



Crunch time in Catalonia: Why Spain needs a constitutional overhaul

by Camino Mortera-Martinez

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Catalonia's illegal referendum has resulted in a serious constitutional crisis in Spain. Madrid needs to urgently revise the country's model of regional government.

Television footage of Spain's Guardia Civil officers in riot gear manhandling Catalan citizens as they tried to vote in Sunday's independence referendum have shocked Europe. The images have fuelled accusations of political repression and heavy-handedness by the national government. But what is happening in Catalonia is not a case of a state denying the democratic rights of its people. It is the product of increasingly radical separatism and a constitutional framework that is too rigid to accommodate those demands. To avoid further confrontation, Mariano Rajoy, Spain's prime minister, needs to urgently reform the country's model of regional government. Spain needs to find ways to better satisfy the hunger for greater self-determination in parts of the country. The only way to do that is to change the Spanish constitution, and do so with the consensus of Spanish society.

Catalans have long been proud of their individual identity, marked by their own language, renowned artists like Dali and Gaudi, a world-famous football team, and a degree of political and financial autonomy. Support for Catalonia's independence has surged in recent times, as a response to Spain's economic crisis and the central government's many corruption scandals. For the past six years, the Catalan government has called on Madrid to allow the region to hold an independence referendum. Rajoy's response was unequivocal: the Spanish constitution protects the country's territorial integrity and forbids such referendums. For Spaniards the 1978 constitution represents the key to a political consensus which allowed the country to draw a line under decades of repression and dictatorship and to become a modern European democracy.

Not all Catalans want independence. [A survey carried out in July by the regional government's Centre of Opinion Studies](#) found 49.9 per cent of voters opposed independence, while while 41.1 per cent supported it. Nevertheless, when Carles Puigdemont – a life-long separatist – became leader of Catalonia's regional administration in January 2016, with the backing of a handful of like-minded, radical

parties, he put independence firmly on the agenda and set the region on a collision course with Madrid – culminating in Sunday’s controversial referendum.

The Catalan government said about 90 per cent of the 2.2 million people who voted in the plebiscite backed independence, though the figures have not been independently verified and turnout was just 42 per cent. But regardless of the result, according to the Spanish constitution, the referendum was illegal. The Constitutional Court of Spain ruled against the referendum in early September. Puigdemont’s arguments that a referendum was justified on the grounds of Catalans’ right to self-determination and a democratic right to decide do not hold water. Spanish experts on international public law [signed a manifesto](#) explaining that Catalonia did not fulfil the legal criteria to have a right to self-determination, as Catalans were not being “oppressed, discriminated or prosecuted by the Spanish state”. But Puigdemont ignored the Court’s ruling and his government’s own legal advice. He did not ask the Catalan or the Spanish parliament for their opinion on the referendum either.

The events of this weekend were shameful. Puigdemont has looked to draw the EU into the dispute with a call on the EU institutions to “mediate”. He also wants the European Council to consider triggering a mechanism known as Article 7 which would suspend the membership rights of Spain on the grounds that it has seriously and persistently breached EU values like the respect for human rights or the rule of law. There is little chance the EU will use this nuclear option as it has not gone that far with Poland and Hungary, countries that have made more serious breaches of EU values. Furthermore, while Catalonia may argue Spain has breached human rights, the Spanish government can argue that, by organising a unilateral referendum, the Catalanian government has disrespected the rule of law.

In a statement on Monday the European Commission called for dialogue and made clear it agreed the referendum was not legal under Spanish law. It said the Catalanian issue was an internal matter for Spain and added that should Catalonia separate from Spain, [it would need to re-apply for EU membership](#). “We trust the leadership of Prime Minister Mariano Rajoy to manage this difficult process in full respect of the Spanish Constitution and of the fundamental rights of citizens enshrined therein,” it said.

Given the personalities involved, however, a quick solution to the crisis is unlikely. Rajoy has a tendency to bury his head in the sand when faced with intractable issues. His early offers of dialogue proved insufficient and when he finally dispatched his deputy prime minister, Soraya Saenz, to Barcelona to mediate, in November 2016, the initiative was too little too late. Rajoy’s government has a tendency towards technocracy, and is seen as being incapable of looking beyond judicial solutions to problems. Thus, faced with an illegal referendum, the national government dug its feet in and deployed hundreds of Guardia Civil and police officers to the region to disrupt the plebiscite – seemingly blind to the possibility that such an approach would galvanise the separatists and reaffirm their narrative of suppressed democratic rights.

On the Catalan side, Puigdemont has been canny but equally unbending in his determination to challenge Madrid. He has worked hard to present the dispute as a case of a national government oppressing the democratic right to self-determination of its citizens. This image harks back to the Franco years, when separatism in Catalonia and elsewhere in Spain was crushed by the dictatorship with measures such as bans on using regional languages. Although Rajoy has the law on his side, Puigdemont has managed to foster a narrative that has made Madrid look like the oppressor. If Puigdemont goes ahead with his pledge to declare independence he will be doing it in the knowledge that Madrid is likely to respond by enacting Article 155 of the constitution which gives the national government the power

to assume control of the regional government's responsibilities. Article 155 allows Madrid to remove Puigdemont from government and call for new elections in Catalonia. Such a move, hinted by King Felipe in his first unscheduled speech to the nation on Tuesday October 3rd, is sure to further inflame tensions.

There is a way for Rajoy [to step back from the brink of a constitutional crisis](#). As much as Spaniards cherish their hard-fought constitution, it is time to change it. The constitution is based on the asymmetric devolution of competences: regions such as Catalonia, the Basque Country or Navarra have more devolved powers than others such as Extremadura, Murcia and Asturias. Spain is a country of strong regional identities, and most Spanish regions have separatist movements of some sort. If Madrid makes concessions to Catalonia alone, it could upset other regions. The government should reform Spain's outdated model of regional government, including rethinking the role of the Senate. As in other federal or quasi-federal countries Spain's upper chamber was designed to represent the regions in the law-making process. But the constitution did not give it enough competences to play this role effectively. Consequently, the Senate has become a virtually defunct institution, and regional representatives have to channel their claims through other fora – not least the Congress, Spanish lower chamber. This has accentuated regional divergences and exacerbated secessionism. Turning the Senate into a chamber dedicated to handling regional issues could help resolve this problem.

Rajoy should acknowledge that while the referendum was illegal it was an expression of the desires of a section of Catalonia which deserve to be addressed. He should seek a new consensus on how the Spanish constitution should best recognize the country's regional diversity. To depoliticise the process, and avoid more claims of victimisation by the Catalan government, Rajoy could set up a council of wise men and women to carry out this work. This council could possibly be made up of a mix of former Spanish statesmen and international officials with experience of dealing with separatist issues in other countries, such as Quebec or Northern Ireland. Ensuring the process has cross-party support at an early stage would help strengthen its mandate and give it legitimacy, as well as helping to reduce the possibility that it might be seen as a capitulation by Rajoy to the Catalan separatists. Ultimately, the council should consider whether Spain would be best served by further devolution of powers to regional administrations. The Spanish government should also consider setting up a permanent council of regional presidents, where all 17 autonomous communities could have their say on Spain's regional configuration.

Puigdemont and Catalonia's pro-independence parties should also play their part by ending their confrontational rhetoric. They should stop presenting Catalonia as a victim of the Spanish central government whose only option is to separate. Pro-independence parties should start by engaging in a sober public debate about Catalonia's relationship with Spain and Spain's approach to its autonomous regions, based on facts, not on myths and emotions.

Spain is a land of passion. But ultimately, both sides of the Catalonia dispute will need to find a practical long-term solution. The scenes of Guardia Civil officers dragging women out of polling stations, firing rubber bullets and beating peaceful voters with batons are reminiscent of darker times that should have no place in Spain or Europe today.

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