

CATALAN INDEPENDENCE

AN OPPORTUNITY FOR EUROPEAN DEMOCRACY

Vicent Partal

THE crisis between Spain and Catalonia is not new, as there has been a political and institutional conflict between the two nations since at least the eighteenth century. During this time, Catalonia has made several attempts to declare independence. It did so in 1810, but was incorporated into the Napoleonic Empire two years later and then returned to Spain in 1814. It did so again on April 14th, 1931, but within hours it became an autonomous region of Spain for the first time. It did so again in October 1934, provoking a harsh repression that led to the imprisonment of the Catalan government until the victory of the Popular Front in 1936. This was the beginning of the Francoist insurgency. Finally, on October 27th, 2017, there was another declaration of independence, in an episode that, despite the appearances, is far from over.

With the exception of 1931, the Spanish response to Catalan politics has been to refuse to talk and instead resort to repression. The images of Spanish police beating up citizens voting in the referendum on self-determination on October 1st, 2017—smashing polling stations, and taking away ballot boxes—went around the world and put Catalonia back in the headlines everywhere.

Soon thereafter, the President of the Catalan Assembly, Carme Forcadell, went to jail, and the President of the Government, Carles Puigdemont, went into exile—two events that are by no means normal in democratic Europe. While they might not be normal in Europe, they are in Spain. In this sense, it is relevant to look at the fates of the 13 presidents of the autonomous community of Catalonia since 1931 in order to better understand that relations between Catalonia and Spain have never been easy. Five of

Vicent Partal is a Catalan journalist. After working for many years as an international reporter, he founded VilaWeb in 1995, one of the first digital newspapers in Europe. He has written several books on Catalan and international politics. He is Chairman of the Board of Directors of the European Journalism Center, based in Maastricht. You may follow him on Twitter @vpartal.



Photo: Guiliver Image

Volunteers counting ballots during the disputed Catalan independence referendum in 2017

them were imprisoned at some point in their lives, two were disqualified by the courts for political reasons, six went into exile—one of whom was only president in exile—and one, President Lluís Companys, was imprisoned by the Spanish Republic from 1934 to 1936 and exiled in 1939, then handed over to Spain by the Nazis and shot by Franco's regime. With the exception of the current president of the Catalan government, only two of the 13 Catalan presidents of the autonomous period have escaped repression.

Curiously, one of these two presidents, Pasqual Maragall, who did not suffer repression, is the main

protagonist of the great change that has taken place in Catalan society. Maragall was an anti-Franco fighter, a socialist, mayor of Barcelona during the city's hosting of the 1992 Olympics, who gradually went from federalist to adopting pro-independence positions.

Maragall became President of the Catalan government in 2003, replacing Jordi Pujol, the charismatic right-wing nationalist who had governed the Catalan autonomy between 1980 and 2003. The government he formed brought together the Catalan Socialist Party—affiliated with the Spanish

PSOE—the post-communists, and the then only pro-independence group, Esquerra Republicana.

In those elections, Esquerra obtained 16.59 percent of the popular vote. In 2022, 20 years later, the pro-independence movement, already divided into three different forces, obtained 52 percent of the popular vote. From 16 to 52. It is clear that such a change of dimension is not very common, so understanding how such a huge leap was made is the key to understanding the current Catalan conflict.

CATALAN AUTONOMY: THE PACT SPAIN HAS NOT RESPECTED

After the death of Francisco Franco, the democratic opposition agreed with the dictatorship on a new regime, whose mission was to soften Spain's profile in order to allow European integration. Channeling the national conflicts, especially those in Catalonia and the Basque Country, played a key role in the democratization that became inevitable. This was the origin of the current "state of autonomies."

Autonomy was granted to all regions and the African territories in order to dilute the potential autonomous power of the Catalans and Basques. Moreover, an informal model of government was in place—the "two keys" system.

Basically, it worked like this: the Catalan parliament could pass the basic law, the so-called Statute of Autonomy. But once approved by the Catalan parliament, the Spanish parliament, Las Cortes, had the right of revision and amendment, even downwards. That was their key. Then the Statute went back to Catalonia, where the people held the second key, which was their vote in a referendum, to reject it if they thought it had been changed too much in Madrid. The Statute was only approved after going through the two keys.

The socialist president, Pasqual Maragall, was aware of the many problems that Catalonia had been unable to solve because of the unclear delimitation of competences and the poor financing resulting from the continuous fiscal plundering of the Catalan population. He decided to draw up a new statute of autonomy within the framework of the Spanish constitution in order to resolve these problems.

Catalonia was trapped in a dangerous dynamic, decades after the transitional pact. The welfare state was unsustainable because of the fiscal deficit between what Spain was collecting in taxes and what the central state was returning. The autonomous government was in charge of health, education, the police, and social welfare, among other things. But the funding came from Madrid, which continued to collect most of the taxes from the Catalans.

The debate about this figure has been very intense in recent years. In any case, it is an enormous burden for the Catalan public service. At the time when Maragall was president, a study committee of experts concluded that the difference between the state's expenditure on the autonomous community and the tax revenue it receives (in the form of taxes or social security contributions) was 6.6 percent of Catalonia's GDP and 24.5 percent of the revenue that Catalans contribute to the state coffers. More specifically, in 2002 the figure was €9.22 billion—a figure that eventually rose to €20.196 billion in 2019.

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Solidarity with poorer regions was never the problem. The problem was that Catalan citizens who paid more received fewer services than others. The Catalan government's ability to maintain the welfare state was threatened. For a social democrat like Maragall, this could not be the case.

The Catalan parliament thus drafted a new statute. It tried to rethink the relationship with Spain in a more egalitarian way. All Catalan parties except the Popular Party approved the law in 2006. There were 120 votes in favor and 12 votes against. It is important to remember this figure, since one

of the charges of Spanish nationalists is that Catalonia is divided, and that the demands are unattainable for lack of a significant majority. But it is a fact that the demands were not met with a majority of over 90 percent.

Then, according to the two keys system, the law was approved in the Spanish Parliament. The only votes against it came from the PP and the pro-independence Esquerra Republicana, who felt that the Spanish Parliament had changed too much of what the Catalan Parliament had voted for. And finally, it was approved in a referendum with 73.9 percent in favor and 20.7 percent against, basically by the pro-independence side and those who were disappointed by the tinkering. Then, it all exploded.

In an unprecedented situation, although the law had already been approved by the two parliaments and the people and signed by the monarch, the Spanish Constitutional Court, at the behest of the Popular Party, became a kind of third chamber of parliament and tweaked the law further and further downwards. Unheard of.

This occurred in 2010 and represented the beginning of the independence process, since a large part of the

Catalan population had the feeling that the constitutional pact had been broken in an authoritarian and unfair manner. Suspicions also rose that the judiciary had been interfering in the democratic process. If autonomy could be seen as a process of internal self-determination

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BACKGROUND: AN ECCENTRIC STATE IN EUROPE

Faced with a political problem, the government of a democratic state reacts by

seeking a political solution, preferably through dialogue. This has not been the case in Spain, as is well known.

For five years, since the violation of the Statute and in view of the gravity of the situation, the Catalan parties have tried to find a solution agreed with Spain that would channel the aspirations of an increasingly indignant population. They attempted to make a fiscal pact. It failed because the Spanish government did not even want to talk about it. Measures to promote the Catalan language were proposed. They were never accepted. The possibility

of a self-determination referendum was discussed, and Catalan authorities asked Madrid more than a dozen times for formal authorization, along the lines of the Scottish referendum. Madrid refused.

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Not only was any such possibility denied, but Spanish nationalism—which had never disappeared from the scene but had been camouflaged—was increasingly socially intensified. Francoism had its ideological basis in Spanish nationalism. For this reason, Spanish nationalism was negatively marked for several decades and seemed

socially and politically unrepresentable. But since the turn of the century, before the Catalan crisis, but amid the Basque crisis, Spanish nationalism has been on the rise again—combative and inflexible as ever. And the Catalan crisis, especially because of the king’s violent intransigence, has put Spanish nationalism firmly at the center, shattering the agreements of the so-called “democratic transition” immediately after Franco’s death.

If one wants to understand today’s events, one needs to understand this key period in Spanish history. In the

1940s, almost all of Europe was dominated by dictatorships. Spain, with its regime allied to Nazi Germany, was no exception. But now it is, because Spain is the only European state that has not broken with its dictatorial past. There has been no settling of accounts with the dictatorship, no purge of the state institutions.

What happened after Franco’s death was a pact between the weak. With the exception of Catalonia and the Basque Country, the democratic opposition was very frail. And the dictatorship was also very weak and needed to get integrated into Europe. Therefore, an operation of change was launched from Francoism to a democratic system, which had to leave intact the sources of power of the old rebel military regime. And that is how it was done.

On the basis of a law reforming the Franco regime, a constitution was approved by a parliament that was not a constituent assembly. It whitewashed the power structures of the Franco regime and is still in force today. King Juan Carlos, personally appointed by Franco, breaking the legal dynastic line, became overnight a democratic king—deeply corrupt, as we would later see.

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The judiciary changed the plates on the door but little else—the dictatorship’s shady Public Order Tribunal became the Audiencia Nacional on January 5th, 1977, but the judges, officials, and the cases they investigated were the same. An amnesty law set the democratic prisoners free, but at the same time

it acted as a full stop law, prohibiting and preventing any kind of prosecution of Franco’s criminals. Meanwhile, the military continued to rule. The second article of the Constitution, which defines the relationship between the nationalities and the State, was not drafted by the politicians, but by the military, who forced them to include it as it was, as several of those who drafted the Constitution have admitted in public and in writing.

The Spanish democratic anomaly is traceable to its roots. Faced with the Catalan crisis, the Spanish governments, whether of the PP or of the PSOE, have repeated *ad nauseam* that democracy is based on the supremacy of the law, thus setting the law against the will of the people. And the key to the Political Reform Act of the Franco regime is this phrase, in its first chapter—a law that can now be found on the official website of the Of-

ficial State Gazette. Incredible as it may seem, it has not been repealed.

The fact is that after Franco's death only a few institutions were closed.

Some of them underwent cosmetic changes, but the majority remained unchanged. When asked "what after Franco?", one of the dictator's confidants replied: "the institutions after Franco." The institutions were thus presented as new democratic ones. But they were the embodiment and preservation of the principles of the regime born in opposition to democracy, and the guarantee of its continuity. The most important of these principles was the "sacred" unity of Spain.

It is sometimes difficult to understand and explain the extent to which Spain, although formally a democratic country, is deeply rooted in the principles and conditions of dictatorship. In a mass grave, shot by Franco's regime, Federico García Lorca, undoubtedly one of the greatest poets Spain has given the world, is still missing. It is not that his body has not been found, but that it has not

been looked for. Almost 50 years after the dictator died in his bed, 114,000 republicans and democrats shot by the Franco regime are still unidentified.

Their bodies lie in ditches by the side of the road. According to the UN, only Cambodia has more missing persons than Spain. Meanwhile, Franco's body was in his state mausoleum until 2019, and when it was moved, the socialist government did so with official respect and recognition of him as head of state.

THE INDEPENDENCE PROCESS AS A DEMOCRATIC RUPTURE

Faced with a political problem, the government of a democratic state reacts by seeking a political solution, preferably through dialogue. But what is the incentive for dialogue in a state which, thanks to its peculiar institutionalization since the dictatorship, can change the will of the people by means of a judge? Dialogue means giving in, and why should you give in when you know that you can decide who is a member of parliament and who is not, who is president and who is not, and what the vote means, regardless of the popular vote?

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This is the fundamental background to the conflict between Catalonia and Spain. And it is against this background that everything that has happened in the last five years has a meaning for the European Union. Catalonia has put forward a political proposal which is based on a reformist path and which has been supported by the people at every stage. Spain's response has been the denial

of fundamental rights, repression unworthy of a democratic system—prison sentences of up to 13 years on the basis of the archaic crimes of sedition and rebellion—and a total refusal to seek a political solution that would allow the

Catalan people to institutionally channel their will. Catalangate, the biggest case of Pegasus espionage in the world, is an example of this. In the European Parliament, Spanish parties from the far right to the Socialists unanimously defended the need and alleged 'right' to spy on Catalans, astonishing the rest of the House.

The current sequence of the conflict has its beginning in 2015, with the formation of a grand coalition for independence under the name Junts pel Sí. They stood in the elections for the Catalan parliament and won. And they did it with a program approved by the Spanish Central Electoral Board.

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The program was that there would be a declaration of independence after 18 months. Junts pel Sí won 62 of the 135 seats in the parliament, a clear victory, and formed a government after reaching an agreement with the CUP, a far-left pro-independence party that had won ten seats. Together they exceeded the absolute majority in the Catalan parliament. Junts pel Sí brought together

the two main Catalan nationalist parties, Convergència and Esquerra, but above all it brought together independent personalities of all kinds and the civic associations that had generated the huge public demonstrations in favor of independence. The best example of this was the human chain that crossed the country on September 11th, 2013, following the example of the Baltic Way. It was 400 continuous kilometers of people shaking hands with each other.

The previous year, the Catalan government had called a first consultation on independence, which was not a formal referendum and did not have the approval of the Spanish government. But according to what has come to light over the years, largely through journalistic revelations, this call led the Spanish government, then in the hands of the PP, to launch the so-called "Operation Catalonia." Basically, there were two

parallel strands to this operation. On the one hand, there was massive espionage and the production of false information about the pro-independence leaders by a group of police officers at the top of the intelligence services. With the complicity of the main Spanish newspapers, this group invented accusations of corruption and all kinds of falsehoods about the pro-independence leaders and managed to disrupt the electoral process. On the other hand, a change in the law by the ex-profeso, giving the Constitutional Court punitive powers, turned it into a battering ram against the steps taken by the pro-independence movement in the Catalan parliament.

And so it was. On September 6th and 7th, 2017, when the Catalan Parliament approved the law on the referendum and the law on the legal and constitutional transition of the Catalan Republic with an absolute majority, the Spanish Constitutional Court led the attack against it. The Spanish parties—which only had 52 of the 135 seats—walked out of the Catalan Parliament and the tensions went through the roof. It should be remembered that all of this happened because the Catalan parliamentarians were trying to comply with the electoral mandate that was explicit in their program and that the citizens had voted for. A few days later, a ship full of Spanish police arrived in

Barcelona and began to arrest politicians, seize government offices, hunt down parties and, without finding them, search for the ballot boxes that would allow the referendum on self-determination to take place on October 1st.

Spain is the only European state that has not broken with its dictatorial past.

On that day, 2,286,217 Catalans, 43.02 percent of the electorate, went to the polls despite the violence unleashed by the Spanish police at the polling stations. The result was 90.18 percent in favor of the proclamation of the Catalan Republic, which the parliament would make effective on October 27th, 2017. The Spanish government immediately abolished self-rule and ordered the detention of the main Catalan political and social leaders. However, in a move that changed the history of Catalonia and certainly that of Europe, part of the government opted for exile.

THE CATALAN CRISIS EXPOSES ILLIBERAL SPAIN

In 2000, French historian Pierre Rosanvallon proposed a new concept to describe the regime of Napoleon Bonaparte: “*démocratie illibérale*.” The term was immediately adopted to describe formally democratic regimes that nevertheless despised and fought against democratic values. Within the EU there is an absolute consensus that at least Poland and Hungary fall into this category.

The way Spain is behaving, the way it is responding to the Catalan proposal, is equally illiberal, unworthy of a democracy. The attempt to solve the conflict through the criminal justice system is not only a big mistake, but also a disregard of the basic principle of democracy. It is also a fact that the panic of the other European states at the prospect of opening a Pandora’s box in the face of a national issue, with a call for the correction of borders, at first slowed down the understanding of what had happened. And Spain was able to use that to get out.

Catalan nationalism has always been deeply Europeanist.

The illiberal component of the Spanish reaction can perhaps be better understood by placing it within the framework of what the Israeli sociologist Sammy Smootha has defined as “ethnic democracy.” By “ethnic democracy” we mean a situation in which the same political system combines a structure of ethnic domination and oppression with the recognition of democratic, political, and civil rights for the entire population, including minorities. According to this scheme, not all citizens belonging to a national group are necessarily persecuted at all times (so it is not a ‘Herrenvolk democracy’ as defined by South African apartheid), but all members of a national minority know that they are under special suspicion and that they will be treated in a discriminatory

manner if something happens to them, precisely because they do not belong to the ‘central nation’ that monopolizes control of the state.

With such a complex definition, the Catalan crisis would have been confined to a corner with no possible solution, misunderstood by public opinion and politicians in the rest of Europe. But a surprising tactical maneuver by the Catalan government opened the door to a convergence of interests with the European construction that, five years later, is bringing the conflict to a point of interest not only for Catalonia but also for Europe.

Immediately after the declaration of independence, the majority of the Catalan government, led by President Puigdemont, took advantage of their freedom of movement as European citizens and settled in Brussels before the Spanish authorities issued arrest warrants against them.

Catalan nationalism has always been deeply Europeanist, but this time it went even further. The Catalan leaders went into exile on the basis of their European citizenship and their willingness to be judged by the European courts—independent courts as opposed to the clearly undemocratic background and nationalist bias of the Spanish courts.

At first, the maneuver—designed by a team of jurists led by Gonzalo Boye—was not understood because it was too revolutionary. And politicians and the very nationalist Spanish press thought it was desperate, when in fact it was a bold step forward. Catalonia was responding to Spain’s encirclement by inviting Europe to take sides. And most importantly, they knew how to do it. Not through the political class, but through the other national courts and, above all, through the European courts: the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR). They claimed for themselves the European democratic rights consolidated in the Treaty of Lisbon, precisely because they also hold European alongside their Spanish citizenship. In so doing, they placed this treaty above the Spanish constitution as the real constitution to be invoked, which it is.

As a result, while the pro-independence leaders who remained and recognized the Spanish authority were exposed to all kinds of arbitrariness, put in jail and banned from politics, the politicians in exile fought and won their cases in all courts and also won the European elections in Catalonia. Today, three of them are MEPs, even though Spain still does not recognize them.

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The arrest of President Puigdemont in Germany in March 2018, at the request of the Spanish justice system, was the key moment. When the German police arrested him as soon as he entered the country, the Spanish judiciary, the political class, and the most nationalist media celebrated, convinced that in a few hours the president would be sent to Madrid and imprisoned. They were deluded by the idea that Europe was still just a club of friendly states that help each other. But because Europe is no longer just that, they were confronted with reality. Europe today is a “nation” under construction, and, above all, an area of freedoms guaranteed to all Europeans and not just to those of one’s own state.

The great vision behind the maneuver was confirmed in July when the Schleswig-Holstein court ruled that there was no room for the extradition of Carles Puigdemont to Spain for the crimes of rebellion, sedition, or public disorder because, after an analysis of the facts, the court did not consider these accusations by the Spanish authorities to be reasonable. The automatic system set up in Madrid did not work and the president of Catalonia was released after spending a few days in prison. In Spain, the joy was beginning to turn into anxiety.

The fear grew when the judicial authorities of Belgium, Scotland, and Italy also refused to extradite the exiled politicians, when the Council of Europe demanded the release of the political prisoners (which happened after some of them had spent three years, eight months and one week in prison), the return of the exiles (which has not yet happened) and a legal reform that would eliminate the most unacceptable charges in a democracy, such as sedition (a reform that has been carried out). Even the UN has intervened on several occasions to denounce the violations committed by the Spanish state against the Catalan independence movement.

THE KEY TO THE CATALAN CRISIS

All this arsenal of legal decisions has placed Spain in a delicate position vis-à-vis the other European states and, above all, vis-à-vis the next Catalan attempt at independence—which Spain will no longer be able to suppress as it did in 2017. But historically, and from the point of view of the deployment of European citizenship enshrined in the Lisbon Treaty, the most important thing is that the Catalan case has contributed to accelerating the European constitutional project, thus opening up space for a way to defend individual rights, but also to solve problems similar to the Catalan one, in a much more democratic and open framework than the member states usually have.

Of particular relevance in this context is the judgment C-158/21 delivered by the ECJ on January 31st, 2023. In response to the Spanish judge’s request for the extradition from Belgium of the exiled Catalan Minister of Culture, Lluís Puig, the Court clarified, among other important things, that a person should not be extradited if there is a suspicion that, even in a formally democratic state, there is discrimination against persons belonging to an “objectively identifiable group.” This means against a minority, in this case a national minority, in other cases religious, linguistic, sexual, or any other kind.

As Neus Torbisco and Nico Krisch explain so well, when the Court of Justice of the European Union was asked by the Spanish Supreme Court to deal with a series of prejudicial questions concerning Lluís Puig, it had a fundamental choice to make. It could put on its hat of European integration—a hat it has worn for much of its existence, removing unjustified borders and obstacles between EU member states. Or, and this was the choice, it could put on the constitutional hat. This is a more recent hat, reinforced by the Charter of Fundamental Rights and the Lisbon Treaty of the early 2000s. It is the hat of a court that checks the actions of governments and ordinary domestic courts, of a court that defends individual rights against *raison d’état*, of a court that interprets the law in a way that

allows for the protection of minorities and vulnerable groups in the face of objective risks to the rights of its members arising from authoritarian or repressive compulsions of powerful majorities. In essence, it is this protective function that justifies the central role played by constitutional courts everywhere.

The leap that has been made with this ruling is a great one, for Catalonia and for Europe. The court's warning is very precarious. Until now, courts could only oppose the persecution of individuals on the basis of systemic failures, as in Poland or Hungary. But from now on, the courts

will also have to oppose the persecution of individuals if an 'objectively identifiable group' of individuals—although living in a functionally democratic state—do not have their rights respected on an equal footing. Ethnic democracy, which is the concept that better defines what Spain is, implies by definition that the behavior of the state is different not because of the facts that occur, but because of the national, ethnic, and group condition of the individuals concerned. And the Court, in this historic ruling,

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has taken it upon itself to warn that this is totally unacceptable in the European democratic and legal framework.

The question now is how to go one step further. How can this “objectively identifiable group of persons” solve the problem of discrimination to which they are subjected? What is Europe's responsibility in putting an end to this discrimination when the European state that is discriminating does not want to do anything about it? Does the right of each state take precedence over the rights of European citizens, or does the existence of European citizenship oblige the European institutions to guarantee the same rights for all, regardless of their state of origin?

The interests of European “national” construction and the Catalan independence process will go hand in hand in answering this question. This is the reason why the Catalan process of independence is also an opportunity—an unbeatable one—for European democracy. ●