

Homage to Catalonia: How to Lift the Gridlock of Constitutional Crisis in Spain

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On 6 October 1934 Lluís Companys proclaimed the Catalan State (*Estat Català*) within a 'Spanish Federal Republic'. 83 years later, Catalonia – unbelievable as it may sound – is on the verge of unilaterally declaring its independence, again. At this crucial moment, one has to seriously wonder whether there is any realistic way to de-escalate this grave constitutional crisis. Before, we try to suggest some principles that could potentially lead to the lifting of this gridlock, let us consider some facts.

First, the referendum that took place last Sunday contravenes the Spanish constitution. It also breaches the Catalan Statute of Autonomy (*Estatut*) that does not entrust the *Generalitat* and the Catalan legislature with the right to organise such referendum.

This is hardly surprising. National constitutional orders very rarely allow for secession. Notable exceptions to this rule include [Article 39 of the Ethiopian constitution](#) that provides 'every nation, nationality or people in Ethiopia' with 'the unrestricted right to self-determination up to secession'; [Section 1 of the Northern Ireland Act 1998](#) which explicitly recognises the right of secession of the region and; [Article 4 of the constitution of Liechtenstein](#) that allows individual municipalities to secede from the union and join either Switzerland or Austria.

Having said that, secessionists including the current Catalan elites very rarely claim that their actions are in conformity with the constitution of the given metropolitan State. In fact, the aim of referendums like the one organised last Sunday is precisely to mark the rupture with the old constitutional order and to create a new one.

What is more problematic than the unconstitutionality of the Catalan referendum, however, is the following. The procedures that the Catalan political elites used to pass the two laws on the referendum and on the transition towards the Catalan Republic [do not pass democratic muster by any stretch](#).

Of course, nothing of the aforementioned gives the right to the Spanish authorities to use such police coercion. Even if it is proved that the Catalan police (*Mossos d'Esquadra*) did not do their job correctly, the State police forces (*Policía Nacional* and *Guardia Civil*) should have never exercised such brutal force against people that tried to express their political views by taking part in that procedure. The contrast between the images from Catalonia and the speech of the Spanish Deputy Prime Minister Soraya Sáenz de Santamaría who was reassuring everyone that the response of the government had been proportionate could not be more stark.

So, the question is where can we go from here?

I would argue that although, until now, the intransigence of both sides has led to this gridlock, there is always space for a compromise that could de-escalate the crisis. However, such compromise should be characterised by a number of principles that could help the two sides present the future agreement as a win-win situation.

First, the Catalan political elites should resist the temptation of unilaterally declaring the independence of Catalonia. The level of participation in the referendum does not allow them to make a convincing case for self-determination. Moreover, such self-restraint is the absolute bare minimum requirement for a meaningful dialogue to start.

Second, the Spanish Government and Opposition should commit themselves to the idea of a plural, multinational Spain. Of course, such an idea is not exactly part of the legacy and history of the governing party. In fact, *Partido Popular* was the party that organised a campaign against the 2006 *Estatut* and challenged it before the *Tribunal Constitucional*. Be that as it may, it is only a firm and tangible commitment to the plurality of a multinational Spain that could potentially secure Spanish unity.

Third, the negotiations should entail a new constitutional arrangement for Catalonia that at a minimum ensures the level of autonomy that the 2006 *Estatut* was providing.

Fourth, this new constitutional arrangement should also provide for a constitutional avenue for Catalan independence. The fact that all reliable polls suggest that the overwhelming majority of Catalans are supporting the organisation of a democratic and legally binding referendum over their constitutional future (*dret de decidir*) should be seriously taken into account.

Fifth, Catalan independence should be decided through super-majorities. The issue of Catalan secession is divisive even within the Catalan society. A mere 50+1 majority should not be able to decide it.

The final question is who could be the honest and impartial broker that could negotiate such compromise between the parties. Unlike what a number of commentators have suggested, I do not believe that the EU can play this role. In a recent [paper](#), I have showed that its very limited legal toolbox does not allow the EU to undertake an active role in conflict resolution within its borders. The EU can accommodate and provide for pragmatic solutions to everyday problems but it cannot catalyse the resolution of disputes that take place within the borders of its Member States. There is enough evidence to suggest that the Europeanisation of such conflicts do not lead to their settlement. It just adds another arena where the parties simply continue their dispute with other means.

So it is up to the Catalan and Spanish political elites to show the necessary level of maturity to solve this existential crisis. Can they do it? The spectre of Lluís Companys is haunting Catalonia and Spain.

A previous version of this article contained a sentence about Quebec that has been deleted after a reader noted a factual error.

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