

CATALONIA: POTENTIAL SOVEREIGNTY IN THE
ERA OF CONTROVERSIAL SELF-DETERMINATION

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I. INTRODUCTION

In the past couple of years, Catalonia, an autonomous region of Spain with approximately 7.5 million people,¹ has come to the forefront of international news because of its growing secessionist movement. In 2017, “¡Madrid nos roba!” (Madrid is robbing us) could be heard around the city during protests and marches.² Those protests were spurred by a series of events starting on June 9, 2017, when the regional president of Catalonia, Carles Puigdemont, announced a plan for a

* This online annotation was written in the course of the author’s tenure as a Staff Editor on the *N.Y.U. Journal of International Law & Politics*.

1. *Timeline of Catalan Separatism that has Rocked Spain*, AL JAZEERA (Oct. 18, 2019), <https://www.aljazeera.com/news/2019/10/18/timeline-of-catalan-separatism-that-has-rocked-spain>.

2. *Could Catalonia Make a Success of Independence?*, BBC (Dec. 22, 2017), <https://www.bbc.com/news/world-europe-41474674>.

“binding referendum on independence.”³ The Spanish authorities claimed that the vote would be illegal,⁴ but on October 1, 2017, more than two million Catalans voted in the referendum.⁵ Puigdemont declared a victory for secession from Spain and on October 27, 2017, asserting Catalonia as an independent state.⁶ However, no country recognized Catalonia as a state independent from Spain.⁷ The Spanish government then dissolved the Catalan parliament, took control of the region, and sent out arrest warrants for Puigdemont and his colleagues.⁸ In response, Puigdemont and other separatist leaders fled to Belgium and were later taken into custody. Nine Catalan leaders ended up in prison.⁹ Yet despite the imprisonment of some of their leaders, the separatist movement lives on in Catalonia, continuing a long history of independence movements. While the arguments for and against Catalan independence have been discussed thoroughly, this annotation will explore the arguments surrounding the legality of Catalonia’s declaration of independence under international law.

II. BACKGROUND

Catalonia has a history of separatist movements. In the seventeenth century, a conflict of interest with Castile¹⁰ led to

3. *Timeline of Catalan Separatism*, *supra* note 1.

4. *Id.*

5. *Id.*

6. Camila Domonoske, *Catalonia Declares Independence; Spain Approves Central Takeover of Region*, NPR (Oct. 27, 2017), <https://www.npr.org/sections/thetwo-way/2017/10/27/560357561/spains-prime-minister-asks-for-direct-rule-authority-over-catalonia>.

7. *The Latest: EU Official Says No One Will Recognize Catalonia*, AP, Oct. 28, 2017, <https://apnews.com/article/919885dc53724eadb4476350f75ac9da>.

8. Meg Bernhard, *Leaders of Spain and Catalonia Open Long-Awaited Talks on Region’s Political Future*, L.A. TIMES (Feb. 26, 2020), <https://www.latimes.com/world-nation/story/2020-02-26/spain-catalonia-independence-talks>.

9. Ana Garcia Valdivia, *Catalan Separatist Leaders Sentenced To 9–13 Years Prison Over 2017 Independence Referendum*, FORBES (Oct. 15, 2019), <https://www.forbes.com/sites/anagarciavaldivia/2019/10/15/catalan-separatist-leaders-sentenced-to-9-13-years-prison-over-independence-referendum-in-2017/?sh=234b90bf579e>.

10. Castille is the traditional central region constituting more than a fourth of modern-day Spain. The region was the core of the Kingdom of

the first separatist movement in which Catalonia revolted against Spain and put itself under the protection of France.¹¹ There were a few smaller movements over the next 200 years, but in 1850 a stronger movement began to reclaim Catalan as a language.¹²

When Francisco Franco rose to power in 1939, he removed the 1932 Statutory Autonomy that had been given to places like Catalonia and the Basque country¹³ and banned all Catalan national languages and holidays.¹⁴ He also removed all symbolic elements of the Catalan identity, including the flag and the national anthem.¹⁵ In 1977, after the death of Francisco Franco, the new democratic government returned some autonomy to the region and Catalonia recovered its autonomous government, the *Generalitat*.¹⁶ A new statute of autonomy was also sanctioned in 1979.¹⁷ However, the Spanish Constitution was adjusted to say that the “Constitution is based upon the indissoluble unity of the Spanish Nation, the common and indivisible patria of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions that make it up and solidarity

Castille, under which Spain was united during the fifteenth and early sixteenth centuries.

Castille, BRITANNICA, <https://www.britannica.com/place/Castile-region-Spain> (last visited Feb. 17, 2021).

11. See Vicente Rodríguez, *Catalonia*, BRITANNICA, <https://www.britannica.com/place/Catalonia> (last visited Feb. 17, 2021) (“In 1640, Catalonia revolted against Spain and placed itself under the protection of Louis XIII of France.”).

12. *Id.* Language was and is seen as important to political identity in Spain. See CLARA J. MIRO, IDENTITY DISCOURSES ABOUT SPAIN AND CATALONIA IN NEWS MEDIA: UNDERSTANDING MODERN SECESSIONISM 1 (2020) (arguing that “Catalan language is central for a Catalan identity.”).

13. The 1932 Statute of Autonomy defined Catalonia as an autonomous region with its own treasury and established the core institutions of its Government: Parliament, the President and the Executive council. *The Contemporary Government of Catalonia (20th and 21st centuries)*, GENERALITAT DE CATALUNYA (Nov. 19, 2018) <https://web.gencat.cat/en/generalitat/historia/generalitat-contemporania/>.

14. Omar G. Encarnación, *The Ghost of Franco Still Haunts Catalonia*, FOREIGN POL’Y (Oct. 5, 2017) <https://foreignpolicy.com/2017/10/05/the-ghost-of-franco-still-haunts-catalonia/>.

15. Montserrat Guibernau, *Prospects for an Independent Catalonia*, 27 INT’L J. POL., CULTURE, & SOC’Y 5 (2014).

16. *Id.* at 13.

17. *Id.*

between all of them.”¹⁸ This clause would later become a point of contention between the separatist movement in Catalonia and the governmental power in Spain, as it reveals the tension between defending the unity of Spain and the social pressures to recognize historic nationalities like the Catalan people.¹⁹

Finally, Catalonia is economically important to Spain. It is the most prosperous region in the country, accounting for 19% of Spain’s GDP.²⁰ It would therefore be very difficult for Spanish leaders to allow Catalonia to separate, since it has been a vital economic part of the Spanish state since the fifteenth century and remains one of its wealthiest regions.²¹

III. CATALONIA MEETS THE TRADITIONAL REQUIREMENTS OF STATEHOOD UNDER INTERNATIONAL LAW

Much scholarship has discussed whether Catalonia has a right to secede from Spain, but few interrogate whether Catalonia actually meets the traditional requirements of statehood under international law. Under the Montevideo Convention, the traditional requirements for statehood are a) permanent population, b) defined territory, c) government, and d) the capacity to enter into relations with other states.²² This annotation will explore Catalonia’s satisfaction of these elements before moving into a discussion of what recognizing an independent Catalan state would mean for other countries.

A. *Catalonia Has a Permanent Population and a Defined Territory*

There is not a clear definition of what makes a population permanent. A permanent population could be described as a

18. CONSTITUCIÓN ESPAÑOLA, art. 2., B.O.E. n. 311, Dec. 29, 1978 (Spain).

19. Guibernau, *supra* note 15.

20. REAL INSTITUTE ELCAÑO, THE INDEPENDENCE CONFLICT IN CATALONIA 13 (2019), <http://www.realinstitutoelcano.org/wps/wcm/connect/d8496562-e096-44a1-81da-b871c91ccf62/Catalonia-dossier-elcano-october-2019.pdf?MOD=AJPERES&CACHEID=d8496562-e096-44a1-81da-b871c91ccf62>.

21. *Catalonia’s Bid for Independence from Spain Explained*, BBC (Oct. 18, 2019), <https://www.bbc.com/news/world-europe-29478415>.

22. Convention on Rights and Duties of States, art. 1, Dec. 26, 1934, 165 L.N.T.S. 19, 25.

group that lives “together as one people, and secondly must form a national community.”²³ Another definition of permanent population posits that “there must be people identifying themselves with the territory no matter how small or large the population might be.”²⁴ Usually, to fulfill this factor, the size of the population serves as an indicator.

Catalonia may meet the permanent population requirement under either definition. There are 7.5 million people in Catalonia—about 16% of the population of Spain.²⁵ International law does not establish a minimum number of people necessary for a population to be recognized as permanent,²⁶ but Catalonia would likely pass any such bar. Regions with as few as 14,000 people have been deemed to have a permanent population for purposes of statehood.²⁷ This factor would thus weigh in favor of Catalonian statehood.

However, it is less clear whether Catalonia has a defined territory. Counterintuitively, “a defined territory does not require precise delimitation of every corner and every portion of a putative State’s boundaries.”²⁸ The relevant question is whether the state has “a territory of its own over which it exercises sovereign and independent authority.”²⁹ Catalonia consists of four provinces: Barcelona, Lleida, Girona and Tarragona,³⁰ with a surface area of 32,107 square kilometers.³¹ A defined Catalonia was first recognized in the twelfth century,³² and the boundaries of the region have

23. Jianming Shen, *Sovereignty, Statehood, Self-Determination, and the Issue of Taiwan*, 15 AM. U. INT’L L. REV. 1101, 1126 (2000).

24. *Id.* at 1126–27.

25. *Catalonia Population 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/regions/catalonia-population> (last visited Feb. 17, 2021).

26. LORI DAMROSCH ET AL., DAMROSCH AND MURPHY’S INTERNATIONAL LAW, CASES AND MATERIALS 287 (7th ed. 2019).

27. *Id.*

28. Shen, *supra* note 23, at 1128.

29. *Id.* at 1129.

30. *Catalonia Population 2020*, *supra* note 25.

31. *Territory*, GENERALITAT DE CATALUNYA, <https://web.gencat.cat/en/temes/catalunya/coneixer/territori-poblacio/> (last updated Apr. 29, 2016).

32. Erin Blakemore, *Why Spain’s Wealthiest Region Wants Independence*, NAT’L GEOGRAPHIC (Nov. 1, 2019), <https://www.nationalgeographic.com/history/article/why-catalonia-spain-wealthiest-region-independence>.

remained unchanged since the second half of the seventeenth century.³³ The greatest difficulty in an argument against defining Catalonia as a territory is that it is a semi-autonomous region within Spain.³⁴ Due to this status, Catalonia would not be free from Spanish claims that they are sovereign over the territory. Indeed, the Catalonian authorities do not have legal title to the land.³⁵ It is therefore unclear whether the factor of having a defined territory would be squarely within Catalonia's favor.

B. *Catalonia Has a Government, but the Effectiveness of that Government is Unclear*

The third statehood requirement of the Montevideo Convention is that the potential state must have a government. Indeed, a government is an indispensable requirement for statehood.³⁶ Potential states have a fair degree of latitude in this respect: The Convention does not state what type of government is required or how the government must operate,³⁷ and the degree of democracy does not matter.³⁸ What does matter is the effectiveness and legitimacy of the government. To determine effectiveness and legitimacy, "the degree of actual authority exercised measures effectiveness, while legal title to exercise that authority measures legitimacy."³⁹ In other words, the government must be able to exercise authority and have the right to exercise that authority.

The Catalan government consists of a legitimate and effective government called the *Generalitat*, composed of an

33. See *Catalonia Profile – Timeline*, BBC (May 14, 2018), <https://www.bbc.com/news/world-europe-20345073> (describing the history of the region).

34. Merriam-Webster defines semi-autonomous as "largely self-governing within a larger political or organizational entity." Semi-Autonomous, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/semiautonomous> (last visited Feb. 17, 2021).

35. Cf. Shen, *supra* note 23, at 1129 (explaining that Taiwan was deemed not to have a defined territory because its land is owned by no one other than the state of China. Taiwanese authorities do not have legal title to the land).

36. *Id.* at 1130.

37. DAMROSCH ET AL., *supra* note 26.

38. Shen, *supra* note 23, at 1131.

39. *Id.*

executive council headed by a president and a unicameral parliament.⁴⁰ The current *Generalitat* was established by the 1979 Statute of Autonomy, which was reformed in 2006.⁴¹ The Statute of Autonomy was created by the Catalan members of the Spanish Parliament and then accepted by the assembly of members of Spanish parliament and approved by referendum.⁴² It gives the *Generalitat* a broad range of powers, including full legislative, regulatory and executive powers in areas such as agriculture and consumer affairs.⁴³ The *Generalitat* also has control over Catalan civil law, tourism, and consumer affairs.⁴⁴ But while these are important areas of governance, the *Generalitat* does not have complete control over Catalonia.

The region also maintains its own police force and public broadcaster⁴⁵ and retains “considerable autonomy in regional authority, culture, education, health and transportation.”⁴⁶ The Catalan government controls its own treasury and can borrow money on its own, but the majority of the region’s tax revenue is controlled by the central government of Spain.⁴⁷ In sum, the Catalan government seems to have legal title and authority to act on its own behalf on issues of general governance. Therefore, it probably fulfills the requirement of having actual authority. Of course, it is difficult to measure the effectiveness of the actual government, but the breadth of powers that the *Generalitat* has might indicate that it is effective since it has authority to influence every aspect of Catalonian life.

40. Rodriguez, *supra* note 11.

41. *The Contemporary Government of Catalonia*, *supra* note 13.

42. *Id.*

43. *Institutional Structure and Powers*, GENERALITAT DE CATALUNYA, <http://economia.gencat.cat/en/ambits-actuacio/relacio-inversors/fets-i-dades/estructura-institucional-competencies/> (last visited Feb. 17, 2021).

44. *Id.*

45. *Catalonia: What Powers Does the Region Have?*, BBC (Oct. 27, 2017), <https://www.bbc.com/news/world-europe-41754124>.

46. Anastazia Marinzal, *Catalonia: The Quest for Independence from Spain 12* (2014) (senior honors thesis, John Carrol University) <https://collected.jcu.edu/cgi/viewcontent.cgi?article=1039&context=honorpapers>.

47. *See id.* at 9 (noting that Catalonia “feels that it bears the brunt of taxes within Spain.”)

C. *Catalonia Can Engage with Other States in a Limited Capacity*

The final statehood requirement of the Montevideo Convention is that the potential state have the capacity to engage in relations with other states. This factor weighs against Catalonia being declared a state. Although this factor requires very little “economic or monetary ability or political or military power,” the state must “possess a legal identity that is distinct from other states and subordinate to nothing but international law.”⁴⁸ In other words, the state must be sovereign.⁴⁹ The Catalan government does have its own international relations department and has engaged in “paradiplomatic work,”⁵⁰ but these are not State-to-State relations. “A political subdivision or a local government, no matter how special it may be, does not have the sovereignty and independence to act as a State.”⁵¹ Catalonia still remains under the control of Spain and could not be characterized as an independent or sovereign entity, and therefore probably fails this factor.

IV. RECOGNITION BY OTHER STATES AND THE FUTURE OF THE CATALONIAN INDEPENDENCE MOVEMENT

Under the declaratory theory of statehood in international law, Catalonia would qualify as a state if it fulfilled the factors of the Montevideo Convention.⁵² Under the constitutive theory of statehood, the act of recognition by other states itself confers international legal personality on the entity purporting to be a state.⁵³ In other words, other states create the new state by recognizing it. To determine if the

48. Shen, *supra* note 23, at 1134.

49. *Id.*

50. See *Catalonia’s Foreign Affairs Plan Curtailed for ‘Undermining’ Spain’s Authority*, CATALAN NEWS (Oct. 6, 2020) <https://www.catalannews.com/politics/item/catalonia-s-foreign-affairs-plan-curtailed-for-undermining-spain-s-authority> (reporting that Spanish courts struck down the Catalan government’s latest foreign action plan).

51. Shen, *supra* note 23, at 1138.

52. Shrutí Venkatraman, *Can the Contrasting Standards for Statehood Put Forth by the Declaratory and Constitutive Theories of Recognition be Reconciled? An Examination of Kosovo’s Disputed Statehood*, 36 EDINBURGH STUDENT L. REV. 36, 36 (2016–19).

53. *Id.* at 37.

entity constituted a state, a court would look at the acts of recognition by other states.⁵⁴ The declaratory theory provides an easier path to Catalan statehood, while the constitutive theory makes that path a bit more difficult. When the leaders of Catalonia declared independence in 2017, the world did not embrace their decision.⁵⁵ European Council President Donald Tusk tweeted, “FOR EU nothing changes. Spain remains our only interlocutor.”⁵⁶ French President Emmanuel Macron stated that the Spanish Prime Minister at the time, Mariano Rajoy, had his “full support.”⁵⁷ The German Government Spokesman at the time, Steffen Seibert, stated that the federal government of Germany “does not recognize such a declaration of independence.”⁵⁸ Finally, the U.S. government declared that “Catalonia is an integral part of Spain, and the United States supports the Spanish government’s constitutional measures to keep Spain strong and unified.”⁵⁹ These and other statements make it clear that no country recognized Catalonia as a state after its declaration of independence, meaning Catalonia failed to achieve statehood under the constitutive theory.

V. CONCLUSION

If Catalonia were to unilaterally secede, it is unclear whether it would be considered a state under traditional international law, or whether other states or blocs such as the European Union would recognize an independent Catalonia. Since the arrests of the political leaders that led the referendum in 2017, the Catalan Secessionist movement has weakened. But in February 2020, the current leaders of the Catalan and Spanish government began talks about what the political future of Catalan might look like.⁶⁰ The future is unclear, but negotiations are the right steps towards a more cohesive future for both Catalonia and Spain.

54. *Id.*

55. *How the World Reacted to Catalan Independence Declaration*, POLITICO (Oct. 27, 2017), <https://www.politico.eu/article/how-the-world-reacted-to-catalan-independence-declaration/>.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Bernhard, *supra* note 8.