

Explaining the differing government responses to self-determination demands in Spain and the UK

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Dr Daniel Cetrà
University of Edinburgh

Dr Malcolm Harvey
University of Aberdeen

Abstract

This paper explores why the UK Government accepted the principle of a referendum on Scottish independence while the Spanish Government has continued to oppose a similar referendum in Catalonia. Previous literature in territorial politics on these cases has focused on the causes behind the rise in independence support and the characteristics of the independence project, but the issue of the different state responses to the same demand has not received sustained attention.

We propose to fill this gap by examining the factors that explain the different approaches taken by the two governments. We hypothesise that there is something distinctly and significantly different between the two contexts that help explain the divergence. Drawing on literature on party politics, constitutional law, nationalism studies and citizen engagement, we identify a number of plausible factors. These include, but are not limited to, the following: different incentives created by party systems and party competition; different constitutions; different national frames and understandings of the political union; and supply (autonomous institutions) and demand (public opinion) dynamics. We stress throughout the analysis the normative underpinning of political principles and institutional designs. We then move to the second half of the paper, exploring these factors as they are embedded in the particular British and Spanish contexts. The focus is on assessing the significance of the factors pinpointed by the academic literatures in each of the cases. The findings will contribute to the understanding of the different attitudes adopted by the UK and Spanish Governments, and to expanding and refining theory in territorial politics about state responses to independence demands.

Introduction

Why did the UK Government accept the principle of a referendum on Scottish independence while the Spanish Government has continued to oppose a similar referendum in Catalonia? This article argues that this variation can be explained by three main factors: the constitutional design relating to plurinationalism (incorporating interpretations of what the state and the nation is, the locus of sovereignty, and the type of constitution that exists in each case); party politics (the incentives created by the party system and the dynamics of party competition); and public engagement with and opinion on the issues of secession, both within the territory engaged in secessionist demands and beyond. There has been a general assumption among political commentators that major difference between the two cases is that the codified Spanish constitution – which appears to forbid self-determination for any of its autonomous communities – is the primary reason for this divergence in approach. While this is a key facet of the Spanish Government's position with regards to a Catalan referendum, and indeed a relevant factor, we suggest that their interpretation of the constitution and the grounds for their refusal veers towards a political rather than legal position.

Almost simultaneously, the British Government formed by a Conservative-Liberal Democrat coalition led by David Cameron, and the Spanish Government led by Mariano Rajoy (Popular Party, PP) faced demands for independence referendums in Scotland and Catalonia. The 2011 Scottish election delivered a Scottish National Party (SNP) majority government as the party won 69 seats out of 129. The SNP argued the result provided a mandate for an independence referendum as their manifesto included the commitment to bring forward an independence referendum bill (SNP, 2011: 28). Evidence shows that increase in SNP support was the result of the perception that the party provided Scotland with effective government rather than an increase in support for independence (Curtice, 2011: 58-65). Despite this, the election results paved the way for a new stage of the constitutional debate in Scotland focused on self-determination and independence. In 2012, then-Catalan PM Artur Mas (then Convergence and Union, CiU) called a snap election and campaigned on the promise to deliver an independence referendum and to begin building the structures of the future Catalan state (CiU 2012: 12). This was a major shift in the traditionally moderate stance of the party on the constitutional question, which consisted in pushing for more autonomy while participating in state-level politics (Barrio and Barberà, 2011). Catalan nationalists claimed that the election delivered a mandate for an independence referendum as pro-referendum parties together achieved a comfortable majority. CiU and the pro-independence Republican Left of Catalonia (ERC) together won 71 MPS, a majority of three; the Catalan greens (IC-V), which also supported a referendum although it was not their main concern, obtained 13 seats; and the far-left pro-independence CUP obtained 3 seats (Martí, 2013). The Catalan parliament passed a 'Declaration of Sovereignty' on 23 January 2013. The ball was in the central government's court.

This article examines the different ways in which the British and Spanish Governments responded to demands for independence referendums and seeks to explain this variation. We adopt a contextualised approach, identifying plausible factors in the literature and exploring them as they are embedded in the specific British and Spanish contexts. We refer to 'factors' rather than 'variables', implying that each is interrelated and relevant in complex ways rather than having an independent effect that can be identified by controlling for the others. Under the Edinburgh Agreement, the Scottish and British Governments agreed to work together to ensure that a referendum on independence for Scotland would take place (Edinburgh Agreement, 2012). The constitution is a reserved matter and the UK Government transferred the powers to hold a referendum to the Scottish parliament using a process known as a Section 30 Order. By contrast, in Spain the demand for a Catalan independence referendum met with opposition from Spain's central government, a position supported by a comfortable majority in the Spanish Parliament.

This article hopes to contribute to the understanding of the different reactions to self-determination demands in the UK and Spain. More generally, it aims at bringing new insights about state responses to self-determination demands. The next section examines the variation in the responses given by the UK and Spanish Governments and the political dynamics that unfolded. In formal terms, this is our *explanandum*. Section two draws on scholarship on constitutional law, nationalism, and territorial politics to identify plausible factors that might explain the variation. Section three explores these factors as they are embedded in the particular British and Spanish contexts. Our *explanans* are the politics of the constitution; the incentives of party system and party competition; and public opinion. We cast doubt on explanations focusing exclusively on the different constitutional designs of Spain and UK and draw attention to the political and national views that underpin constitutional interpretations and precepts, among other factors.

Governmental Reactions to Self-Determination Demands

Spain

The Spanish Government have consistently maintained that there cannot be a Catalan independence referendum. The dominant argument is that the Spanish constitution enshrines the indivisibility of the Spanish nation and establishes that national sovereignty belongs to the Spanish people as a whole. As a result, even if there were to be a referendum, the franchise should extend across the whole of Spain and not be limited to Catalonia. A Catalan referendum would be ‘an illegal act’ and a ‘violation’ of national sovereignty, according to Spanish PM Mariano Rajoy (Calleja, 2017). In its 2015 manifesto, the PP stressed that ‘the unity of the Spanish nation is the principle grounding our democracy’ and that the party ‘guarantees and will always guarantee that neither Spain nor our national sovereignty be chopped’ (PP, 2015: 7). Facing demands from Catalonia to respect ‘the democratic right to decide of Catalans’, the Spanish Government’s answer consisted of equating law-enforcement with democracy. Indeed, the Spanish Vice-President Soraya Sáenz de Santamaría has repeatedly argued that there is no democracy beyond the law (EFE, 2014). The Spanish government explicitly rejected the Scottish precedent precisely on the grounds that Spain has a written constitution that affirms the unity of Spain.

The focus on the unconstitutionality of a Catalan referendum and the need to obey the law is complemented with references to the dramatic consequences of independence itself. Prime Minister Rajoy and the Spanish Government have argued that Catalan independence would be detrimental for Catalans as it would imply the exit from the European Union, the common market, and the Euro (Rodríguez, 2017). There have also been calls for preserving the emotional and cultural ties binding Catalans and the rest of Spaniards after centuries of living together. These calls are connected to the pride of being Spanish, partly grounded on the claim that Spain is the oldest nation in Europe (Moncloa, 2017).

The Spanish Government’s position is shared by all state-wide parties except the leftist coalition *Unidos Podemos* (Together We Can). This coalition is formed by *Podemos*, United Left, and smaller parties. In April 2014, a delegation of the Catalan Parliament formally asked the Spanish Parliament to transfer the powers to hold a legal referendum to Catalonia, a demand that echoed the mechanism used by the UK Government to transfer the competence to the Scottish Parliament. Under the current Spanish constitution, referendums can only be called by the central government in Madrid. An overwhelming majority of Spanish MPs voted against it, including the main opposition Socialist party – PSOE (Martí and Cetrà, 2016: 108). After the 2015 Spanish election, one of the main reasons why a leftist coalition between *Podemos* and PSOE with the external support of other parties did not materialise is that *Podemos* established the holding of a Catalan independence referendum as a *sine qua non* requirement to form a government, while the PSOE opposed such a referendum. More recently, the party has attempted to tone down his position (Rodríguez-Teruel, Barrio and Barberà, 2016: 13). In

September 2016 there was a successful internal revolt within the PSOE to remove Pedro Sánchez from his position as the party's General Secretary. Members of the party board justified this move due to the party's poor results in the 2015 and 2016 Spanish elections (Medina and Correa, 2016; Simón, 2016). It was also justified as a result of an agreement between the pro-independence Republican Left of Catalonia (ERC) and *Podemos*, brokered by Sánchez, which was seen as unacceptable by the wider party (Moreno, 2017).

The strategy of the Spanish Government has been to resort to challenges via the Constitutional Court. In September 2014 the Catalan Parliament passed a law on popular consultations to hold a non-binding independence vote on 9 November 2014. The Spanish Government challenged the law in the Court, which ruled the vote illegal five days before it was held. However, the Government ultimately tolerated the vote when the Catalan Government called it on the basis of article 40.2, which had not been appealed by the Spanish government. The vote, which came to be known as the 'participation process', was more an act of protest by the pro-independence side than a decisive test on independence as it was boycotted by most unionists (Liñeira and Cetrà, 2015: 263). In March 2017, then-PM Artur Mas was found guilty by Catalonia's High Court of disobeying the Spanish Constitutional Court and was fined and banned from holding public office for two years (García, 2017). Three other members of the Catalan Government were also found guilty. The President of the Catalan Parliament, Carme Forcadell, faced charges of neglect of duty and contempt of court for allowing the pro-independence 'roadmap' to be put to a vote in July 2016.

Partly as a result of the Spanish Government's unaltered position, there was a progressive shift in the strategic goal and discursive focus of the pro-independence camp. The initial emphasis on 'the right to decide' and the demand for a negotiated referendum was progressively replaced with the goal of independence. This enhanced divisions within the pro-independence camp. First, after the 2014 'participation process' there were public disagreements between CDC (Democratic Convergence of Catalonia) and ERC about the next step. Second, the 'plebiscitary elections' in November 2015 set the far-left pro-independence CUP as kingmaker as the Together for Yes (JxS) pro-independence coalition fell short of a majority (Martí and Cetrà, 2016). The CUP vetoed Mas's candidacy due to profound ideological disagreements, thus fulfilling their electoral promise of not re-electing him as president. JxS and the CUP struck a deal the day before the deadline which allowed CDC to keep the presidency with Carles Puigdemont while the CUP secured a parliamentary majority for JxS. Third, JxS and CUP have different views on the best strategy to achieve independence, with the latter defending an open confrontation and challenge with the state.

Another consequence of the shift from self-determination to independence was create tensions between the parties supporting the principle of a referendum but not necessarily independence, and those who supported independence outright. This is the case with regards to the Catalan Greens and *Podemos*, currently under the coalition *Catalunya Sí Que Es Pot* (Catalonia Yes We Can). This, together with the excessive difficulties of achieving unilateral independence, may have influenced the Catalan Government's recent decision to shift back the focus to the demand for a referendum. Catalan President Carles Puigdemont announced a binding referendum in September 2017 while insisting that he is still open to dialogue with the Spanish Government (Roger and Pruna, 2016). In April 2017 the Spanish Government challenged the Catalan draft budget in the Constitutional Court for including an item to cover the costs of the referendum, which automatically suspended it until the Court's ruling will be issued. The political deadlock remains.

The UK

In contrast with the more absolutist position of the Spanish Government, the UK Government has adopted a more permissive strategy with regards to demands for a referendum on independence, allowing the Scottish Parliament to organise and hold such a vote in 2014 and respect the outcome. The

caveat here is that this position appears to have changed recently, a point to which we will return later. Nevertheless, the relationship between the UK Government and Parliament at Westminster and the devolved institution at Holyrood in Edinburgh in relation to the constitutional question appears to be much more flexible than that of their Spanish counterparts.

Devolution to Scotland was a reaction to a clear demand for some form of self-government. The establishment of a Scottish Parliament was not seen as a threat to the Union but as a means of securing its continued existence. George (now Lord) Robertson, then Shadow Secretary of State for Scotland, proclaimed that devolution would “kill nationalism stone dead” (Harvey, 2015: 15). Besides which, the SNP in 1997 were not considered a threat to the Labour party’s hegemonic position in Scotland. The contrast with Catalonia is clear here. Since the establishment of the Catalan autonomous community in 1980, each election has seen Catalan nationalists emerge as the largest party, and the very establishment of these institutions was tied to the process of democratization, a process which the nationalists had played a significant role in. In Scotland and the UK, the nationalists had not been involved in these processes and were not in a position – in the initial years of devolution – to govern. What also stands in stark contrast is the apparent rigidity of the Spanish constitution, which establishes the ‘indivisible unity’ of the Spanish nation and appears to prohibit a referendum on that very subject. Not so in the UK, where the position is much more ambiguous, and constitutional change occurs more frequently and in an ad hoc manner, based predominantly on precedent and convention (Bogdanor, 1999). Thus, when the SNP won a minority government in 2007, and subsequently a majority in the 2011 Scottish Parliament election, they did so with the express intention (as indicated in election manifestos and numerous public statements while in office) of holding a referendum on independence. The UK Government, guided in part by opinion polls which suggested that the option of remaining in the UK would prevail handsomely, goaded the SNP into declaring a referendum. This was ostensibly a high stakes poker game: the UK Government believed that their victory would be significant, and that this would end discussion of further constitutional change for the foreseeable future.

As a result, a referendum was organised with the full support of the Conservative-Liberal Democrat UK Government, with the rules governing its operation outlined in a document which became known as the Edinburgh Agreement. Between the two governments, decisions were made upon the franchise for the referendum, the number of options and questions allowed on the ballot and a deadline by which the vote had to be held. With a turnout of 84.6%, the referendum engaged the population at a record level for an election or referendum under universal suffrage. Prime Minister David Cameron made regular interventions in the debate, emphasising his family belong to clan Cameron, whose motto ‘let us unite’ played explicitly to his argument in favour of the Union. The phrase ‘One Nation’ was used over twenty times by then-opposition leader Ed Miliband in a conference speech – ostensibly in an economic sense, but with reference to the Scottish debate too. Former Prime Minister Gordon Brown, and the current holder of that office Theresa May made reference to the UK as a ‘family of nations’ and a ‘Union of nations’, emphasising unity despite differences in identity. The outcome – the defeat of the independence proposal by 55.3%-44.7% – saw just over 2 million people vote to remain in the UK, against 1.6 million who voted to leave. Nevertheless, the UK General Election in May 2015 strengthened the SNP’s hand on the constitutional question after the party’s remarkable performance. While in 2010 the party had secured 6 seats in constituencies which had historically seen high support, in 2015 the SNP returned 56 of Scotland’s 59 MPs, reducing Labour, the Conservatives and the Liberal Democrats to a solitary Scottish seat each.

The 2016 Scottish Parliament election saw the SNP returned to government in Scotland, albeit as a minority. However, the increase in seats for the Scottish Greens has maintained a pro-independence majority among MSPs. The UK Government – after 2015, a Conservative majority – has sought to dampen support for independence by further extending autonomy to the Scottish Parliament. The taxation provisions of the Scotland Act 2012 were enacted after the 2016 election, and further

powers were devolved in the aftermath of the independence referendum and the Smith Commission process. It is clear that the UK Government's intention on the constitutional issue is to seek to accommodate demands for further autonomy within the framework of devolution and to allow the Scottish Parliament the opportunity to legislate freely within its areas of competence. However, in the wake of the EU referendum vote in which Scotland's vote to remain has been overruled by the UK-wide vote to leave, the Scottish First Minister Nicola Sturgeon has indicated her intention to begin a process that would allow Scotland to hold a second independence referendum by the end of Spring 2019. The UK Prime Minister Theresa May has responded by saying "now is not the time" for a second referendum, implying that consent for a referendum would not be withheld indefinitely, but that consent would not be forthcoming in short order. Nevertheless, the Scottish Parliament has given its backing for a Section 30 Order, which would temporarily transfer the power to hold a referendum to the Scottish Parliament – as it did in 2014 – meaning that the UK Government will now have a decision to make as to what strategy it intends to pursue.

Factors Explaining the Variation

The Constitutional Politics of Nationalism

The arguments provided by the Spanish Government in relation to the Catalan question points to the relevance of the constitutional design. The variation in the responses of the two central governments might be explained with reference to the fact that the Spanish written constitution clearly prohibits independence, while the UK lacks a codified constitution which allows for a much more flexible constitutional practice. In this paper, we cast doubt on this view. We emphasise that constitutions codify, rather than transcend, nationalism, and therefore explicitly legal arguments such as those of the Spanish Government are also political arguments comprising more or less implicit views over nationhood and sovereignty. We also stress that there are multiple interpretations available of the Spanish constitution.

Drawing on scholarship in constitutional law (Tierney, 2004; Walker, 2016), we identify three relevant constitutional factors through which we can appraise the two cases. The first is *the national conception of the state*. By this we mean whether the Spanish and the UK constitutional designs and praxis display a mononational or plurinational view of the state. The second factor is related and consists of *the locus of sovereignty*. This refers to whether it is legal for Catalonia and Scotland to hold independence referendums. The third is *the type of constitution*. By this we mean whether it is codified or non-codified, and whether its reform process is considered rigid or flexible.

Plurinational states represent a challenge to the monistic approach to liberal constitutionalism (Tierney, 2004; Requejo, 2010). This approach presupposes the existence of only one people within the state and presumes the liberal democratic state to be neutral in national and cultural terms. The claim by minority nationalists that the state encompasses different peoples puts into question unitary concepts of sovereignty and 'narrow formalisms which hope to freeze constitutional meaning within the frame of the dominant position' (Tierney, 2004: 15). There is a set of institutional repertoires that states can choose from when seeking to manage plurinationalism within its borders, including symbolic recognition, which assumes that state-wide political elites are willing to identify the state as plurinational (Swenden, 2013). We expect factors around the recognition of plurinationalism or otherwise to be relevant in explaining the responses given by the British and Spanish Governments. We expect the recognition of these territories as nations to be necessary but not sufficient conditions for the holding of an independence referendum.

In relation to the assumption of state neutrality, nationalism scholars and liberal nationalist theorists have persuasively argued that nationhood is pervasively institutionalised in the practice of liberal democracies (Dickhoff, 2016; Hearn, 2006; Kymlicka, 1995; 2001). Bernard Yack's notion of the

'myth of the civic nation' captures this point (Yack, 2012: 23-43). He notes that liberal constitutions do not only stipulate the moral and political principles that must rule the living together of a particular political community, but it also includes cultural elements and connections with pre-political identities. Mariano Rajoy's references to centuries of living together within the Spanish nation are a case in point. The myth of civic nations as voluntary associations for the expression of shared political principles fails to explain why loyalty and attachment are supposed to bind individuals to their particular nation rather than to any other one whose constitution supports the same principles. Because liberal constitutions codify rather than transcend particular national and cultural frames of reference, tensions within plurinational states are more fruitfully understood as the result of competing national projects. The extent to which the centre contributes – and accepts challenges – to nation building may also be an important explanatory factor.

Another challenge posed by minority nationalism is in relation to the principle of self-determination. Claims by minority nationalists carry with them a more or less explicit assertion of the right to self-determination, presented as part of the normative content of nationality (Keating 2001). The specific claim is that the nation is the subject of self-determination and it has the right to determine its future. The emerging notion of the 'right to decide' in the Catalan context captures well this principle, although this is a more vague formulation that aims at stressing the democratic foundations of the demand. The principle of self-determination sits uneasily with unitary concepts of sovereignty and puts into question the legitimacy of state borders. International and European law do not recognise a right to self-determination, and there is an unresolved debate in scholarship within liberal political theory over the conditions that make self-determination legitimate (Moore, 1998). While we recognise the relevance of these normative debates, themselves an abstraction from real-world dilemmas, we expect them to be less central in explaining the responses given by the two central governments. If we accept the view – widely held in international relations theory – that states are primarily concerned with self-preservation (Hobbes, 1996 [1651]) then any referendum that might threaten the boundaries of the state should not be undertaken. This is where issues within international law around the concepts of sovereignty and the primacy of states on the one hand, and respect for democratic processes and the principle of self-determination on the other come into conflict.

Historic claims to respect the right to self-determination date from Woodrow Wilson and the League of Nations, but as a principle of international relations, this has been balanced by the fact that states remain the primary actors in global politics, and as a result, the territorial integrity of existing states has tended to take priority. Although central governments tend to avoid grandiose claims about territorial integrity and preservation of borders when dealing with internal territorial claims, undoubtedly these issues of 'high politics' play a role in guiding their actions. The process of globalization has weakened the power of the state, introducing a supranational level of state interactions through international institutions. At the same time, regional actors have increased demands for autonomy, seeking opportunities to participate in global markets, threatening the primacy of the state from below. As a result, states have had to learn, in practice, to share sovereignty, both by ceding control of issues in the international realm to supranational bodies and, crucially, by decentralising within the state and allowing regional actors to determine policy within their own territories. Globalization and decentralization then, are two sides of the same coin when it comes to diminishing the power of central government and emboldening other political actors. How a central government reacts to both of these issues – in particular, the historic relationship the centre has with the concept of sovereignty – may be crucial in understanding whether a state may be willing to accommodate demands for a secession referendum.

Public Opinion

Beyond elite level discussions of sovereignty, self-determination and constitutional competences, public opinion and engagement with the issue may also be a significant variable in considering the different responses from the central governments. The demand for, and the participation in, constitutional referendums (sanctioned and un-sanctioned) emphasised that different methods of 'doing' formal politics can achieve broader public participation. It is not that the public are entirely disengaged from politics (though this does appear to be a trend – see Hay, 2007 and Flinders, 2012) but that the methods utilised and the expectations that they have of these methods lead to a negative view of the extent to which their participation matters. Referendums are the clearest examples of direct democracy in use in contemporary representative democracies, and their use has become widespread (Butler and Ranney, 1994). For some, this increase in use can be explained with reference to the negative role of the people in representative democracies – that is, the power of the people is limited to selecting and de-selecting their preferred representatives in elections (Bogdanor, 1994). For others, it is a question of increasing the legitimacy of a particular course of action – if the people vote for it, it appears to have more legitimacy (Papadopoulos, 2001). However, Chambers argues that the polarisation of debate in referendums and the inevitability of majoritarian outcomes actually “derails deliberation and, in so doing, undermines the legitimacy of outcomes”. Indeed, this goes as far as seeing voting in a referendum as “final” and citing referendums as a “zero-sum game” (Chambers, 2001: 240-5). Tierney (2012) points out that referendums in the context of representative democracies are problematic, potentially anti-democratic, and may not be the most appropriate means of directly engaging the public in political (and especially, constitutional) discussions. Deliberation of the issues related to constitutional questions creates a demand for information, requiring political actors to turn to activism, and electorates to be more active in seeking out information.

Alongside engagement, the views of the public – both within and outwith the region claiming self-determination – may also play a role. In the case of the former, the central government may accede to demands for a referendum on secession if it perceives that the demand for such a referendum exists but that support for secession itself is not sufficient to allow the region to secede. This represents a calculated risk on the part of the central government: referendums are often seen as an opportunity to punish a sitting government, and frequently the electorate make these opportunities into a judgement on the success or failure of the government itself, rather than the issue at stake (Qvortrup, 2005). Nevertheless, if opinion polls suggest that the status quo is the preferred option of the public within the secessionist region, especially if that is by a significant margin, the central government may see this as an opportunity to strengthen their case against secession, deliver a blow against those campaigning for secession, and move the issue off the political agenda. A calculated risk, but one in which the potential rewards are significant. In the case of the latter, public opinion beyond the region might also be taken into account. Here, these views are likely to focus on the historic unity of the state, emotional claims of connectivity, and pragmatic considerations such as whether the secessionist region contributes a significant economic advantage to the rest of the state, or whether it is seen to be a drain on the centre's finances. Other factors, such as public acceptance or rejection of the notion that a particular region has a 'right' to hold a referendum, or whether the electorate in the rest of the state should also have a say in the potential reorganisation of the state, might also be considered.

Party Politics

Party politics plays a significant role here too. Political elites are the ones responsible for managing minority nationalist demands and establishing and modifying constitutional arrangements aimed at address them. Drawing on scholarship in territorial politics (Meguid 2008, Toubreau and Massetti 2013, Verge 2013), we identify two relevant and interrelated factors through which we can appraise the two cases. The first are the strategic calculations of the ruling elites vis-à-vis the incentives created by the

party system. The second are the strategic calculations created by the dynamics of party competition. Political elites make decisions following a set of interests and objectives, and here we focus on their electoral logic of action (Toubeau and Massetti, 2013: 302). This logic is driven by the vote and office-seeking goals of parties, and the point here is that the positions of the two central governments reflect strategies that seek to maintain their dominant position in their party systems vis-à-vis the pressures of party competition. In relation to strategic incentives, Meguid (2008) suggested that state-wide parties threatened by regionalist parties will respond by accommodating their demands to undermine regionalist parties' ownership of the issue and to maximise their share of the vote. Conversely, state-wide parties not threatened by regionalist parties may adopt an adversarial strategy. We will appraise this contextually in the cases of the PP in Spain and the Conservatives in the UK.

Analysing Spain and the UK

In the Spanish case, the constitution shows a dominance of a mononational view of the state but also a significant degree of ambiguity. This leaves room to multiple interpretations of the national question. The PP Government's legal argument is based upon the idea of Spain as an 'indivisible nation', and implicitly, a lack of recognition of any distinct nations existing within the Spanish territory.

The 1978 Spanish constitution declares 'the Spanish people' as the subject of sovereignty 'from whom all state powers emanate' (Article 1.2). It also establishes that 'the Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards' (Article 2). Minority nations in Spain can be seen as 'nationalities' but not nations, as Spain as a whole is the only nation. The dominance of the majority national group is also reflected in the linguistic issue, a politically sensitive matter in Spain, as Article 3.1 declares Castilian the only official language throughout the state, which all Spaniards have the duty to know. Catalonia's position in terms of symbolic recognition is thus very different than that of Scotland. For, despite the lack of a single, codified constitution, Scotland's acceptance as a nation within the UK has never been in serious doubt (Harvey, 2017: 152). Indeed, the most recent Scotland Act (2016) established – for the first time – the permanence of the Scottish Parliament as an institution within the UK constitutional framework.

There is however a significant degree of ambiguity in the Spanish constitution. Although the constitution does not declare Spain to be a plurinational state, the reference to the right to self-government for 'the nationalities and regions of which [Spain] is composed' could be interpreted as the signal of a source of authority that precedes the constitution (Martínez-Herrera and Miley, 2010: 8). This interpretation could be supported by the fact that the Catalan *Generalitat* was re-established before the passing of the Spanish Constitution, thus creating a link to Catalonia's distinctive constitutional past. There are also references in the Spanish constitution to the 'peoples' of Spain in some passages, and there are calls to respect and protect Spain's cultural richness in the Preamble and in Article 3. Finally, many expected that the distinction between 'nationalities' and 'regions' would result in asymmetrical federal decentralisation that would de facto grant national recognition to minority nations (Tierney 2004). The ambivalence of the constitutional precepts reflects both the general willingness to reach a compromise after Franco's Dictatorship and the competing views of the constitutional committee over nationhood and sovereignty. The disagreement about whether Spain contains one or more nations remains unsolved, and national recognition has arguably been the main historical demand of Catalan nationalism.

In a recent report, the Institute of Autonomic Studies of Barcelona, a research institute linked to the Catalan Government, highlighted five different procedures through which Catalonia could hold a referendum on its constitutional future. The first is to base it on the Catalan statute on referendums; this would allow the referendum to be designed and organised in Catalonia, with the authorisation of the central Government. The second is to use the procedure for consultative referendums in Art. 92 of

the Constitution; in this case it would be held and at least minimally designed by the central institutions. The third would be the constitutional mechanism for the transfer of competences to the Catalan institutions of self-government, so that they would have competence to either hold or hold and design the referendum (Art.150). The fourth would be to use a statute on 'consultations' of citizens, which was submitted to the Catalan parliament as part of the new process, where the consultation could be fully designed and organised by the Catalan authorities. The fifth and final mechanism would be to reform the Constitution to include consultative referendums for AC's. The report then recommends that the Catalan authorities negotiate with the central ones to determine which of these procedures is the most adequate.

There is a clear distinction to be made in the differing terminology employed in each case. The UK's argument with regards to Scotland is more nuanced – it accepts the principle of Scotland as a nation, and broadly accepts its right to self-determination, though not without caveats. This is not a new circumstance – previous Conservative Prime Ministers Margaret Thatcher and John Major accepted Scotland could secede from the Union (Keating and McEwen, 2017: 9). Indeed, there has even been acceptance that Scotland could be a *successful* independent country from UK-wide politicians opposed to independence. The argument made is that it shouldn't *want* to. Much of the 'Unionist' argument has focused upon the idea of the UK as a 'Union of Nations', of Britishness as an overarching identity, with Scottish, Welsh or English identities not inconsistent with the idea. Multiple national identities are unproblematic for the UK state, which is happy to incorporate and accommodate these attitudes if it helps to maintain the Union. This appeal to unionism is, in contrast with the Spanish case, not a legal argument but much more of an appeal to emotional and historic ties that bind the nations within the state. The argument points to the fact that there is no constitutional barrier to secession, and constitutional change can – and has – occurred in order to facilitate the possibility. This factors into the type of constitution apparent (as outlined below) but also speaks to a different perception of the state, influenced by the different approaches to mononationalism and plurinationalism outlined above. The Spanish government, by contrast, falls back upon the intransigence of the constitution on the issue, providing a legal defence for a political position.

Control over constitutional matters remains a reserved competence in both cases. Nevertheless, the UK government ceded temporary control over the issue to the Scottish Parliament in 2014 to allow for the independence referendum to occur. Theresa May, as well as Secretary of State for Scotland David Mundell, have indicated that they would be amenable to doing so again in the future, but that 'now is not the time' for such a referendum (Johnson, 2017). In short, while sovereignty and the competence over the constitution itself remains at Westminster, we have seen that sovereignty shared in the past and may do again in the future – albeit at the discretion of the UK government. This is an important point, because it emphasises the fact that the flexibility of the constitution only plays a partial role in allowing for such shared competence. The UK's reliance on precedent and convention, and its use of referendums in an ad hoc manner – most often when it was perceived to be in the interests of the government – mean that the UK government's commitment to allowing the component nations of the UK the opportunity to claim their self-determination is not an intrinsic part of the constitution, but a position arrived at to achieve the maximum possible political leverage. As noted above, a Section 30 order that gave the Scottish Parliament the temporary power to hold a referendum was, essentially, a change to the constitutional competences of the institution. Similarly, while the Spanish constitution is more rigid, and interpretation of the relevant sections appears to preclude a Catalan referendum, there are options to alter this – albeit through a process that is complicated and potentially lengthy – thus, the design of the constitution itself and the legal appeals to it suggest that constitutional design is an insufficient factor in explaining the divergence in reactions to these demands.

This point shows the significance of party politics in understanding the different answers given by the two governments. The PP and the Conservative party are both centre-right state-wide parties

which are electorally unsuccessful in the minority nation, as evidenced by their share of the vote in regional and state elections as opposed to their electoral performance in the rest of the state. The Catalan branch of the PP, the Catalan Popular Party (PPC), has become a marginal party in Catalan politics as *Ciutadans* (Citizens) has overtaken their role as the party defending the unity of Spain and the constitutional order, at least in Catalan elections. As the PPC competes with *Ciutadans* for the Catalan unionist political space, rather than with regionalist parties, the PP does not risk incurring in severe electoral losses by adopting a rigid stance on the demand for a Catalan independence referendum. Indeed, should the PP be willing to address the demand for a Catalan independence referendum, the party would face severe electoral competition from *Ciutadans* at the Catalan level and from this party and the PSOE at the Spanish level. These parties would present the move as a 'concession' to the separatists, and the PP would probably experience a loss of votes as the party's core voters would feel that the party leadership is sacrificing the party's ideology. Thus, on this issue the PP does not face a tension between ideological purity and marginal vote-seeking (Toubeau and Massetti 2003, p. 306). In short, party ideology and vote-seeking calculations incentivise the PP to maintain their uncompromising position on the matter, while the constitutional design provide a further constraint and a discursive justification for their position.

The behaviour of the Conservative party can be contextualised in a similar but slightly different way. The historic decline of the Scottish party left them with no MPs in Scotland in 1997 (and have returned only a solitary Scottish MP in each of the elections since). Devolution, with a proportional electoral system, allowed for some recovery, but it was only with the Scottish Parliamentary election in 2016 that the party returned to significant strength, overtaking Labour as the second party to the SNP. To this end, the party's strategy with regards to party competition cannot be explained by a sense of being threatened by the regionalist party. Rather, both current Scottish Conservative leader Ruth Davidson and UK Prime Minister Theresa May have sought to burnish the party's Unionist credentials in Scotland by establishing the party as its primary defenders. The UK Government has thus attempted to accommodate demands where they believe that accommodation will have limited impact upon the constitutional future of the UK but have taken an adversarial position in relation to issues where they consider the Union threatened. In this manner, they have conceded the 'regionalist' agenda to the SNP and focused their electoral energies on the other significant block of Scottish voters – the majority that voted in favour of remaining in the UK in 2014 – and outflanked Labour on the issue.

What has also been clear – to this point – is that the pro-independence actors in Scotland have been willing to engage in the process, and 'play by the rules' established by the sovereignty of the UK government in the matter. They have not threatened to hold a referendum without the consent of the UK government, and have been willing to enter discussions to achieve this end, allowing both sides to maintain a diplomatic position. By contrast, the strict legal position in Spain appears to disallow any discussion over the issue, and the Catalan pro-independence actors have moved to a more radical position, which has been escalated by the Spanish government's intransigence on the issue – itself a position entrenched by the constitution. As a result, numerous court cases have occurred, Catalan politicians have been prosecuted for their role in the 'participation process' and the issue remains a live one. The question arises now as to whether Catalonia will be able to hold a legal referendum – with the agreement of the Spanish government – if it is not preceded by some form of constitutional reform.

Lastly, public opinion also appears to play a role in the decision-making process for each government. In the UK case, prior to the 2014 vote, there was widespread acceptance across the UK that Scotland should be able to hold a referendum. By 2015, the majority view (51%) in England and Wales was that the UK Government should block a second independence referendum if it were to be requested before 2020 (What Scotland Thinks, 2015). In Catalonia, support for the right to hold a referendum amounts to around four-fifths of the electorate, while opinion in the rest of Spain constitutes a majority (65%-35%) against allowing a referendum. In both cases then, it appears that the

actions of the central government are in tune with the majority of the population that they represent. This has important electoral considerations at regional and national level. Broadly, those who support the unity of the state are likely to support the government in their position, while those who are pro-secession are unlikely to do so. What this amounts to in practice is an added constraint for the Spanish government, since the unity of the Spanish nation appears to retain some salience in elections, whereas in UK-wide elections, this appears to be less of an issue. However, as a caveat here, the potential for a Labour-SNP coalition in the aftermath of the 2015 UK General Election did appear to do some damage to Ed Miliband's chances of becoming Prime Minister. And in the Scottish Parliamentary election of 2016, the Conservative party replaced Labour as the main opposition party, campaigning on a clear platform as the principle party in support of the Union.

Conclusion

This article sought to explain the differing responses of the UK and Spanish governments to the similar demands for referendums on secession placed upon them by Scotland and Catalonia respectively. We challenged the popularity of the claim that these responses are the result of the rigid Spanish constitutional setting compared with the flexibility of the UK constitution, suggesting that this legal consideration is not sufficient to explain the differences in the cases. Rather, we claim that the different political interpretations of state and nation, party political considerations and public opinion have played a role in shaping the position of the central government in responding to these demands.

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