-called “participatory process” nevertheless took place on November 9, 2014, organized by private associations with the support of the Catalan public administration. This was an informal process, primarily conducted by volunteers, but “official results” were given by the Catalan government: 2,305,290 citizens participated, and 80.76 percent voted in favor of independence. (There are about 6.5 million citizens in Catalonia). Two-and-a-half years later, on March 13, 2017, the Superior Court of Justice of Catalonia (*Tribunal Superior de Justícia de Catalunya*) convicted the Catalan president Artur Mas and some members of his cabinet for having disobeyed the Constitutional Court’s orders to stop the popular consultation and the participatory process. Artur Mas was sanctioned with a fine and was barred from holding public office for two years.

The Catalan Parliamentary Elections of September 2015 and the Referendum of October 2017

The next elections, held on September 27, 2015, were the turning point in this story. The political parties that advocated secession (*Junts pel Sí*, and *CUP*) were very explicit during the electoral campaign that a vote for them was to be counted as a vote in support of secession. So the elections were given a “plebiscitary” character: they served, indirectly, as a referendum on independence. In the end, the popular vote the separatist parties gathered was less than 50 percent: they obtained 47.74 percent. It was a good result, but not the victory they had expected. Because the electoral system is not purely proportional, however, the separatist groups managed to get a majority of the parliamentary seats. On this fragile basis, they argued that they had received a democratic mandate to break Catalonia’s ties with Spain.

On November 9, 2015, the secessionists passed a parliamentary resolution triggering the process to build an independent Catalan Republic. From then onward, the resolution stated, the Catalan government was exclusively bound by Catalan laws. The resolution also declared that the Spanish Constitutional Court had lost its legal authority to invalidate any decisions made by the Catalan government. The Constitutional Court, of course, later held such a resolution to be unconstitutional.¹⁰

As soon as Carles Puigdemont was installed as the new Catalan president, the secessionist strategy continued. Initially, the plan was to construct an independent Catalan Republic in one year and a half. The democratic legitimacy for doing so was said to derive from the secessionist parties obtaining a majority of the legislative seats. (p. 234) As the deadline approached, however, the plan was reconsidered. The idea of having a referendum on independence returned to the political agenda.

The climax was reached in September 2017, when the Catalan Parliament passed two important statutes through a fast-track legislative procedure that eliminated all the rights of participation that the parties in the opposition normally enjoy. One statute called for a referendum on independence to be held on October 1, 2017. The other stipulated the procedure to be followed when declaring Catalonia's independence and giving birth to a new Catalan Republic. According to these laws, if the referendum showed that the popular votes in favor of independence outnumbered those against, the Catalan Parliament would be under the duty to issue a declaration of independence two days after the official publication of the results. A provisional set of laws would then apply, until a new constitution for the new Catalan Republic was adopted.

These political moves obviously amounted to a grave attack on Spain's constitutional order. Under the Spanish Constitution (as is true of almost all democratic constitutions in the world), it is unlawful for a region to unilaterally secede from the rest of the country.¹¹ The Spanish Constitution does not recognize the right of Catalans to "choose secession." Nor does the principle of self-determination of peoples, that is part of public international law, extend such a right to Catalans. No situation where international law is generally regarded to cover a right to secession obtains.¹² Catalonia is not a colony. Its territory has not been occupied by a foreign country. And its citizens are not victims of systematic human rights violations by the Spanish state.

As expected, the Spanish government challenged those two statutes before the Constitutional Court. The Court quickly suspended their operation by way of interim measures.¹³ The Catalan authorities decided to proceed according to their plans in spite of it all. The Spanish government, the prosecutors, and the judiciary adopted various measures to neutralize the logistics of the referendum. The technical infrastructure was their target. The judiciary, in particular, ordered the police to prevent the referendum from taking place. In the end, however, many people went to the polling stations on October 1 and managed to cast their ballots. Only a few stations were closed, affecting 770,000 citizens, according to the information provided by the Catalan government. The official results were these: 90.18 percent voted in favor of independence, while only 7.83 percent voted against. (Out of 5,313,564 citizens who were entitled to participate, 2,286,217 votes were counted). No procedural guarantees were in place, however, so the official results were unreliable, as international electoral observers concluded.

(p. 235) In various polling stations, there were clashes between the state police forces (*Policía Nacional* and *Guardia Civil*) and crowds that tried to prevent the seizure of the ballot boxes. Some people were injured. The evidence of police excesses generated a major

scandal, both in Spain and internationally. Thousands of citizens took to the streets on October 3 to express their outrage against the police.

In spite of the unlawful character of the referendum, the Catalan government decided to regard it as valid. It published the results and argued that there was now, finally, an unquestionable democratic mandate to proclaim the independence of Catalonia.

Then, on October 4, in the middle of the political turmoil generated by the illegal referendum and the moves toward secession, King Felipe VI made a grave speech to the nation expressing his opposition to the illegal actions of the Catalan authorities, as well as his endorsement of the necessary measures to be taken to restore constitutional order. The king's words helped strengthen the unity of the two largest political parties (the Popular Party and the Socialist Party) in support of the extraordinary measures that Prime Minister Rajoy would employ.

The Proclamation of the Catalan Republic and the Spanish Government's Reaction

As already indicated, one of the statutes that the Catalan Parliament had passed in September 2017 established that the declaration of independence was to be issued within two days of the publication of the results of the referendum, in the event of a secessionist victory. This deadline was not observed.

A first meeting took place in Parliament on October 10, where President Puigdemont expressed the position of his government. He assumed the mandate to declare Catalonia's independence, but suspended the effects of a declaration of independence. No debate took place and no parliamentary resolution was adopted. It was not clear what the legal impact of Puigdemont's words were.

As a response, Prime Minister Mariano Rajoy announced that its government would use the extraordinary mechanism detailed in article 155 of the Spanish Constitution to stop the secessionists. This article (which is taken with some alterations from article 37 of the German Constitution) empowers the central government to issue measures to confront a regional government that fails to comply with its constitutional or legal obligations or that gravely attacks the general interest of Spain. The consent of the Senate is required for such measures to be implemented. This mechanism had never been employed before.¹⁴

(p. 236) After some days of great confusion and anxiety, the expectation in the morning of October 26 was that President Puigdemont would call early elections in Catalonia to neutralize the central government's announcement to resort to article 155. The press was informed that that was the plan. But some members of the secessionist parties had publicly criticized the idea in the previous hours. They regarded early elections as a betrayal of the promises made to the people as to the consequences of the referendum. In the end, President Puigdemont could not resist the internal pressures and chose to go ahead with a parliamentary declaration of independence. Thus, on October 27, an independent Catalan Republic was proclaimed by the Catalan legislative assembly. As knowledgeable observers expected, no government in the world recognized the new state and the European Union sided with the Spanish government.

That same day, the central government obtained the Senate's authorization to adopt the extraordinary measures that article 155 contemplates. Prime Minister Rajoy announced next day (a Saturday) the decision of his government to call early elections in Catalonia, to be held on December 21, 2017. He also announced the removal of the Catalan president and his cabinet. The Catalan public administration would therefore be subject to the supervision and the instructions of the central government.

After a quiet weekend, the following Monday brought a big surprise: Puigdemont and some members of his cabinet had fled to Belgium, while others remained in Spain. All of them were facing criminal charges. The highest courts in Spain (the *Audiencia Nacional* and the Supreme Court) were conducting the proceedings. (They still are at the time of writing). There is no reasonable doubt that organizing the illegal referendum of October 1, and coordinating all the actions that culminated in the proclamation of an independent Catalan Republic amounts to a breach of the law. There is also no serious doubt that the principal actors in this movement disobeyed judicial orders and used public money in an unlawful way. Such actions are defined as criminal by the Spanish Penal Code. There is room for controversy with regard to the crimes of sedition and rebellion the leaders are also being charged with.¹⁵ In any event, it seems inevitable that criminal sanctions will be imposed on them after the trial takes place in a relatively near future. So the courts handling these cases had to decide whether it was necessary to adopt provisional measures. They concluded that there was a risk that the criminal activity secessionists were being accused of might continue in the future, and thus ordered some of the leaders to be sent to prison as a provisional measure.

(p. 237) As expected, demonstrations were organized in Catalonia to protest against the central government's measures under article 155 and the judicial incarceration of the secessionist leaders. In this highly charged political atmosphere, the elections were finally held on December 21, 2017. There was a very high level of political participation: 79.04 percent of the people turned to the polls. The secessionist parties (*Junts per Catalunya*, *ERC*, and *CUP*) maintained their popular support: they gathered around 47.5 percent of the votes, which is almost as much as they had obtained in the previous elections of 2015. Because the electoral system is not purely proportional, as already noted, these parties achieved a majority of the parliamentary seats. It is thus likely that the new president will be chosen by the secessionist parties. Things remain uncertain at the time of writing. It is extremely unlikely, however, that Catalan separatists will pursue the same strategy in the future. The fact of the matter is that they have utterly failed to bring about Catalonia's independence and they have caused great collective damage. No country in the world has recognized the independent Catalan Republic. The European Union has expressed its clear opposition to illegal secession. The Catalan economy has suffered as a result of the political instability that secessionists have caused. Catalan society is deeply divided on the issue. Massive demonstrations in defense of the unity of Spain have already taken place in Catalonia. In spite of the significant percentage of citizens who have voted for the separatist political parties, they amount to less than 50 percent. There is no democratic mandate to construct an independent Republic. The vast majority of citizens who endorse independence, moreover, are not ready to engage in illegal acts and face the applicable penalties. Their social and economic situation is not so desperate as to make revolution a rational course of action for them.

Catalan Secessionism as a Form of Populism

How should we characterize Catalan secessionism? The movement has its own distinctive features, but it exhibits family resemblances with other political phenomena we normally associate with populism.¹⁶

A first characteristic of Catalan secessionism is its tendency toward a very simplistic political discourse. For Catalan separatists, the political world does not present complex problems that call for sophisticated solutions. Simple answers are to be given, that citizens can easily grasp. If the majority of Catalan citizens seem to be of the opinion that it would be better for Catalonia to leave Spain, the obvious thing to do, according to the secessionists, is to organize a referendum to test whether this majoritarian sentiment exists. If the answer is yes, then Spain must permit Catalonia to become a (p. 238) new independent state. A different approach is a betrayal of democracy. Political communities

have a “right to decide” whether to remain within the larger polities they find themselves in.

There is a well-known problem, however, that the specialized literature on secession has always discussed: How should we define the boundaries of the relevant group that is supposed to have a right to exit? And how should we deal with secessions within secessions? Historical experience shows that this is a real issue.¹⁷ In the case of Catalonia, for example, at some point a majority of Catalans may favor secession from Spain, but within Catalonia there is a large group of citizens who are concentrated in vast parts of the provinces of Barcelona and Tarragona that are clearly against independence. A name has already been invented to refer to this territory: Tabarnia. Would it not be fair, then, for this section of Catalonia to remain in Spain, while the other chooses to secede? This important question is thought to be ridiculous by Catalan secessionists, who consider that the unity of Spain is open to question, but the unity of Catalonia is not. To support their position, they ultimately have to rely on a nationalist assumption, according to which Catalonia is a true nation while Spain is an artificial combination of nations. But this is too simple a doctrine.

A second aspect of the Catalan secessionist movement is its endorsement of the idea that there is such a thing as a homogeneous “Catalan people,” and that the majority of the people want independence. We have already noted that the secessionist parties have never garnered more than 50 percent of the popular vote. In addition, it is critical to observe that the political preference for leaving Spain is strongly correlated to membership in particular social and cultural groups. As studies have revealed, someone whose parents were born in Catalonia is more likely to favor secession than someone whose parents come from the rest of Spain. A person who belongs to the middle class is more likely to support secession than a person from the lower classes. People who live in the rural areas are more prone to support secession than people who live in large cities. The complex composition of Catalan society and the significant cleavages that the issue of independence has already produced are suppressed by the prevailing rhetoric. Secessionists make a simple appeal to “the Catalan people” without any nuances. This helps them draw a contrast between the Catalan people and the Spanish establishment centered in Madrid—the state apparatus and the social and economic elite whose interests are served by it. The struggle for Catalan independence is thus presented as a populist struggle.

(p. 239) The denial of heterogeneity and pluralism goes so far that in many villages and towns in Catalonia the secessionist flag (the “estelada”) is displayed in local public buildings, as if it were the official flag. During the elections in recent years, major controversies have arisen when the Spanish organs in charge of supervising the fairness of the elections have ordered those flags to be removed, out of neutrality considerations.

A similarly populist move can be observed when Catalan separatists refer to Franco’s dictatorship as an example of Spanish authoritarianism, and they contrast the latter with the democratic spirit that—they claim—has historically animated the Catalan people. They neglect, however, that Catalonia was deeply divided during the Civil War and that significant sections of conservative public opinion in Catalonia were supportive of Franco. Again, the reference to an abstraction (the Catalan people) hides the inconvenient fact that Catalan society, like Spain in general, was tragically divided on many issues, leading to a civil war and a brutal dictatorship. It is instructive that on September 24, 2017, the president of the Catalan Parliament, Carme Forcadell, asserted in public that the Spanish executive and judicial authorities that were adopting measures against unilateral secession were acting “exactly in the same way as under Franco’s dictatorship.” Her words illustrate the extent to which the dichotomy between Catalan democracy and Spanish authoritarianism is deeply entrenched in secessionist discourse.

A third feature of Catalan political separatism that deserves emphasis is its pronounced tendency to lose all sense of proportion when assessing the defects and virtues of existing institutional structures. Catalan secessionists are ready to exaggerate the defects of current arrangements, and to minimize the achievements that past generations have made to improve collective life in Spain. Thus, secessionists portray Spain as a very centralized polity that shows no sensitivity toward the interests and the national identity of Catalan citizens. Some of their grievances may be justified to a certain degree, but they underestimate the progress that has been made.

They complain quite rightly, for example, that more visibility should be given to Catalan language and culture at the state level. This does not mean, however, that Spain has shown no respect for Catalan identity. In public schools in Catalonia, for instance, Catalan is the basic medium of instruction—Spanish plays only a minor role. The Spanish Constitutional Court has accepted this. It has held that parents have no right to insist on Spanish as the only working language for their kids in public schools. The Court has thus ruled that it is perfectly legitimate for the Catalan government to establish Catalan as the “center of gravity” of the educational system. The Court has also said, however, that the Spanish language cannot be totally excluded.¹⁸

It is also true that the way resources are distributed among the different regions in Spain is not fair enough, and that Catalonia (as well as some other wealthy regions) should receive more public goods than it currently gets. But this does not mean that (p. 240) “Spain robs us (Catalans)” of 16,000 million euros each year, as secessionists often say.¹⁹ Actually, Catalan separatists often argue that if Catalonia becomes independent in the future, the European Union will not be in a position to close its doors to the new state, given the wealth and industrial development that Catalonia exhibits. This suggests that being part of Spain has not been so terrible after all. Indeed, the existence of a protected Spanish market has historically been crucial for the growth of the Catalan industrial sector.

Similarly, it is uncontroversial that the Spanish government often issues laws and regulations that are so detailed that they drastically reduce the space left for regional self-government. A better system should be designed to safeguard regional autonomy against the legislative excesses from Madrid. It is an exaggeration, however, to say that Catalan self-government is minimal.

Secessionists also underestimate the extent to which the democratic system built around the Constitution of 1978 has been quite decent in terms of protecting fundamental rights. Spain was one of the first countries in the world to recognize same-sex marriage. (It did so in 2005). Under the existing Constitution, moreover, Spain has never responded to terrorism through laws allowing for unlimited detention of suspects without trial, as other nations unfortunately have. A key manifestation of the Spanish Constitution’s liberal openness is the absence of any substantive barrier to constitutional amendment, since no principles are entrenched. No restrictions exist in Spain, therefore, regarding the goals and programs that political parties can pursue. The Constitutional Court has insisted in its jurisprudence that the Spanish Constitution does not embrace a model of “militant democracy.” Over the years, secessionists have freely fought for their ideas in the political sphere and they have fully enjoyed the constitutional protection of freedom of speech, association, and assembly.

A fourth remarkable trait of the secessionist movement is connected to this lack of a sense of proportion. While Catalan separatists paint a very defective Spanish political system, they promise a rosy Catalan Republic. An independent Catalonia, they say, will be a model for the world: it will be a country like Denmark (but with nicer weather). They also describe a rather easy path to get to the future they envisage. They completely underestimate the economic, social, and cultural damage that would be produced if Catalonia were to sever its strong links with the rest of Spain through unilateral actions, such as the damage we

already witnessed in the fall of 2017 when the parliamentary declaration of independence was issued.

This connects with a fifth aspect of Catalan secessionism: its capacity to build epistemic shields to protect people from reality tests. Many citizens are led to ignore inconvenient facts or to interpret them in imaginative ways in order not to let the facts undermine (p. 241) their beliefs. It was instructive, for example, how people in secessionist circles reacted to the news that thousands of companies had decided to move their headquarters from Barcelona to Madrid (or to other cities in Spain) when those companies learned about the secessionist laws that the Catalan Parliament had passed in September 2017. The false story that the secessionist leaders were able to sell to many audiences was that the Spanish government had forced all those companies to abandon Barcelona in order to discredit the Catalan government.

When reality sometimes finally emerges, secessionists easily change gears. For a long while, for example, they contended that the European Union will help the cause of Catalan independence. When events proved them wrong, they started to criticize the Union. Thus, former president Carles Puigdemont declared on November 26, 2017, that the European Union is a “club of decadent countries,” where a few people govern to serve economic interests of questionable legitimacy. He suggested that a referendum should be called in Catalonia to ask citizens whether they want to be part of such a Union.

The Difficult Way Forward

So what is to be done? There is wide consensus among commentators that the key political figures should sit down and negotiate an agreement to confront the Catalan crisis.

According to some voices, the agreement should include the terms under which the Spanish government could permit Catalonia to hold a referendum on independence. The problem with this proposal, first of all, is that it is doubtful that such an authorization would be valid under the current Constitution, given the Constitutional Court’s case law, as already noted. More important, an existential question about the independence of Catalonia would produce enormous polarization among the citizenry, undermining the social fabric.

Instead of organizing a referendum to register the existence of a tiny majority for or against independence, it is much better to work out a middle-ground solution that can be accepted by a larger, much more stable majority. A package of reforms should be agreed upon by the relevant political representatives and offered to the Catalan people for a vote in a referendum. In that referendum, the secessionist forces could argue their case against the proposed reforms and in favor of independence. If the majority of citizens voted in favor of the package, the necessary legislative and constitutional changes would be introduced at a later stage.

There is no hope for progress, however, if there is only negotiation. There must also be a deliberative moment, when diverse citizens and political representatives try to explain why they think the way they do, and why they have developed the preferences they have. Big misunderstandings and false information could be eliminated through a deliberative process of some quality. It is also critical to restore feelings of mutual loyalty. (p. 242) It is hard for the Spanish leaders at the center to increase Catalan self-government, if this will only make it easier for Catalan authorities to create an institutional platform to achieve secession in the future. Conversely, secessionist sentiment will not tend to be reduced unless the higher level of political autonomy that may be granted to Catalonia is securely protected against future erosion by the central authorities. So the way forward to construct a political

solution to the Catalan problem is not easy at all. Only time will tell whether a successful constitutional reform is finally agreed upon.

Footnotes:

¹ For a general introduction to Spain's decentralized political structure, see Victor Ferreres Comella, *The Constitution of Spain. A Contextual Analysis* (Oxford: Hart Publishing, 2013), 161–199, and Eliseo Aja, *El Estado autonómico: federalismo y hechos diferenciales* (Madrid: Alianza Editorial, 2007). For a more detailed treatment, see Santiago Muñoz Machado, *Derecho Público de las Comunidades Autónomas*, Volume 1 (Madrid: Iustel, 2007).

² On the positions held by the different parties and groups in this regard, see Santos Juliá, *Transición. Historia de una política española (1937–2017)* (Barcelona: Galaxia Gutenberg, 2017), 453–496.

³ For an account of the recent historical period, see Jordi Amat, *La conjura de los irresponsables* (Barcelona: Anagrama, 2017).

⁴ STC 31/2010.

⁵ For a discussion of the pros and cons of abstract-review constitutional challenges filed by political actors, see Victor Ferreres Comella, *Constitutional Courts and Democratic Values. A European Perspective* (New Haven: Yale University Press, 2009), 55–70.

⁶ STC 42/2014. For comments on this judgment, see Enric Fossas Espadaler, “Interpretar la política: Comentario a la STC 42/2014, de 25 de marzo, sobre la Declaración de soberanía y el derecho a decidir del pueblo de Cataluña,” *Revista Española de Derecho Constitucional* 101 (2014): 273–300, and Victor Ferreres Comella, “The Spanish Constitutional Court Confronts Catalonia’s ‘Right to Decide’,” *European Constitutional Law Review* 10 (2014): 571–590.

⁷ See articles 92 and 149.1.32 of the Spanish Constitution.

⁸ STC 103/2008.

⁹ STC 31/2015, and STC 32/2015.

¹⁰ STC 259/2015.

¹¹ For a thoughtful comparative-law discussion of what constitutions say and should say about secession, see Vicki C. Jackson, “Secession, Transnational Precedents, and Constitutional Silences,” in *Nullification and Secession in Modern Constitutional Thought*, ed. Sanford Levinson (Lawrence: University Press of Kansas, 2016), 314–342.

¹² On this issue, the opinion of the Supreme Court of Canada concerning Quebec is instructive. See Opinion of August 20, 1998, “Reference re Secession of Quebec” [1998] 2.S.C.R 217.

¹³ The Court later ruled that the two laws were unconstitutional: STC 114/2017, and STC 124/2017.

¹⁴ On this mechanism, see Alberto López-Basaguren, “Regional Defiance and Enforcement of Federal Law in Spain,” in *The Enforcement of EU Law and Values: Ensuring Member States’ Compliance*, ed. András Jakab and Dimitry Kochenov (Oxford: Oxford University Press, 2017), 309–311. For a more detailed analysis, see Jesús García Torres, “El artículo 155 de la Constitución española y el principio constitucional de autonomía,” in *Organización territorial del Estado (Comunidades Autónomas)*, Volume II (Madrid: Instituto de Estudios Fiscales, 1984), 1189–1303, and Pedro Cruz Villalón, “La protección extraordinaria del

Estado,” in *La Constitución española de 1978. Comentario sistemático*, ed. Eduardo García de Enterría and Alberto Predieri (Madrid: Civitas, 1980), 689–717.

15 Alberto López-Basaguren, “Regional Defiance,” 311–315.

16 For a discussion of several manifestations of populism in the United States and Europe, see John B. Judis, *The Populist Explosion* (New York: Columbia Global Reports, 2016).

17 Many examples could be given. During the American Civil War, for instance, the Free State of Winston, an upper-state county in Alabama that had no desire to leave the Union, tried to exit from Alabama. More recently, if Quebec had seceded from Canada, the question of what to do with the parts of Quebec where Anglophones are concentrated would certainly have arisen. On these cases, see Sanford Levinson, “The 21st Century Rediscovery of Nullification and Secession in American Political Rhetoric,” in *Nullification and Secession in Modern Constitutional Thought*, ed. Sanford Levinson (Lawrence: University Press of Kansas, 2016), 43.

18 STC 337/1994, and STC 31/2010.

19 For a critical view of secessionist claims on economic matters, see Josep Borrell and Joan Llorach, *Las cuentas y los cuentos de la independencia* (Madrid: La Catarata, 2015).