



[Cramer, K.](#) (2016) Do Catalans have ‘the right to decide’?: secession, legitimacy and democracy in twenty-first century Europe. *[Global Discourse: An Interdisciplinary Journal of Current Affairs and Applied Contemporary Thought](#)*, 6(3), pp. 423-439.
(doi:[10.1080/23269995.2015.1083326](https://doi.org/10.1080/23269995.2015.1083326))

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Deposited on: 13 August 2015

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Do Catalans Have ‘the Right to Decide’?: Secession, Legitimacy and Democracy in Twenty-First Century Europe

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Do Catalans Have ‘the Right to Decide’?: Secession, Legitimacy and Democracy in Twenty-First Century Europe¹

Secession is normally viewed as legitimate only as a last resort for oppressed peoples, but contemporary independence movements in Europe are working hard to shift perceptions of the legitimacy of secession as a democratic phenomenon. In this context, the recent growth of the independence movement in Catalonia has given rise to a direct confrontation between two opposing conceptions of the legitimacy of secession in democratic nation-states. On one hand, pro-referendum Catalans claim that a vote on the matter would be entirely consistent with the basic principles of democracy. On the other, the Spanish government rests its denial of a referendum on the legal authority of the Spanish Constitution, which states that Spain must remain united. This article traces the two competing discourses of democratic and legal legitimacy (what we might call the ‘right to decide’ versus the ‘duty to abide’) through an examination of the rhetoric of key political actors. It concludes that the Catalan government’s attempt to prove that Catalonia could constitute a politically legitimate independent state, and should therefore be allowed to ask its residents whether they wish it to do so, is particularly significant as a challenge to generally-accepted ‘remedial right’ theories of secession.

Keywords: Catalonia, Spain, Catalan independence movement, secession, political legitimacy

The twenty-first century has so far witnessed an unprecedented number of democratic challenges from separatist movements to the established nation-states at the core of the European Union. The failure of the 2003 ‘Ibarretxe Plan’ for the Basque Country to achieve a vote on free association with the Spanish state did not deter others from pursuing similar agendas (Keating and Bray 2006). This included Scotland, whose success in holding a referendum on independence with minimal opposition from the rest of the UK has spurred on others, including Veneto and Flanders, and given added

weight to the demands of Catalonia, where pressure for a binding vote has been building since a string of makeshift local consultations were held in 2009-10. The Scottish example proves that calls for secession can be managed democratically through standard processes of political negotiation and consultation, as indeed they have been previously in Canada (Evans 2013: 9). Nevertheless, the concept of secession itself remains highly problematic, and it is often viewed as a 'last resort' that will receive international approval only under the most extreme circumstances (Buchanan 2003: 331).

Given its reluctance to do anything other than affirm the sanctity of existing state boundaries, the international political community has generally tried to characterise secession as an internal matter for the nation-states concerned (Buchanan 2003: 340-1). Despite attempts to elicit support from figures as diverse as Barack Obama, Julian Assange and Lady Gaga,² Catalan calls for a Scottish-style referendum therefore remain entirely dependent on the approval of the Spanish government, since the power to hold a referendum of any kind is reserved to the state under the terms laid out in the Spanish Constitution.³ In fact, a binding referendum would not technically be possible without prior constitutional reform, since it would contradict key clauses that guarantee the territorial unity of Spain (Ferrerres Comella 2014: 586-8). Whether a purely consultative vote could be authorised has been the subject of great debate, with legal opinion on the matter as divided as public opinion; the legal problem here revolves around whether a consultation could be used to prompt constitutional reform or would have to take place as part of a process that was already underway (588).

In any case, the current right-wing government led by Mariano Rajoy has made it clear that it has no intention of sanctioning any form of referendum on secession, nor will it enter into any negotiations whose aim would be to give Catalonia more powers

within the Spanish state. This has given rise to a war of words and gestures which has included a purely symbolic ‘public consultation’ held in Catalonia on 9 November 2014. As a result, charges of disobedience and misuse of public funds have been brought against the President of the Catalan Autonomous Government, Artur Mas.⁴ Rajoy has characterised the vote itself as ‘illegal’ and the concept of Catalan secession as ‘unconstitutional’ and – therefore – illegitimate (Rajoy 2014).

As the contemporary heir to historic forms of Spanish nationalism, Rajoy’s *Partido Popular* (People’s Party, PP) has a particularly centralist conception of the Spanish state which also surfaced during the party’s first term of majority government, under José María Aznar, from 2000-2004. However, it is not alone in its opposition to Catalan independence, since most Spanish leftists also stress the concept of ‘national solidarity’, even when they are more than just pragmatic proponents of regional devolution (Balfour and Quiroga 2007: 72). Catalonia is a key driver of Spain’s economy (as is the Basque Country), and a net contributor to the interregional fiscal transfers that support its poorer regions (Bel 2013: 190-2). This economic centrality partly explains the pragmatic approach to territorial accommodation taken during Spain’s transition to democracy, which resulted (through a rather haphazard evolution) in the ‘State of Autonomies’ that exists today. However, the system has come under increasing strain, both from the ‘competitive federalism’ emanating from all seventeen regions as they jostle for improved competencies (Balfour and Quiroga 2007: 60), and from Basque and Catalan demands for self-determination. The current government’s hard-line stance against Catalonia’s ‘right to decide’ therefore needs to be seen in this context.

The discourse surrounding the legitimacy or otherwise of the Catalan independence movement has become increasingly polarised ever since the Catalan

parliament approved a 'Declaration of Sovereignty and the Right to Decide' in January 2013, as the precursor to demanding a referendum.⁵ The majority of the text was declared unconstitutional by Spain's Constitutional Court in March 2014, in a judgement that affirmed that Spain itself was the only sovereign nation, and the 'right to decide' could only be exercised within the limits prescribed by the Spanish Constitution of 1978.⁶ The Spanish government's refusal to negotiate other options has effectively stymied the development of any 'third way' between these two poles, with the result that this term itself remains incredibly vague, denoting anything from enhanced autonomy for Catalonia within the present system to federal and even confederal re-arrangements of the Spanish state. At the time of writing, the only two positions that have been clearly articulated are 1) that the Catalans are a sovereign people who have the democratic right to decide their own relationship with the Spanish state, or 2) that Catalonia forms part of a sovereign Spanish nation-state that remains 'indivisible' until such time as the people of Spain see fit to amend – through the proper legal process – the Constitution that prescribes this indivisibility.⁷

Given the extensive coverage of this dispute in the Spanish media (by which I mean traditional, new and social media), it is not surprising that questions regarding the legitimacy of Catalonia's claims and the Spanish government's right to ignore them have become a matter of fierce public debate. Manuel Arias Maldonado goes as far as to say the following:

Spanish society is currently embroiled in a permanent debate about matters that are fundamental to philosophy and political theory. This is the only way to describe the problem of the legitimacy of power, the relationship between legitimacy and legality, the definition of what is just, and the defensibility of civil disobedience in a democratic context. (Arias Maldonado 2014)⁸

The aim of this article is to examine the character and evolution of this debate during a

two-year period from the passing of the ‘Declaration of Sovereignty’ in January 2013 to the calling of ‘plebiscitary’ Catalan elections in January 2015. The discussion draws mainly on political speeches, written statements from political parties and institutions, and press articles. After a brief introduction to the ways in which the legitimacy of secession may be conceptualised, the article places the Catalan independence movement in the context of Spain’s on-going crisis of both economic stability and institutional legitimacy. It then turns to examine the rhetoric used by the current Spanish government to dismiss Catalan claims, and the Catalan autonomous government’s attempts to counteract this.

The significance of these competing discourses for Spain and Catalonia is clear: together, they describe a political conflict that has reached an impasse so serious that Spain’s entire future as a nation-state depends on how it is eventually resolved. However, they also shed light on a much broader context: the apparently growing attraction of the concept of ‘independence in Europe’, and the attempts of members of various territorial minorities to make a convincing case for the desirability and democratic legitimacy of this option. The idea of secession as a legitimate political choice regardless of the circumstances has been given a significant boost by the Scottish referendum, implying that the idea of secession as a ‘remedial’ right is out-dated, at least within the context of the ‘unity in diversity’ promulgated by the European Union. Catalonia’s struggles with a Spanish state that will not accept this view will no doubt further shape the evolution of this discourse on a European, and possibly a global, scale.

Legitimising Secession

The second half of the twenty-first century saw an increasing acceptance of regional government, or at least administration, within Western European nation-states (Keating 2000; Loughlin 2009). While it has been argued that devolution has generally been a

force for stability in Western countries that encompass national minorities (Guibernau 2006), for some of these the question of secession has now become urgent. Indeed, many of these secession movements are led by nationalist parties in power in elected regional institutions. They therefore enjoy political legitimacy within the particular democratic sphere of regional government, but does this political legitimacy extend to a democratic right to secession?

We should of course draw a distinction between democratic legitimacy and political legitimacy, even though the two concepts are clearly related. Without going into the details of the extensive debates on this relationship in political philosophy (for a summary of which see Peter 2014), a major question is the extent to which political legitimacy is in itself derived from democratic legitimacy, and vice-versa. If the two are separable, then even a non-democratic government may enjoy political legitimacy in certain circumstances (Peter 2014: 13). In contrast to these ‘instrumentalist’ positions that see outcomes as more important than the process by which these are arrived at, Allen Buchanan’s view is that political legitimacy derives from ‘a Robust Natural Duty of Justice’ at whose core we find ‘the protection of basic individual rights’ (Buchanan 2002: 718). Since democratic institutions are the best guarantor of these rights and of the ‘fundamental equality of persons’, democracy is ‘necessary if the exercise of political power is to be morally justifiable’ (Buchanan 2002: 715, 719).

Frederick Barnard raises a broader point relating to morality by asking ‘whether or not norms sanctioning processes intended to authenticate democratic governance demand the convergence of political rightness with universal moral rightness’ (Barnard 2001). According to Jaime Lluçh, questions of morality are in fact central to the concerns of secessionist and autonomist groups and will tend to dictate the extent to which territorial accommodation is seen as an acceptable compromise. Lluçh argues

that ‘sub-state nationalists inhabit a “moral polity” in which reciprocities are expected and notions of the common weal and mutual accommodation are essential’ (Lluch 2012: 435). If this moral contract is perceived to be broken, the sub-state nationalist will adopt a particular federalist, autonomist or separatist position depending on the extent to which s/he believes that the nation-state has a genuine will to fix the problem (Lluch 2012: 440). While this is a rather limited conception of morality compared with that which informs Buchanan’s normative concept of political legitimacy, the idea of the moral polity still rests on Buchanan’s fundamental premise of ‘genuine political community among equal persons’ (Buchanan 2002: 719). Sub-state nationalists who are unhappy with the amount of reciprocal recognition they get in return for their loyalty to the democratic nation-state are therefore likely to question its authority over them, if not its legitimacy, partly on the basis that this undermines the equality that is seen to be a fundamental characteristic of democracy.

As we will see, the debate on Catalan independence revolves squarely around the concept of democracy and involves two competing and contradictory definitions of how the term applies to this particular context. For most Catalans, whether or not they are in favour of independence, the idea that they should be able to vote on their status vis-à-vis Spain has become the embodiment of the meaning of democracy in the current crisis.⁹ This is expressed in the popular slogan ‘votar és democràcia’ – ‘voting is democracy’ – which has become, for example, a handy twitter hashtag for those posting messages in support of a binding referendum or of those who organised the unofficial vote on 9 November 2014. On the other hand, the Spanish government and most of the Spanish media equate democracy firmly with legality: specifically, in the form of the inviolability of the Spanish Constitution of 1978 which prohibits the secession of any part of the nation-state. They therefore deny the legitimacy of all actions taken by the

Catalan Autonomous Government – the *Generalitat* – to claim sovereignty for the Catalan nation and hold a referendum or plebiscitary elections on independence.¹⁰ Catalan politicians and pro-independence groups have attempted to counter this argument by pointing out that the law is not an absolute but a product of democratic processes, and it therefore needs to be flexible enough to respond to changing political circumstances (Forcadell Lluís 2013: 17). They deplore the failure of the Spanish government to accept the need for negotiations towards a political settlement.

One of the main areas of debate in theories of secession concerns the extent to which its legitimacy depends on some kind of injustice having been perpetrated on the group that is attempting to secede. Indeed, some theories are based on the premise that unilateral secession can only really be justified in such terms; these have come to be known as ‘remedial right only’ theories (Buchanan 1998: 227-8). Allen Buchanan argues that ‘From the standpoint of international law, the unilateral right to secede—the right to secede without consent or constitutional authorization—should be understood as a remedial right only, a last-resort response to serious injustices’ (Buchanan 2003: 331). Furthermore, he states that ‘In affirming a remedial understanding of the right to secede, international law should unambiguously repudiate the nationalist principle that all nations (or “peoples”) are entitled to their own states’ (331). Nevertheless he qualifies this, firstly by supporting the premise that the international community should strongly support attempts to guarantee the human rights of minorities and to find alternatives to secession (such as autonomy), putting pressure on the nation-state if necessary. Secondly, he provides for a relatively broad definition of the kind of injustice that might legitimise secession (Buchanan 2003: 331, 351-2). This includes ‘the state’s persistence in violations of intrastate autonomy agreements’ as well as more standard justifications such as a the violation of basic human rights or ‘unjust annexation’ (352).

In contrast, Christopher Heath Wellman argues that ‘many groups have a primary right to secede even in the absence of past injustices’ (Wellman 2013: 118). Wellman’s argument rests on a very different premise from Buchanan’s, which is that a large group may decide to secede as long as this does not cause undue harm to the political entity from which it breaks. He explains that ‘because the liberal cannot justifiably restrict political liberty which is not sufficiently harmful, a secessionist party has the right to secede when its independence will not jeopardize political stability’ (118). A split from a stable first-world democracy – Wellman uses the example of Quebec and Canada – should not produce any long-term adverse effects that the original nation-state would not be able to overcome. The idea of political legitimacy is key to Wellman’s argument, since the main issue is whether both of the resulting states are in a position to retain that legitimacy vis-à-vis their own people (113). International recognition of each state’s legitimacy would naturally follow on from this. Spain and Catalonia ought to fall into the same category as Canada and Quebec in terms of their ability to form separate legitimate states. However, as we will see in the next section, the Spanish state is in fact undergoing a crisis of political legitimacy, only part of which is related to the question of its relationship with Catalonia.

A Crisis of Political Legitimacy in Spain

As a relatively young democracy, forged in the wake of the dictatorship of Francisco Franco which ended only with his death in 1975, Spain has been rightly proud of its rapid political transformation. However, the global economic crisis that struck Spain in 2008 exposed a number of existing cracks in its political and economic foundations, which have now become gaping holes. The depth of Spain’s crisis was an indicator of fundamental problems that had been successfully hidden by factors such as Spain’s

enhanced international standing and a construction boom (Royo 2014). Sebastián Royo argues that these pre-existing flaws could be found in virtually all of Spain's institutions, including the monarchy, the judiciary, banks and their regulators, and the education system. These combined with failings in the country's political institutions to the effect that 'economic success spurred by the country's modernization and EU membership was not sustained because the governments (at all levels: local, regional, and national) became less accountable and responsive to citizens' (Royo 2014: 1570). This lack of accountability and responsiveness has been exacerbated by the economic crisis, to the point that perceptions of the legitimacy of virtually all of Spain's institutions have fallen dramatically in the last few years (Royo 2014: 1576-7).

A few brief examples will help to explain why the general public has become so disillusioned. Corruption and clientelism among the political elites have been a perennial problem for Spain even in democracy, but recent scandals have revealed the full extent of its reach into the highest levels of government. For example, the government bailout of failed banking conglomerate Bankia in 2012 was followed by revelations that its board members had been issued undeclared credit cards drawing on a hidden fund (Schaefer Muñoz, Enrich, and Bjork 2012; De Barrón and Pérez 2015). Meanwhile, those who had bought preference shares in the bank only to see them plummet in value are still waiting for a verdict on whether the sale itself was fraudulent (EFE 2013). As for the monarchy, the behaviour of King Juan Carlos during the crisis, which included a luxury trip to Botswana to shoot elephants (possibly accompanied by a mistress), sent his popularity rating plummeting and eventually resulted in him abdicating in favour of his less controversial son, Felipe. Even this has not removed the monarchy from the public gaze, with King Felipe's brother-in-law Iñaki Urdangarin on

trial for embezzlement, and his sister Cristina accused of complicity in the resulting tax fraud.

Spain's devolved system of government as a whole has come under increasing scrutiny because of the duplication of administrative structures it is perceived to entail, as well as the creation of regional political elites that are also highly susceptible to corruption and clientelism (Royo 2014: 1574). It is certainly the case that Spain's autonomous communities have in no way been immune to these diseases, with numerous regional politicians arrested – for example – in an anti-corruption raid in October 2014 (Kassam 2014). Catalonia's major scandals in recent years have centred around the illustrious Pujol family, directly implicating the former President of the *Generalitat* Jordi Pujol, who confessed to having substantial undeclared funds in a bank account in Andorra. His claim that this was an inheritance is still to be tested. Meanwhile, one of his sons, Oriol, a high-ranking member of his father's party who was in many ways the heir to his political legacy, has been accused of influence peddling. The Spanish courts are so overwhelmed by the number of recent corruption cases that these are taking years to come to trial, further eroding public confidence in the justice system.

Public frustration with Spain's governing elites, caused mainly by these scandals and their ineptitude in the handling of the economic crisis, has led voters to embark on a somewhat desperate search for alternatives. The sweeping victory of the PP in the 2011 general elections was one symptom of this, but the party has been no more adept at handling the crisis than the left-wing government before them. Civil movements and protests have therefore flourished, and these have included an increase in visibility of the Republican movement, small- and large-scale protests to try to prevent evictions that

are the result of repossessions for mortgage arrears, and the *Indignados* anti-austerity movement.

While it would be simplistic to say that the increase in support for Catalan independence is solely attributable to this same search for alternatives, it is clear that some of its newer supporters have indeed responded to it in this way (Serrano 2013b: 19). The independence ‘project’ was already well formulated by the time the full extent of the crisis became apparent, unlike other alternatives such as the *Indignados* and the eventual birth of anti-establishment party *Podemos*. Nevertheless, *Podemos* is rising in popularity in Catalonia as well as the rest of Spain and may present a significant challenge to the pro-independence vote (Duarte 2015). Catalan politics is therefore very much replicating the current pattern in the rest of Spain, with the historically-dominant forces losing substantial support to newer and/or previously more minor parties.

Given this context, it is not surprising that much Catalan pro-independence rhetoric now revolves around the idea that Spain suffers from an acute democratic deficit (or ‘shortage’) of which the Catalans are prime victims (Bosch 2013: 115). The Catalan reaction, according to the pro-independence politician Alfred Bosch, has been to oppose this shortage ‘with an extra dose of democracy’, ensuring that the independence movement is as respectful of democratic processes as possible (Bosch 2013: 118). Antonio Elorza, on the other hand, argues that this respect is a myth because the Catalan institutions that promulgate this approach are themselves breaking a cardinal democratic rule: institutional neutrality (Elorza 2014). Writing in the newspaper *El País*, he says:

Democracy is not a manipulable framework that can be adapted to suit whoever is in government, so that they can arrive at a result that is consistent with their own aims. Democracy is a procedure that facilitates political decision-making, based on the participation of all citizens on an equal footing. This is the principle of

isonomy, which dates back to Ancient Greece. But it's clear that this has not existed in Mas's Catalonia.

Elorza's attempt to tell us what democracy 'really means' is typical of the debate as a whole, in which everyone claims to have the 'true' definition of the term, in opposition to the false conceptions held by others. It is on the basis of their own definition of democracy that the commentator then goes on to assess the legitimacy of the other's position. No one will admit that such terms are in fact slippery and open to interpretation (Sadurski 2009: 22).

The 'Spanish' View

As has already been noted, arguments against Catalan sovereignty have come to coalesce around a legalistic definition of democratic rights based on the Spanish Constitution. The powers of the Autonomous Communities derive from this constitution, although the document is deliberately ambiguous about the nature and pre-existing rights of the 'collective subjects' (denominated 'nationalities and regions') that make up the Spanish state (Martínez-Herrera and Miley 2010: 8-10). On the other hand, it clearly states that sovereignty rests with the people of Spain as a whole, that Spain is 'indivisible', and that the Spanish government may suspend the powers of an Autonomous Community if it 'acts in a way that is seriously prejudicial to the general interest of Spain'.¹¹ It is on this basis that the PP have rejected any notion of the Catalans' 'right to decide', a right that it claims can only be exercised by the entire Spanish people (Rajoy 2014: 12, 13).

Furthermore, the PP's own concept of Spanish nationality has come to be fundamentally based on the idea of constitutional patriotism, despite this originally having been the preserve of the Spanish left (Balfour and Quiroga 2007: 90-1, 114-7). Constitutional patriotism has provided a new way of framing a discourse of national

identity that avoids some of the pitfalls associated with the way the concept had been traditionally employed by the Spanish right. Nevertheless, as Balfour and Quiroga put it, calling for loyalty to the constitution above all else also has the effect of stressing its ‘incontrovertibility’, giving the PP a reason to ‘deny any reform of the Constitution that would reflect changing identities’ (Balfour and Quiroga 2007: 117). This obsession with ‘the need to preserve societal oneness’ flies in the face of liberal-democratic principles that stress the need to protect ‘plurality and the right to be different’ (Barnard 2001: 4-5).

Spain’s constitution allows for laws passed either by the central or autonomous governments to be challenged on grounds of unconstitutionality. The Constitutional Court that hears these challenges is also the body specifically charged with resolving conflicts of jurisdiction between the state government and autonomous communities.¹² Whereas it might have been assumed that the role of the Court would diminish over time as the State of Autonomies became more embedded, in fact it has increased in importance. Two of its decisions are particularly pertinent to the discussion here. In 2008, it ruled on an act that had been passed by the Basque government that would have allowed it to hold a ‘plebiscite’ asking the Basque people for its support in negotiating with ETA and preparing the ground for further discussions on the Basque Country’s ‘right to decide’ (Mees 2015: 54). In ruling against the act, the Court also clarified that any consultation not sanctioned by the state that in any way resembled a referendum, even if it went by a different name and was not binding, would still be unconstitutional (Ferrerres Comella 2014: 586; Serrano 2013a: 50-1).

Its second crucial ruling concerned the updated Catalan statute of autonomy that came into force in 2006. Despite having been through a long process of approval by the Catalan and Spanish parliaments and a referendum in Catalonia, several challenges

were then received by the Court, the most comprehensive of which came from the PP (Orte and Wilson 2009: 424-30; Ferreres Comella 2014: 573-4). The Constitutional Court took until 2010 to produce its verdict, which in fact left much of the text untouched, although it did invalidate certain key provisions (Ferreres Comella 2014: 574-5; Dowling 2013: 155-6). It also ‘reinterpreted’ a statement in the Preamble that referred to Catalonia as a nation, stating that while this could be accurate from a social, historical or cultural perspective, it could not be a legal definition since Spain is the only nation recognised in the constitution (Ferreres Comella 2014: 575).

The discourse of unconstitutionality as applied to matters related to Catalan autonomy was therefore well established by 2010, and it is no surprise that this was the primary term used by the PP to describe the ‘Declaration of Sovereignty’ of 2013 and Mas’s plans for a consultation on independence announced several months later (Cué 2013). However, as the consultation itself drew nearer, ‘unconstitutional’ gave way to ‘illegal’ as the preferred term. Even though it was clear that this accusation of illegality was still predicated on the constitution, the word ‘illegal’ appeared now to be preferred for its greater clarity and impact.

This change of rhetoric was no doubt aimed particularly at the Catalans, whose attitude towards the constitution has become increasingly hostile despite having been one of the regions that voted strongly in favour of it at the time it was devised (Martínez-Herrera and Miley 2010: 11-12). The challenge to the 2006 statute through the Constitutional Court was certainly one factor in this, but it was also a symptom of a general feeling that, far from fulfilling the apparent promise of special treatment and recognition for Catalonia that had prompted high levels of support in 1978, the constitution was actually a brake on Catalan ambitions and was being used as an excuse to limit and even cut back its autonomy (López Tena 2007: 98-9). Calling the

Generalitat's actions 'unconstitutional', then, would be unlikely to have much impact on those Catalans who now dismiss the constitution as just another failed attempt to force them to conform to a centralising conception of the Spanish state. As Víctor Ferreres Comella puts it, 'the political forces that are pushing the process of "national transition" in Catalonia consider the Constitution to be a dead document as far as they are concerned' (Ferreres Comella 2014: 584). The term 'illegal' therefore carries greater force, and also an implied threat of legal action, which has of course been carried out in the charges laid against Artur Mas and two of his ministers after the vote on 9 November 2014.

In a speech given in Barcelona three weeks after the unofficial consultation on independence, Mariano Rajoy made a series of observations about the vote and its consequences as he saw them. First, he described it as a 'simulacrum of a consultation' – a phrase that had already been circulating for several weeks following its use in a speech by the leader of the PP in Catalonia, Alicia Sánchez Camacho, on 14 October (Rajoy 2014: 8; Europa Press 2014). The vote was such a 'farce', according to Rajoy, that two thirds of the eligible voters declined to take part, resisting the 'pressure' put on them by the *Generalitat* to do so (Rajoy 2014: 8). The *Generalitat* had 'flouted the law' and divided Catalan society, and all for nothing, since its own figures after the vote showed that a majority of Catalans did not want independence (9). The planned process in Catalonia will now pass through the stages of 'so-called' plebiscitary elections, followed by the drafting of an 'illegal' constitution to be ratified in an 'illegal' referendum (13). Rajoy, however, pledges the following:

Now, just to be clear, I am not going to let the unity of Spain be called into question, or the right of all Spaniards to decide what they want their country to be – in other words, national sovereignty – , or the equality of Spaniards and their fundamental rights. I won't let anyone call these into question. (13)

Approaching these matters through political dialogue is one thing, but ‘politics cannot be an excuse to flout either the law or the will of the people’ (14). ‘If politics is an alternative to the application of the law, we are proposing something that is not very democratic at all’ (14). Rajoy’s speech very much represents a mature version of the discourse of legality which, by that stage, had come to dominate not just within the PP and its sympathisers but more broadly in sectors of the media and public opinion.

The PP’s arguments draw on a liberal democratic perspective that prescribes a necessary ‘trade-off’ in which citizens forego direct participation in government ‘for the functionality and accountability of representative democracy’ (Isakhan and Slaughter 2014: 4). Thus, having accepted the Spanish Constitution and democratically elected their political representatives, Spaniards – Catalans included – are bound by the laws and policies those representatives put into place. The problem with this position is that Spain’s economic crisis and continuous corruption scandals have critically damaged the perceived accountability of Spain’s politicians. It is not surprising, then, that Catalan rhetoric is moving ever closer to ‘civic republican’ conceptions of democracy, ‘in which democracy is thought of as a participatory, inclusive and deliberative form of government’ (Isakhan and Slaughter 2014: 4). This is especially the case within the civil movement, which now has a very broad membership and a significant amount of influence on party-political actors (Cramer 2015; Dowling 2014: 222-3). However, this presents something of a paradox for the party currently in power in the *Generalitat*, whose political roots lie firmly in the same liberal democratic tradition espoused by Mariano Rajoy.

The ‘Catalan’ View

The two political parties that have had the most influence over the independence movement during the two years that concern us here are Artur Mas’s *Convergència*

Democràtica de Catalunya (Democratic Convergence of Catalonia, CDC), and *Esquerra Republicana de Catalunya* (Republican Left of Catalonia, ERC), led by Oriol Junqueras. ERC was the first of the two parties to move towards an explicitly pro-independence position, in the 1990s, whereas CDC's sudden conversion only occurred in 2012 (Dowling 2013: 153; 2014: 224). The change eventually resulted, in June 2015, in the end of a previously successful federation with *Unió Democràtica de Catalunya* (Democratic Union of Catalonia), which remains committed to trying to find some kind of 'third way' between independence and the status quo. CDC and ERC have now agreed to hold 'plebiscitary' elections in September 2015 at which they will present a joint candidate list including key members of civil pro-independence associations.

Despite their political differences in terms of their position on the left-right spectrum, CDC and ERC now have much in common when it comes to the arguments they use to justify independence, sharing in a coherent narrative that has been forged in the period since the debates over Catalonia's new statute (Dowling 2014: 227-8). Catalan identity has become a difficult basis on which to build a sense of common purpose because of the diverse origins of the community's population, although the Catalan language still plays a strong role in creating a sense of groupness (Brubaker 2004: 12-13; Serrano 2013a: 146). Much of the current political rhetoric therefore stresses factors to do with the economy, citing – among other things – Catalan taxpayers' 'unreasonable' contribution to propping up the poorer regions of Spain and the lack of state investment in Catalan infrastructure (Bel 2013: 165-252; Pons i Novell and Tremosa i Balcells 2005). Austerity measures following Spain's descent into economic crisis in 2008, and the perception that the two different Spanish governments in power since then have both been incompetent at managing the crisis, have heightened an already-existing feeling that Catalans would be better off running their own affairs.

In this sense their claims mirror Christopher Wellman's description of the 'teleological approach' to secession (based on the function the state serves rather than the consensual process by which it is created), which 'allows secessionist parties to claim a right to secede grounded in *efficiency*' (Wellman 2013: 109-10).

Despite this stress on contemporary economic and political factors, claims of historical injustice visited by the Castilian-led Spanish state on Catalonia surface regularly in pro-independence discourse. Historical factors therefore appear as one in a long list of legitimising arguments for Catalan secession in the *White Paper on Catalonia's National Transition* that has been produced by a team of 'experts' recruited by the Catalan government (Generalitat de Catalunya 2014). The brief historical argument here concentrates on the fact that Catalonia was a differentiated entity for many centuries, with its own institutions (Generalitat de Catalunya 2014: 24). It is made clear that these institutions were lost in 1714 through military intervention (the defeat of Barcelona by Bourbon troops at the end of the War of Spanish Succession), and that there was no possibility of recuperating a similar – and therefore sufficient – level of autonomy in the three centuries that followed.

However, the White Paper's suggested reasoning in support of claims to self-determination does not prioritise these historical factors. Instead, after a brief review of the main justifications permitted by 'remedial right only' theories of secession, it develops its case around the specific issue of the failure of three decades of attempts to achieve an acceptable level of autonomy within the Spanish state constituted in 1978 (Generalitat de Catalunya 2014: 20-3). It therefore attempts to invoke Allen Buchanan's category of 'violations of intrastate autonomy agreements' as Catalonia's primary justification for secession (Buchanan 2003: 352). These violations include the Spanish government's interference in the drafting of Catalonia's Statute of Autonomy of 2006

and the subsequent ruling of the Constitutional Court, which are labelled the most ‘convincing’ evidence (Generalitat de Catalunya 2014: 22).

As far as liberal-democratic arguments based on the rights of the individual are concerned, these are certainly apparent in the White Paper. So, for example, the writers argue that the general right to self-determination is not just predicated on the collective consensus that confers legitimate political authority on a territory’s elected representatives, but also on the ‘moral autonomy’ of each individual member of that collective, to the effect that the right to constitute an independent state is a primary right of the individuals that make up the collective (Generalitat de Catalunya 2014: 19). This is of course reflective of the classic liberal position that puts individual liberty at the heart of all aspects of political thinking (Wellman 2013: 99). Interestingly, a stress on the rights of the individual also appears in some of the slogans of the civil pro-independence movement that circulate on social media: ‘I want to decide’, ‘I want to be free’.

The liberal focus in this kind of rhetoric has the specific benefit of countering accusations that the Catalan independence movement is born out of a traditional ethnic nationalism. It does so by drawing attention away from questions about who constitutes the Catalan ‘in-group’ (Miley 2007: 195; García 2010; Serrano 2013a). Phrasing the desire for independence as a matter of the ‘moral autonomy’ of the individual plays down groupness and reinforces the argument that each Catalan should have the democratic right to vote on the way forward. It also gives rise to a dual discourse of legitimation, since if claims of injustice are rejected, an argument can be made that independence is the will of the people and their wishes should therefore be heeded regardless of whether there was injustice or not. Nevertheless, as the head of the institution trying to make this argument, Artur Mas is caught in a double bind: the

Spanish government rejects the idea that his position represents the will of the majority of Catalans, and yet it denies him access to the tools – such as a binding referendum – that would allow him to prove that it does (Rajoy 2014: 7).

An important characteristic of Catalan nationalism in the context of this insistence on democratic rights is its commitment to non-violent forms of action. The peaceful nature of the mass demonstrations organised by the civil independence movement plays an important part here, with each event ‘proving’ Catalonia’s commitment to non-violent protest, and therefore the legitimacy of the movement itself. This concern with proving legitimacy is also partly responsible for the scrupulous way in which all possible democratic avenues have been explored by the Catalan government. One example of this was the formal request to the Madrid parliament in January 2014 to be able to hold a consultative referendum, even though the petition was known to be futile from the start. By exhausting all possible steps, the Catalan government is reassuring the international community of its commitment to the democratic process, while at the same time calling into question the democratic credentials of a Spanish government that has consistently refused Catalan offers to negotiate. This also bolsters the case for secession as a remedial right.

Nevertheless, there is an internal danger inherent in this strategy. While Mas seems happy to prolong the journey towards independence in this way, members of the civil independence movement are getting increasingly frustrated with the lack of progress despite what they see as a clear mandate from the people to secede (Anon 2014). As a result, talk of a unilateral declaration following the planned elections in September 2015 is growing, even though still only a fifth of the Catalan people appear to support such a move (8TV 2015). Mas is understandably cautious about this option given the uncertain international reaction to a sudden unilateral declaration, even now

that the Catalan government has shown that it would understand this very much as a last resort. Furthermore, the White Paper warns that a unilateral declaration might be followed by a ‘conflict between the two orders [Spanish and Catalan], in which the authorities and directives of each of them would fight to get the upper hand and take control’ (Generalitat de Catalunya 2014: 34-5). It goes on to say that

For this reason, the effectiveness of a unilateral proclamation of independence is largely conditioned by the existence of state structures with the capacity to exercise the functions of government over the territory and obtain social acceptance of their mandate.

One of Mas’s preoccupations is precisely to have in place these ‘state structures’ – including a tax office, energy infrastructure and security – before any declaration is made (Garcia Pagan 2015). Not only will this satisfy the concerns raised in the White Paper, it also addresses Wellman’s condition that a seceding government must enjoy political legitimacy in the eyes of its own people if the secession itself is to be legitimate (Wellman 2013: 113).

Conclusion

When David Cameron was asked to justify granting a referendum on Scottish independence, he responded that he had viewed the request from the newly-installed SNP government as legitimate because the party had been democratically elected on an unambiguous platform. Therefore, ‘I did what I thought was the right thing, which was to say “you voted for a party that wants independence, you should have a referendum that is legal, that is decisive and that is fair”’ (Watt 2014). His reasons were also pragmatic:

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. (Watt 2014)

Even though Cameron’s reaction to the referendum request was no doubt predicated on an assumption that the ‘no’ vote would easily prevail, his explanation for the decision suggested that he had a moral responsibility both to accept the will of the Scottish people and to avoid a conflict that would be detrimental to both sides.

In contrast, the discourse employed in Spain by the PP and its allies in the media has sought to characterise the *Generalitat*’s request for a binding referendum as completely illegitimate, despite numerous indications of majority support among Catalans for such a vote. Furthermore, it is argued that the proposal originates from an exclusive and manipulative form of nationalism that is pitching itself malevolently against the legal authority of the Spanish government and the democratic validity of the Spanish Constitution. This approach attempts to paint the conflict as a case of a politically legitimate government facing an illegitimate separatist movement (Arias Maldonado 2014). However, both sides are represented by elected political parties with a democratic mandate, and therefore both enjoy political legitimacy, even if this operates in different spheres. Nor is the Spanish government a ‘neutral’ representative of the people, in contrast with a Catalan government that has forgotten this obligation. The current conflict therefore represents a battle between two opposing nationalisms, each of which is institutionally represented by legitimate political entities.

Frederick Barnard reminds us that liberal-democratic governments are forced to operate in the context of ‘the ideas of limited power and contingent authority in and through which they are definitionally identified and upheld’ (Barnard 2001: 5). The PP’s insistence on the infallibility of the Spanish Constitution seems to function as a way of trying to counteract or even deny this contingency, lending an authority to

Rajoy's pronouncements on Catalan independence that they would not otherwise have. In contrast, for the Catalans the authority of the constitution is contingent on continued support from the citizens whose lives it regulates, rather in the manner of Renan's 'daily plebiscite'. The result is a 'clash of normative systems' (Ferrerres Comella 2014: 584), in which no resolution seems to be possible since each side simply tries to invalidate the claims to normativity of the other.

Barnard also suggests that democratic norms are best derived from political activity, not from 'some antecedently self-validating authority or dogma' (Barnard 2001: 71). The Spanish government claims that since Catalan nationalism conditions the Catalan concept of democratic secession, the latter is therefore invalid. This disguises the fact that the concept of the nation that conditioned the constitution was substantially a product of a traditional form of Spanish nationalism of which the PP is a direct descendent (Balfour and Quiroga 2007: 46-7, 100-7). Equally, the PP's insistence on the Spanish Constitution as the ultimate source of authority means that its view of 'the rule of law' is also predicated on 'some pre-existing rightness' (Barnard 2001: 71). Furthermore, by equating the rule of law directly with democracy as if they were the same thing, the PP appears to make Spanish democracy itself contingent on the inviolable 'rightness' of the constitution. In its ruling on the possible secession of Quebec, the Canadian Supreme Court referred to the 'interaction between the rule of law and the democratic principle' as a requirement for generating political legitimacy and therefore a reason for the flexible interpretation of constitutional norms in a secession crisis (Supreme Court of Canada 1998, para 67). However, in the PP's view there can be no interaction between the two concepts – and therefore no conflict between them that requires political negotiation – because they are one and the same thing (Rajoy 2014: 15).

As we have seen, in the face of this national stalemate the preferred tactic of the *Generalitat* has been to hedge its bets over the arguments that might provide international recognition of the Catalan people's 'right to decide'. Even while fundamentally disagreeing with the 'remedial right only' approach that predominates internationally, the Catalans have found a possible route here in highlighting the state's persistent breaking of the reciprocal 'contract' on autonomy supposedly forged in the late 1970s. International precedents based on other premises are also invoked, including the UK and Canadian governments' pragmatic/democratic approaches to Scotland and Quebec, respectively (Evans 2013: 9-11; Supreme Court of Canada 1998). These are used to reinforce the argument that the democratically-expressed will of the Catalan people trumps the preservation of the existing nation-state, and morally requires a negotiated political solution based on the acceptance of secession as a legitimate political goal. On top of this, we also see the Catalan government actively working towards the establishment of 'state structures' that will prove an independent Catalonia's capacity to create a new state that will have immediate political legitimacy in the eyes of its own people (Wellman 2013: 113) – perhaps even more so than the ailing Spanish rump state it would leave behind.

It is the last of these approaches that perhaps has the greatest potential for opening up new chinks in the international community's attitude towards secession. The granting of the 2014 referendum to Scotland implied that the duties of citizenship conferred upon the members of minority nations within democratic nation-states can be offset by a moral right to have the government attend to these citizens' desires. The Catalans are now demanding recognition of this right from the Spanish state. However, since such recognition is unlikely to be forthcoming, their leaders are also attempting to manoeuvre themselves into a situation in which they have so many of the necessary

institutions in place that international acceptance of their right to secede would seem a small and relatively insignificant step, at least in terms of its effects on the daily lives of people within the borders of the new Catalan state. Without a change in Spain's position on negotiation, this process can only drive a deeper wedge between the two sides and is likely to entail further damage to the Spanish government's own precarious political legitimacy.

Notes

¹ Correspondence to kathryn.crameri@glasgow.ac.uk.

² See for example the list of 14,513 international figures who in 2013 were sent a copy of the book *Catalonia Calling: What the World Has to Know*:
<http://www.sapiens.cat/ca/personatges.php>.

³ Spanish Constitution of 1978, Section 149.1.32.

⁴ His deputy and education minister were also charged.

⁵ 'Resolució 5/X del Parlament de Catalunya, per la qual s'aprova la Declaració de sobirania i el dret a decidir del poble de Catalunya', 23 January 2013.

⁶ Sentence 42/2014 of 25 March 2014, published in *Boletín Oficial del Estado* number 87, 10 April 2014, pp.77-99.

⁷ See the Spanish Constitution of 1978: Articles 1(2) & 2.

⁸ All translations from Spanish and Catalan sources are my own.

⁹ Surveys consistently show that around 80% of Catalans back a binding referendum, which is much higher than the figures for those who support independence (which varies greatly depending on the exact parameters of the question) (RAC1 2012).

¹⁰ The question of what constitutes the Catalan nation is a complex one, since cultural and in some cases political identification with Catalonia extends outside the borders of the Autonomous Community of Catalonia as it is currently constituted. This is one of the factors that complicates the perceived legitimacy of the President of the Catalan Government to speak for all Catalans.

¹¹ Spanish Constitution of 1978, Sections 1, 2 & 155.

¹² See Part IX Section 161 of the Spanish Constitution of 1978.

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