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ARTICLE

Public International Law and the Catalan Secession Process

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Abstract

This article briefly identifies the aspects of public international law related to the Catalan secession process, bearing in mind that Spain is a constitutional social and democratic state governed by the rule of law and a member of both the European Union (EU) and the Council of Europe (CoE). Over 6 years ago, on 27 October 2017, the regional Catalan Parliament proclaimed the independence of the Autonomous Community of Catalonia. From the start, the most recondite stratum of the Catalan pro-independence strategy has consistently invoked *international* law considerations with no real basis. Here we explain why. First, given the function of state sovereignty (today humanized and, in the context of the EU and CoE, democratized), under international law, these events can only be classified as a secession process (*stricto sensu*), that is, a revolutionary act in the constitutional order of the state of Spain with undertones that are far from peaceful. Second, we address the facet of the Catalan pro-secession strategy – typical of populist policies today – consisting of abusing terms and concepts, a language policy that, in our view, was and still is intended to win the minds of both the Catalan population and any other uninformed external observers. Finally, we examine how statehood is acquired under international law and its relationship to the 2017 declaration of Catalan independence and the present-day situation.

Keywords Catalan secessionist process · Public international law · Self-determination · Secession · Territorial integrity · Human rights · Rule of law · Democracy

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1 Introduction

Just over 6 years ago, on 27 October 2017, the regional Catalan Parliament proclaimed the independence of the Autonomous Community of Catalonia. Today, at the time of writing, the Spanish Parliament is debating an amnesty law, which – *do ut des* – would benefit its negotiators, i.e. both those who carried out that secession process and the Socialists (the *Partido Socialista Obrero Español* or PSOE), who needed their votes to form a new central government after the 23 July 2023 elections. In fact, as will be explained below, the Socialists were only the second-most voted party in those elections, behind the liberal People's Party (*Partido Popular*, PP). However, the PP was unable to secure the votes needed to form a government of its own, as required in the Spanish parliamentary monarchy system. Whatever the political merits of this transaction, and however it might fit within the Spanish Constitution, it does not initially seem to have much to do with the principles and norms of general public international law.

And yet, from the start, the most recondite stratum of the Catalan pro-independence strategy has consistently invoked *international* considerations: for the secessionists, the self-determination of peoples, an essential principle of the international legal system, was and remains a basis of legitimation and legalization of their claim. Additionally, gaining independence, becoming a sovereign state, means, first and foremost, joining the international community as a primary subject of international law in order to participate in interstate relations and the formation and implementation of its legal order. Like the right to self-determination, sovereignty, territorial integrity, independence, effectiveness and recognition are legal concepts specific to international law, and it thus falls to scholars of that field to define them.

In recent years, we have carefully observed, studied and published on the Catalan secession process in the face of widespread ignorance of and prejudice to the reality of both public international law and Spain's history, culture, society and constitutional legal framework. In this article, we will pool our research and thoughts to briefly identify the aspects of public international law related to this process, bearing in mind that Spain is a constitutional social and democratic state governed by the rule of law and a member of both the European Union (EU) and the Council of Europe (CoE).[1]

The analysis will be structured around three main ideas. First, given the function of state sovereignty (today humanized and, in the context of the EU and CoE, democratized), under international law, these events can only be classified as a secession process, that is, a revolutionary act in the constitutional order of the state of Spain with undertones that are far from peaceful. The second has to do with the curious phenomenon – typical of populist policies today – consisting of abusing terms and concepts, a language policy that, in our view, was and today still is intended to win the minds of both the Catalan population and any other uninformed external observers. The third idea focuses on how statehood is acquired under international law and

[1] This article updates, supplements and, in some paragraphs, includes excerpts from our previous work in: Remiro Brotóns 2017 and Torroja 2019c. Among our other work on the Catalan secession process, see also: Remiro Brotóns and Andrés Sáenz de Santa María 2018; and Torroja Mateu 2019a; 2020a; 2020b; and 2023.

its relationship to the 2017 declaration of Catalan independence. The article ends with a brief overview of the current state of affairs and some conclusions.

2 Spanish State Sovereignty and the Catalan Independence Process

The starting point to analyse the Catalan independence process can only be the principle of sovereign equality and its corollary, the right to territorial integrity, as sovereignty is the essence of any state (Sect. 2.1). Based on this premise, the 2017 Catalan independence process can only be considered an *internal revolutionary act*, i.e. a secessionist process (Sect. 2.2). In the face of such an act, how the executive and legislative powers, as well as the judiciary, responded can be analysed in relation to international law (Sect. 2.3).

2.1 States' Right to Territorial Integrity and the Role of Humanized and Democratized Sovereignty

As noted, any analysis of the Catalan independence process must start with the principle of sovereign equality and its corollaries, the rights to territorial integrity and to political independence. There is no right of separation for a territory in international law; this is a settled point in both the literature and international practice, and we will not discuss it in further detail here. On the other hand, national unity and territorial integrity are a *sovereign right*, *not an international obligation*. Any state wishing to transfer its sovereign powers to a part of its population may do so. Consequently, the grounds for such a devolution always lie in the domestic legal order and the principle of self-organization of the state. The constitutional recognition of a *domestic right to separation* is exceptional in contemporary state practice. The practice of separations since 1945 has been varied. Examples include Singapore in 1965, eleven of the former Soviet republics in 1991, the Czech Republic and Slovakia in 1993, and Montenegro in 2006.

In contrast with the peaceful process of separation (devolution or transfer of sovereignty), *secession* (i.e. the *forcible seizure of independence*) is a revolutionary act by a secessionist people against a parent state that opposes said act. Under this strict understanding, secession can be defined as the action of becoming independent from a state, undertaken by a part of that state's population, usurping part of its territory in violation of constitutional norms and/or against the will of its government. In other words, to secede is to break away from a state in order to establish another state (or become part of a third state, which, though less common, is not unheard of) against the constitutional order and, therefore, against the parent state's will.[2]

[2] "[S]ecesión – a menos que la Constitución de un Estado diga expresamente lo contrario– puede ser el fruto de la revolución o de la guerra civil, pero no el resultado de un derecho" [Secession – except where a state's constitution expressly provides otherwise – can be the result of a revolution or of civil war, but not of a right] (Remiro Brotóns 1978, p. 133). On the issue of terminology and concepts, see also: Remiro Brotons et al. (2010, pp. 73–74), Remiro Brotons et al. (2007, p. 105), Torroja Mateu (2019b, pp. 237–388), (2022a) passim; (2022b), passim.

Here, it is worth highlighting the inseparable link between territorial sovereignty and human rights in contemporary international law. Certainly, in the sphere of universal international law, sovereignty is considered *humanized*: since 1945, how a state treats its population is clearly an international matter. This means that all states have an international duty to protect and respect human rights. Although the content of this duty can vary depending on the state, there is a hard core of imperative norms (*jus cogens*) that applies to them all. The textbooks consistently drive this point home.

In the sphere of the EU, the Member States (all also members of the CoE) additionally assume more specific international obligations that link human rights to respect for a specific social order in which these rights can be effective. This social order includes the values of "freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. (…) pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men" (Article 2 of the Treaty on European Union (TEU)). In fact, this article defines the essential elements of a *democratic constitutional state* and, thus, establishes specific obligations for the Member States. Just as the notion of humanized sovereignty has been coined in the field of universal international law, one could arguably talk about *democratized* sovereignty in the field of EU law; a democratized sovereignty that includes the primacy and direct applicability of the EU principles, values and norms to respect and protect *constitutional democracy* (or *liberal democracy* or *pluralist democracy*). Similarly, albeit with a broad content, the sovereignty of the CoE Member States can be considered a democratized sovereignty.

What are the practical consequences of these concepts? What specific form does this *humanized and democratized sovereignty* take? Namely, that the states are internationally bound to respect and enforce the international obligations attached to those concepts. A state cannot shirk its international obligations to respect human rights or constitutional democracy as a form of state, along with all the principles, norms and values that it embodies. From this functional perspective of sovereignty, i.e. that it entails not only the exercise of rights, but also the fulfilment of obligations, today, a state's territory is not unrelated to the obligations that state has undertaken internationally. Therefore, to protect the unity of a sovereign territory is to protect the obligations attached to it. In the case of democratic constitutional states governed by the rule of law, such as Spain, these international obligations are set forth in the constitution. From this perspective, to violate the Spanish Constitution (CE) is to violate the country's international obligations. In other words, in constitutional democratic states governed by the rule of law, the sovereign territory is not unrelated to respect for human rights, democracy and the rule of law (which, in turn, are inseparable attributes). Protecting the unity of the Spanish constitutional territory cannot be understood today merely in *material* terms, i.e. in terms of territory. It is much more: it means protecting the democratic legal system and all the values it entails. Therefore, in democratic states governed by the rule of law, humanized and democratized sovereignty can only be realized through the basic law, i.e. the constitution. The unity of the territory, as a form of unity of the Spanish nation, established in Article 2.1 CE, is inseparable from the defence and protection

of the values of freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, etc.

2.2 A Revolutionary (and Hardly Peaceful) Act by the Regional State Authorities

One need not be a particularly astute jurist to see that, in the context of 2017, Catalan independence would be an unconstitutional act devoid of support in international norms. Statements by Spanish constitutionalists and international lawyers immediately confirmed this when the secessionist process (or *procés*, as it is known, from the Catalan) first emerged. For the former, it was enough to recall that national sovereignty is vested in the entirety of the Spanish people (Art. 1.2 CE) and that the CE is based on the *indissoluble unity* of the Spanish nation, the common and indivisible country of all Spaniards (Art. 2 CE).[3] The latter, spurred on by the invocation of international law as a legal basis for Catalan Law 19/2017 (on the self-determination referendum), felt obliged to recall that Catalonia did not tick the boxes for any of the cases in which international law recognizes a right to sovereignty and independence for a regional entity of a sovereign state.[4] In other words, barring the amendment of the CE or a change of course in international law, Catalan independence can only be the consequence of a successful *revolutionary act*.

The actions of the Catalan government and Parliament, especially since 6 and 7 September 2017, when the so-called referendum and transition or disconnection laws were passed, have been described as a *coup d'état* by spokespersons for the central government at the time, as well as by numerous pundits, no doubt with the aim of emphasizing their seriousness through the use of an undeniably arresting term.[5] In our view, more than a *coup d'état* – literally, a "blow of state" in the original French, that is, a sudden violent seizure of political power in violation of the constitutional order – what took place was a much more serious blow *to* the state, constituting the greatest existential threat Spain has faced in the last 80 years.

This *blow to the state* consisted of an *ongoing revolutionary act* that had been long in the making, thanks to the systematic constitutional disloyalty of the nationalists who had controlled the institutions of the *Generalitat* [the system of institutions through which Catalan self-government is organized] for most of the period since

[3] See the "Manifiesto en favor de la Constitución" [Manifesto in favour of the Constitution], signed by 241 constitutional law professors (Various Authors 2017a, b).

[4] See the "Declaración sobre la falta de fundamentación en el Derecho Internacional del referéndum de independencia que se pretende celebrar en Cataluña" [Statement on the Lack of Foundation on International Law of the Independence Referendum that Has Been Convened in Catalonia], signed by more than 300 members of the Spanish Association of Professors of International Law and International Relations (AEPDIRI) (https://web6341.wixsite.com/independencia-cat), which clearly and concisely stated that the right to self-determination of peoples in no way legitimated the secession of Catalonia. It was also published in Various Authors (2018). See also the commentary on it in Torroja Mateu (2020a).

[5] References to what happened as a "coup" became quite widespread. See, for example, the accusation by the Office of the Public Prosecutor in the Supreme Court trial for the events of 2017 (Europa Press Nacional 2019). Its description as a *golpe posmoderno* [post-modern coup] also caught on to some extent (Gascón 2018).

the promulgation of the 1978 Constitution. The "State of Autonomous Communities" [the form adopted by the Spanish state, whereby the *comunidades autónomas*, literally, autonomous or self-governing communities, are the first-level administrative divisions into which the country is divided] may have put the *national question* to rest, but it also endowed the nationalists in Catalonia with powers and resources to lay the foundations for separatism. It is hardly surprising that these same regional institutions have led the revolution now underway, to which the Spanish central government has turned an inexplicably indolent and passive blind eye for far too long. The "street" came later, called upon by the institutions to complete the task, to provide the popular support of the Catalan *poble* [people, in Catalan], for the institutions' contumacious rebellion. The *revolutionary act* was thus transferred from the institutions to the rank and file of political parties and allegedly cultural organizations, such as the *Assemblea Nacional Catalana* [Catalan National Assembly, ANC] and *Òmnium Cultural.* And so, disobedience of judicial decisions, breach of official duty and misappropriation of public funds gave way to sedition under the guise of peaceful popular protests, selectively violent in their methods, timing and places, according to a meticulously devised and executed plan.[6]

A *revolutionary act* is, by definition, against the law. Revolution is not regulated; it is done. There is no revolution without crime. Revolution need not involve an armed uprising: the notion encompasses "every not legitimate change of th[e] constitution" (Kelsen), whether or not force is used. For instance, were a group of members of the government to amend the constitution in an authoritarian way, without the use of armed force, that change would be no less revolutionary. The distinguishing feature of the Catalan revolution is that its leaders, far from toppling the regional institutions, *used them* –unfairly and tortuously – *for leverage*. The Catalan national-separatists have always understood that independence could only be achieved through *revolution*, as the Spanish Constitution did not allow it and it was utopian to imagine a constitutional reform based on a pact between *sovereign nations.* Since the promulgation of the 1978 Constitution, they had been preparing to seize the opportunity should it arise; the economic crisis that began in 2009 was the door to the wardrobe that would lead them to Narnia. In 2010, a ruling by the Constitutional Court, in an action brought by the PP, declaring some articles of the new Statute of Autonomy of Catalonia null and void and interpreting others,[7] added fuel to the fire.[8] Especially as the terms of some of the members of this high guardian of the Constitution had expired, undermining its authority. Further

[6] To this end, the Decision in the trial of the defendants for the events of 2017 [Supreme Court Decision [ATS] (Criminal Division) of 21 March 2018] and the list of proven facts in the judgment convicting them [Supreme Court Judgment [STS] (Criminal Division) of 14 October 2019, ECLI:ES:TS:2019:2997] are significant (the conviction for rebellion was ultimately excluded from this decision).

[7] Constitutional Court Judgment [STC] (Plenary) 31/2010, of 28 June 2010, ECLI:ES:TC:2010:31.

[8] Following the ruling's publication, the then president of the *Generalitat*, by means of an institutional message, called a demonstration to protest it in Barcelona (https://www.publico.es/videos/218772/montilla-convoca-a-la-ciudadania-a-una-manifestacion-tras-conocer-el-fallo-del-estatut). Since then, references to the judgment on the Statute as triggering the secession process have been commonplace, with some considering that this demonstration marked the true start of the *procés* (see Amat 2018, p. 65).

complicating matters, shortly thereafter, the new government headed by Mariano Rajoy justifiably rejected the *fiscal agreement* sought by the *Generalitat.*[9] This demand had the support of part of the Catalan population, thanks to the slogan "Espanya ens roba" [Spain is robbing us].[10]

The first step was to declare, in 2013, that Catalonia was a *sovereign nation* and that this sovereignty was vested in the *poble català* [the Catalan people], both clearly unconstitutional assertions.[11] From there, a body of law based on that original sovereignty was manufactured in a schizophrenic relationship with the president of the *Generalitat*'s status as the highest representative both of the state in Catalonia and of the Catalan regional government and Parliament, that is, institutions whose source of legitimacy lies in the 1978 CE and the Catalan Statute of Autonomy. That legislation directly sought to give a seemingly legal veneer to a series of manifestly illegal acts intended to pave the way for a declaration of independence. Hence, the refusal to heed the decisions of the Spanish Constitutional Court and the High Court of Justice of Catalonia, as well as the warnings of the Catalan Parliament's lawyers and the *Comissió de Garanties* [Guarantee Commission]; the curtailment of the rights of the opposition parliamentary groups; and even the violation of the Statute and the Catalan referendum law itself. Everything was, if not legal, at least legitimate – they claimed – in pursuit of independence. The revolutionaries bet their future on victory, which would make them national heroes, men and women of state.

Of course, there was no shortage of *good people*, drawn by the sweet nectar of an Arcadian independence and their own deep-seated feelings, who followed the politicians, convinced of the legality and justice of their actions. They would no doubt be surprised and alarmed to be considered *revolutionaries* for the mere fact of *wanting to vote.* Yet, in the end, even the bourgeois gentleman Monsieur Jourdain discovered that, all those 40 years, he had been speaking in prose. From the vantage point of the current circumstances, the irresponsibility of leaving education in the hands of the *Generalitat*, with no real oversight by the state, is clear. The outrageous manipulation of history, coupled with the affirmation of a superior and exclusive identity incompatible with the Spanish identity, has been poisonous.[12] Over the years, many – though not all – Catalans assimilated that supremacist nationalist

[9] On 20 September 2012, then President of the *Generalitat* Artur Mas asked Prime Minister Rajoy for a fiscal agreement for Catalonia. Following Mr. Rajoy's refusal, Mr. Mas veered sharply towards separatism, in a calculated manoeuvre to mitigate the tensions plaguing his government as a result of the complicated situation of the economy and public services due to the economic crisis then engulfing all of Spain. See: Coll (2018, pp. 26–27).

[10] The refrain "Espanya ens roba" appears to have first been used in 2011 by the *Solidaritat per la Independència* [Solidarity for Independence] MP Alfons López Tena (García 2021). It has since served as the basis for a broad campaign to portray Catalans as the victims of an unfair fiscal deficit. See: Borrell and Llorach (2015), De la Fuente (2014).

[11] On 23 January 2013, the Parliament of Catalonia passed Resolution 5/X, on the sovereignty and right to decide of the people of Catalonia. The Constitutional Court ruled on that Resolution in Judgment (Plenary) 42/2014, of 25 March 2014 (ECLI:ES:TC:2014:42), rejecting that a declaration of sovereignty of the people of Catalonia or a right to decide in disregard of the constitution itself was possible under the constitution.

[12] See: Rul Gargallo (2019).

consciousness and, through regular grants to institutions claiming to be part of civil society, the *Generalitat* equipped itself with the tools to align the masses in a common project. Add to this the recovery of a regional police force, the *Mossos d'Esquadra* or *Mossos*, that now, as in 1934, protected the *revolution*. Although it is no secret in Spain, it is worth noting here the short-sightedness and prioritization of short-term interests of those who – whether Socialists or members of the PP – chose to leave Catalonia in the hands of the nationalists in exchange for the rich reward of their votes in the Spanish Parliament, which enabled them to form governments and remain in power in the legislative periods in which those votes were decisive to delivering a majority.

In addition to a *revolutionary act*, the checkmate in which the separatist *procés* placed the Kingdom of Spain, a social and democratic state governed by the rule of law, whose 1978 Constitution "is based on the indissoluble unity of the Spanish nation" (Art. 2 CE), is *by no means peaceful*: it is an attack on the constitutional democratic state, notwithstanding the pains its designers have taken to repeatedly describe it as otherwise. According to the UN and the EU, the *concept of peace* in the twenty-first century has evolved since the nineteenth century, when it referred to *a period between two wars*. Today, the notion of peace encompasses all actions aimed at keeping and building it. This idea of a *culture of peace* was sealed in the main international and European organizations in the wake of World War II (under the term *peaceful change*). In international practice, the concept of peace is today understood in this broader sense. To violate the basic law of a society whose function is to ensure peace and order is to attack *that* peace and *that* order. It is flippancy to underestimate the consequences of the breach of the Spanish Constitution. It is neither peaceful nor pacifism in the broad sense with which the term is used today. Besides, after World War II, the reconciled European states agreed on the notion of democracy, in the context of the CoE, as a form of state encompassing respect for three inseparable principles: the rule of law, human rights, and the free democratic election of political representatives (representative democracy in the strict sense). They did this in the conviction that peace in Western Europe would be built through *democracies that respected these indissociable principles.* The experience of the horrific war left them no room for doubt. The revolution against Spain's constitutional democracy can only be understood as a path towards the destruction of peace. Peace is inextricably linked to the values embodied in democracy, as defined in Europe. In this sense, the Catalan independence process was by no means peaceful, in the contemporary sense of the term.

2.3 The Role and Response of the Central Authorities

In the face of an internal revolutionary act, a sovereign state's international rights and obligations remain intact. Since a state acts through its organs, the responses of the executive and legislative powers, as well as the judiciary, to the revolutionary act can thus be analysed in relation to international law, that is, in the present case, beyond the context of the Spanish Constitution. One could argue that the democratic state of Spain – which does not follow the defensive democracy model of countries

such as Germany and in which pro-independence parties therefore are not banned – is ill-equipped to counter secessionist assaults.

2.3.1 The Executive and Legislative Powers: The Application of Article 155 CE

There has been much speculation regarding whether, at the extraordinary session of the Catalan Parliament held on 10 October, the president of the *Generalitat*, Mr. Puigdemont, declared independence. The central government's requests for clarification failed to dispel the uncertainty.[13] The fact of the matter is, all else being equal, the Spanish flag continued to fly alongside the *senyera* [the Catalan flag] atop the *Palau de la Generalitat* [the seat of the Catalan government], even as the central government decided to trigger Article 155 CE to restore constitutional order in Catalonia. Whatever the case, on 27 October, the Catalan Parliament put an end to those doubts when it *formally declared independence*; shortly thereafter, the Spanish Senate passed (a slightly watered-down version) of the measures proposed by the central government.[14]

The use of Article 155 CE in the situation generated by the Catalan regional institutions is a textbook case. The situation was unquestionably the type envisaged by the precept: an autonomous community that is not fulfilling its obligations under the Constitution and is acting in a way that seriously undermines the general interest of Spain. If it does not apply in a case like this, it might as well be scrapped as useless. More and more voices called upon the central government to use this

[13] Following the illegal referendum of 1 October, the president of the *Generalitat*, Carles Puigdemont, speaking in a plenary session of the Parliament of Catalonia, on 10 October declared that he accepted the mandate for Catalonia to become an independent state in the form of a republic. He then asked Parliament to suspend the effects of the declaration of independence in order to initiate talks to reach an agreed solution. The next day, the Spanish Council of Ministers issued a summons to the president of the *Generalitat*, in accordance with the terms of Art. 155 CE. The summons, as well as the subsequent letters between Mr. Puigdemont and Mr. Rajoy, can be viewed in the resolution published in the Official Gazette of the Spanish Parliament (*Boletín Oficial de las Cortes Generales* [*BOCG*] *(Senado)*, 12th Legislative Period, of 21 October 2017 (https://www.senado.es/legis12/publicaciones/pdf/senado/bocg/BOCG_D_12_162_1350.PDF)). The summons urged Mr. Puigdemont to clarify whether a declaration of independence had been made and, if so, to repeal said declaration and any actions oriented towards secession to ensure the full application of the decisions of the Constitutional Court. On 16 October, the president of the *Generalitat* sent a letter to the Spanish prime minister in which, rather than complying with the request, he sought to open talks in relation to what he called the "political mandate to emerge from the ballot box on 1 October". That letter was answered by the Spanish prime minister with a reminder of the need to comply with the request made on 11 October. On 19 October, Mr. Puigdemont answered this letter with another, in which he indicated that on 1 October the people of Catalonia had decided on independence, that the effects of that declaration were suspended, but that, should the government of Spain not agree to open a channel for talks, the Parliament of Catalonia would vote for independence.

[14] The session in the Catalan Parliament can be viewed on its website here: https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUPACIO:8113675,17488. The details of the session in the Spanish Senate and the video thereof are available on its website at: https://www.senado.es/web/actividadparlamentaria/sesionesplenarias/pleno/rwdsesionespleno/detalle/index.html?id=30&legis=12. The vote in the Parliament of Catalonia and passage by the Spanish Senate of the measures requested by the central government in accordance with Art. 155 CE were almost simultaneous. The session of the Catalan Parliament concluded at 3:29 p.m., and that of the Spanish Senate at 4:15 p.m.

mechanism to respond. Then Prime Minister Rajoy's prudence at the time has – rightly – been described as pusillanimous. Article 155 should have been triggered far earlier, at the very least when the Catalan referendum and legal transition or disconnection laws were passed, on 6 and 7 September. But Mr. Rajoy wanted to maintain a united constitutionalist front and sought to continue to bolster his case until he could win over the Socialists, whose position remained ambiguous until 10 October. Seven days prior, the King, in a necessary and rigorous speech that marked a turning point in the course of events, set the stage for the possible use of Article 155. Meanwhile, in the wake of the illegal referendum of 1 October, the Catalan government sponsored a general strike to gain international visibility[15]: a *national strike*, it was claimed, that would showcase its ability to paralyse Catalonia, a goal that was only partially achieved, through the blocking of roads and railways,[16] leaves of absence for civil servants,[17] and picketing in the streets.[18]

The triggering of Article 155 CE has been harshly condemned by both the pro-independence movement and the so-called *autodeterministas* [proponents of self-determination], such as the political party *Podemos* and its regional partners in Catalonia, *Els Comuns,* who supported the Catalan referendum but not independence itself. Some even saw in it the spectre of the return of *fascism.*[19] Certainly, paragraph 2 of Article 155 CE fuels this confusion, providing that: "With a view to implementing the measures provided in the foregoing clause, the Government may issue instructions to all the authorities of the Autonomous Communities." The provision seems to take for granted that the said authorities would remain in office, despite having failed to comply with the central government's previous request to fulfil their obligations and cease to seriously undermine the general interest of the country. Yet it seems that this presumption of their willingness to follow the government's instructions may be premature. Additionally, the provision states that the government "may", not "shall", issue instructions to the regional authorities. In fact, the central government interfered as little as possible with the Catalan administration, leaving it in the hands of the second tier of its executive body, reporting directly to the corresponding central government ministers, sacking only the members of the

[15] The King's speech, delivered on 3 October, can be viewed at the following link: https://www.casareal.es/ES/ArchivoMultimedia/Paginas/archivo-multimedia_archivos-videos-detalle.aspx?data=2099. It was broadcast the same day as the "national strike", a general strike called by the *Taula per la Democràcia* [Board for Democracy], a platform set up just days before consisting of various organizations, including the ANC, the *CCOO de Catalunya* and *UGT de Catalunya* trade unions, the *Federació d'Assemblees de Pares i Mares de Catalunya* [Federation of Parent Assemblies of Catalonia], *Òmnium Cultural* and the University of Vic, among others (see: L'Unilateral 2017).

[16] At that time, a video was shared of a Russian citizen in Tarragona, who was removing a barrier of burnt tyres and warning of the consequences of the conflict then beginning. See: El Confidencial (2017).

[17] The *Generalitat* announced that public employees who participated in the "national strike" would not have their salaries docked. The Spanish Ministry of Treasury, however, warned that said docking should be carried out, as it would be illegal not to (Nació 2017).

[18] See, for example, this compilation of news stories about the events of that day: El Nacional.cat (2017).

[19] The former minister of the *Generalitat*, Raül Romeva, expressly linked the "155 bloc" with fascism. See: La Vanguardia (2017).

cabinet and those advisors appointed at their pleasure, and eliminating those organs and agencies created to carry out the separatist plan.

The Spanish Constitutional Court had to rule on the measures taken under Article 155 CE as a result of the lodging of two actions of unconstitutionality. The first was filed by members of the *Unidos Podemos-En Comú Podem-En Marea* parliamentary group; the second, by the Parliament of Catalonia.[20] The Constitutional Court upheld the constitutionality of the actions taken, with the sole exception of the provision establishing that publications in official gazettes (the *Diari Oficial de la Generalitat de Catalunya*, or *DOGC*, the Official Gazette of the *Generalitat* of Catalonia, and the *Butlletí Oficial del Parlament de Catalunya*, or *BOPC*, the Official Gazette of the Parliament of Catalonia) that had not been authorized by, or ran contrary to what had been agreed by, the authorities appointed by the Spanish government would lack validity. Separately, the doubts expressed regarding the Spanish prime minister's prerogative to dissolve the Catalan Parliament were laid to rest with the immediate calling of elections within the time limit set by the relevant statutory provisions.[21]

What is the threshold when the unity of the state is attacked, when its territorial integrity is undermined, when all Spanish citizens are stripped of the humanized and democratized sovereignty that is theirs under the Constitution? How far is the state willing to go to defend the constitutional order, its unity, its integrity, the sovereignty of the Spanish people? There is no place for bridges with the revolutionary act. The state has to get wet to ford the river. If it does, it can win or lose; if it does not, it is lost. The state has to bring the same determination to its defence as the separatists bring to its destruction. To hesitate is to admit that the state is incapable of controlling Catalonia with the measures it is willing to take, which would not be the ones *needed* to achieve its objectives. It would be a grave mistake to follow a policy of appeasement with those seeking to blackmail the state. And yet that is what we have witnessed in the last few years.

Beyond whatever policy the central executive and legislative authorities might decide to pursue, in our view, the constitutional democratic state of Spain has undertaken international commitments, to both the EU and the country's population as a whole, that require it to respect constitutional democracy.

[20] Settled by Judgments of the Constitutional Court (Plenary) 89/2019 and 90/2019, of 2 July, ECLI:ES:TC:2019:89 and ECLI:ES:TC:2019:90, respectively.

[21] The elections were announced by Royal Decree 946/2017, of 27 October, calling elections for the Parliament of Catalonia and its dissolution (*Boletín Oficial del Estado* [Spanish Official Gazette, *BOE*], 28 October 2017). They were held on 21 December and won by the party Cs (25.37% of the votes and 36 seats), followed by *JuntsxCat* (21.65% of the votes and 34 seats), ERC-*CatSí* (21.39% of the votes and 32 seats), the PSC-PSOE (13.88% of the votes and 17 seats), *CatComú-Podem* (7.45% of the votes and 8 seats), the *Candidatura d'Unitat Popular* [Popular Unity Candidacy or CUP] (4.45% of the votes and 4 seats), and the PP (4.24% of the votes and 4 seats). After the elections, Joaquim Torra was ultimately named president of the *Generalitat* through an agreement between the parties *JuntsxCat*, ERC-*CatSí* and the CUP, which together held 70 of the total of 135 seats.

2.3.2 The Judiciary: The Obligation to Enforce the Law

The judiciary followed its own path in the prosecution of the crimes allegedly committed by agents of the Catalan government and *Mesa* of the Catalan Parliament [the board responsible for managing it]. The clocks that set the *judicial and political tempos* rarely march at the same speed. Hence, the grotesque scenario of elections featuring candidates in prison or on the lamb, who could be barred from holding office for months or years after their election for crimes committed before it was called.

As a result of lawsuits filed by the Spanish Public Prosecutor's Office, bringing charges of rebellion, sedition, misuse of public funds and disobedience, among others, the members of the Catalan government sacked on 28 October, as well as the president and members of the board of the Catalan Parliament, and, previously, the presidents of the ANC and *Òmnium*, were summoned to testify as parties under investigation and, thereafter, subject to precautionary measures. In some cases, this included pre-trial detention; in others, it could be avoided through the posting of bail and other additional measures. However, a discussion of the complex procedural and substantive problems posed in a case that was ultimately taken up by the Criminal Division of the Supreme Court would fall beyond the scope of this article.[22]

On 14 October 2019, after 4 months of proceedings conducted with all the guarantees (they were broadcast live on television), the Second Division of the Supreme Court handed down a ruling of great significance and legal and political importance, convicting nine pro-independence leaders of various offences (sedition and misuse of public funds for the purpose of committing sedition in some cases and disobedience in others). All were pardoned by the Spanish government, now controlled by the Socialists, on 22 June 2021,[23] on grounds of public usefulness, one such ground – although, needless to say, not explicitly mentioned – being that the secessionist parties' support in the Spanish Parliament had allowed the PSOE to form a government. As a supplementary measure, on 22 December 2022,[24] the offence of sedition was repealed and that of misappropriation of funds was amended in the Spanish Criminal Code, once again, with the parliamentary majority led by the PSOE and thanks to the secessionist parties' votes.

It is a fact that the former president of the *Generalitat*, Mr. Puigdemont, and four of his former ministers, chose to flee to Brussels rather than attend the court summons in Spain, prompting the issue of European arrest warrants for them. As the judicial proceedings were playing out in the Belgian courts – in Flemish at the express request of the parties – Mr. Puigdemont made the rounds of every available platform to hurl unwarranted accusations at Spain, the rule of law and, even, the

[22] For an analysis of this judgment, with particular emphasis on its international and European perspective, see: Torroja Mateu and Ripol Carulla (2020).

[23] Royal Decrees 456/2021 to 464/2021, of 22 June, published in the *BOE* of 23 June 2021.

[24] Organic Law 14/2022, of 22 December, on the transposition of European directives and other provisions for the adaptation of criminal legislation to European Union law and reform of offences against moral integrity, public disorder and smuggling of dual-use weapons, *BOE*, 23 December 2022.

European Union, whose institutions have closed their doors to him. All the while, he insisted on a *legitimacy* that he has certainly lost by consciously laying waste to the constitutional and statutory bases for it. Making the pilgrimage to Brussels for an audience with the fugitive former president became a means of signalling both consolation and protest for his unconditional supporters and an electoral event for the leader of one of the nationalist coalitions competing in the European elections scheduled for 21 December. The (non-)implementation of the European arrest warrants in this case shows just how far we still are from building a truly integrated judicial area.[25]

The judicial status of Mr. Puigdemont and his associates took a new turn when the investigating judge for the case in the Supreme Court decided to withdraw the European arrest warrants.[26] This judicially shrewd decision has had a very positive political side effect. The aim was to prevent the Belgian judges from being the ones to predetermine the crimes for which the defendants could be tried in Spain, rewarding the fugitives for fleeing and granting them more favourable treatment than those who had heeded the summonses of the Spanish justice system. Should Mr. Puigdemont and company return to Spain of their own accord, they will immediately be arrested. Separately, given that three of the people affected by the European arrest warrants (Carles Puigdemont, Antonio Comín and Clara Ponsatí) had been elected to the European Parliament in the 2019 elections, how this development affected the European arrest warrants had to be determined. Initially, nothing changed with that election, as none of the three travelled to Spain to swear on the Constitution to obtain the credentials to be issued by the Spanish Central Electoral Board. However, this situation changed when the Court of Justice of the European Union, in its judgment of 19 December 2019,[27] interpreted that the status of MEP was acquired at the time of the election, without it being necessary to comply with the requirements established under national law to obtain the credentials. In the wake of this ruling, the status of Mr. Puigdemont, Mr. Comín and Ms. Ponsatí as MEPs was recognized, making it necessary, to be able to act against them on the basis of the issued warrants, to request that the European Parliament waive the immunity associated

[25] On the fortunes of these arrest warrants, see: Arenas García (2023).

[26] The original arrest warrants, issued by the person who had initiated the investigation proceedings at the *Audiencia Nacional* [National High Court], were withdrawn by the investigating judge at the Supreme Court, Pablo Llarena, when the case was moved to that court (Rincón 2017) with the aim of concluding the investigation before issuing new warrants. Accordingly, once the investigation was completed, the European arrest warrants were reissued (Supreme Court Decision [ATS] (Criminal Division) of 21 March 2018; see: BP 2018). These new warrants, however, were also withdrawn in accordance with the Supreme Court Decision [ATS] of 19 July 2018. Upon conclusion of the Supreme Court trial of the defendants who had not fled, new warrants were issued, adapted to the classification of the offences in the judgment [Supreme Court Judgment [STS] (Criminal Division) of 14 October 2019, ECLI:ES:TS:2019:2997]. These warrants were issued on 14 October 2019 (for Mr. Puigdemont) and 4 November 2019 (for Mr. Comín, Lluís Puig and Ms. Ponsatí). Although they remain in force, they have been suspended pending a final ruling by the Luxembourg Court on how the MEP status of several of the individuals included in the warrant affects them.

[27] Judgment of the Court of Justice (Grand Chamber) of 19 December 2019, in Case C-502/19, *Oriol Junqueras Vies* with the intervention as other parties of the *Ministerio Fiscal*, *Abogacía del Estado* and *partido político VOX*, ECLI:EU:C:2019:1115.

with that status. The European Parliament granted this request on 9 March 2021. The affected MEPs, however, appealed its decision to the Luxembourg Court. Although the Court upheld the authorization to continue the proceedings against them,[28] this ruling has also been appealed before the Court of Justice, which has not yet handed down a judgment in the case.

The judiciary acted in accordance with the defence of the Spanish constitutional order. Such actions, in turn, are in accordance with the international obligations undertaken by the Kingdom of Spain, at both the international and European level. In a constitutional and democratic Member State of the EU governed by the rule of law, the state has a duty to enforce the law, a duty that extends to all state organs. In the end, however, if there is a crime, the ultimate obligation lies with the judiciary. Following the rejection of the appeals for constitutional protection filed with the Constitutional Court, the convicted pro-independence leaders took their case against Spain to the European Court of Human Rights.

3 The Regional Authorities' Language Policy (or How to Camouflage a Revolutionary Act)

One of the most salient features of our time is the intensive manipulation of language to sway public opinion to get people to swallow public policies that defraud them, harm their interests and destroy the fundamental values of the rule of law and respect for the democratic order.[29] This same tactic was pursued by the (political and civil-society) leaders of the *procés*. How could the people be galvanized on such flimsy domestic and international legal grounds? The nationalist propaganda resorted to slogans such as the aforementioned "Espanya ens roba", along with "dret a decidir" [right to decide], "democràcia és votar" [democracy is voting], and "l'autodeterminació no és un delicte" [self-determination is not a crime]. Simple but highly effective slogans for turning people out, as one would expect in populist politics. Thus, the nineteenth-century *cuestión catalana* [Catalan question], which, by the twentieth century, had degraded to the point of contributing to the outbreak of a bloody civil war that would rage across all of Spain from 1936 to 1939, was, in the twenty-first century, dressed up with deliberate conceptual confusion, lies, offensive language, publicity stunts and heaping doses of victimhood. In response, inside and outside Catalonia, Spaniards took back the symbols of their collective identity (such as the flag), which had previously been appropriated by fringe Francoist groups. In turn, in its eagerness to internationalize the *procés*, the pro-independence movement attracted a number of foreign scholars and movements who – whether for free or for a fee – showcased their own lack of seriousness by weighing in on the situation in terms that seemed to ignore Spain's status as a democratic state and member of the

[28] Judgment of the General Court (Sixth Chamber, Extended Composition), of 5 July 2023, in Case T-272/21, *Carles Puigdemont i Casamajó, Antonio Comín i Oliveres and Clara Ponsatí i Obiols v European Parliament supported by the Kingdom of Spain*, ECLI:EU:T:2023:373.

[29] Remiro Brotóns (2013, p. 33).

EU and even speculating about Catalonia's *secession as a remedy* to a possible serious violation of its population's fundamental rights by an *oppressive* and *repressive* state controlled, they claimed, by *budding neofascists*.

But language manipulation, conscious or otherwise, must still stand up to the scrutiny of the law, including both Spanish constitutional and international law (*ignorantia juris non excusat* or *ignorantia legis neminem excusat*). In this sense, it is worth highlighting a fact that is rarely mentioned by the secessionist leaders: the primacy of international law – that is, that international law which is binding on Spain – can never *attack* constitutional law. No matter how often "international" considerations are invoked as justification, they cannot override the Constitution in the Spanish legal system. Precisely for that reason, the Spanish Constitution itself takes great care to prevent the conclusion of treaties containing stipulations contrary to its provisions (Art. 95 CE).

Let us now take a brief look at some of the most frequently abused terms (Sect. 3.1), with special reference to the so-called *right to decide*, justified through the right to self-determination of peoples (Sect. 3.2) or the so-called democratic principle (Sect. 3.3).

3.1 Concepts Misused Against Constitutional Democracy

The list of invented terms or misrepresented concepts is endless. Whenever the need arises, a new one rears its head: *dialogue, political prisoners, right to decide, remedial secession, democracy is voting, self-determination is not a crime, democratic tsunami*, and the list goes on.

For example, *dialogue* was – and remains – the mantra of both sides. The Catalan separatists ensconced in the regional institutions speak of *dialogue*. In his speech to the Catalan Parliament on 10 October 2017, the president of the *Generalitat* proposed temporarily suspending the effects of the declaration of independence to give *diàleg* a chance.[30] On 16 and 19 October, he reiterated this idea in letters to Spanish Prime Minister Rajoy, in response to the latter's requests that he clarify whether or not he had declared independence and, if so, that he rectify and restore the constitutional order. The Spanish government (then controlled by the PP) and main opposition party at the time (PSOE), which backed the government in this situation, also spoke of *diálogo*.[31] And *Podemos* and *Els Comuns*, along with not a few professional, trade union, and academic associations, also spoke incessantly of *dialogue*. Is not *the word mightier than the sword*? Well, then, *parlem, hablemos,*

[30] Mr. Puigdemont's speech can be viewed here: https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUPACIO:8111933,17488.

[31] The power to trigger the mechanism of Art. 155 CE lay with then Prime Minister Rajoy, who ultimately did so with the support of the main opposition party at the time, the PSOE (Díez et al. 2017). In the vote in the Senate to authorize the measures requested by the government, both the PP and Socialist senators voted in favour, as did those from the Cs, *Unión del Pueblo Navarro* [Union of the People of Navarre] and *Coalición Canaria* [Canary Islands Coalition] parties. However, two Socialist senators skipped the vote so as not to have to vote in favour of triggering Art. 155. One was José Montilla, president of the *Generalitat* in 2010, who had called the demonstration against the Constitutional Court judgment in the appeal lodged against the 2006 reform of the Statute of Autonomy of Catalonia.

let's talk. And if we take to the streets to demonstrate dressed in *white*, to symbolize our innocence, as was done in Madrid and other capitals across the country on 14 October 2017, all the better. The subsequent government led by Pedro Sánchez has promoted and sat down to new talks with the pro-independence leaders. To set up talks between the regional and central executive powers is to displace the debate from its natural place in a constitutional democracy: the regional parliament, which is where the pro-independence and constitutionalist parties should engage with each other. Talks that exclude half the Catalan population may fulfil interested political ends, both particular and personal, but hardly ends in furtherance of the general interest, as defined by the Spanish constitutional democracy.

However, while this slogan may appeal to citizens of good faith, there is nothing innocent about these proposals. They whitewash the continued unlawful conduct of the regional institutions and transform the vertical relationship of the parties in the constitutional framework into a horizontal one, one of parity, of one power to another, outside the law or, more accurately, against it. To agree to talks with those who declared, in advance, that they would not change their mind was – is – to pave the way for them to make independence effective, their sole objective. Compliance with the constitution is a sine qua non for formal talks. That is what it means to *do politics*, the very action called for time and again by those who, far from basing *politics* on the rule of law and respect for the law, seem to perceive it as a field exempt from any rules. Many of us disliked the social or cultural policies of the PP government in power in Spain in 2017. However, we are even less fond of the attempt to *do politics* by chipping away at the rule of law and censoring what they call the *judicialization* of politics, simply because judges are doing their job, investigating and, where applicable, convicting those who, while in public office – that is, *doing politics* – violate the public interest, the common good as enshrined in the law. To *do politics* without obeying the law is to play *power politics,* to engage in the *politics of force.*

Additionally, to portray politicians who commit crimes as *political prisoners* rather than what they are, i.e. *imprisoned politicians,* is to argue that political activity is a field exempt from judicial control, which strikes us as outrageous in a democratic – not repressive – state such as Spain. It is, of course, quite respectable to demand the release of *political prisoners*, where they exist. However, conspiring to destroy the unity of the state (and the substantive rights and duties linked to humanized and democratized sovereignty), in violation of constitutional rules, is not a *political* activity, but a serious *criminal* one driven by politics and, often, not only politics.

Finally, of all the misrepresented concepts, those that sought to legitimate and legalize the revolutionary act based on international law and, in particular, the principle of the self-determination of peoples stand out. In addition to directly asserting the right to self-determination and, even, with time, to remedial secession and its applicability to Catalonia (which, in this scenario, would currently be immersed in a "humanitarian crisis"), the pro-independence movement bandied about euphemisms such as the "right to decide" and "democracy is voting".[32] Later, in the context of

[32] The "right to decide" slogan sought to justify the holding of a self-determination referendum and had already been used in Resolution of the Parliament of Catalonia 742/IX, of 27 September 2012 (Pons Rafols 2015; Arenas García 2018, pp. 68–84).

the trial of the pro-independence leaders, the ANC would develop the "self-determination is not a crime" campaign. And, in the wake of the convictions handed down by the Supreme Court in 2019, violent riots were promoted in the streets of Barcelona through the *Tsunami Democràtic* [Democratic Tsunami] campaign.[33] Let's take a moment to look at these terms more closely.

3.2 A Right to Self-Determination for Substate Entities? No Basis in International Law

The convoluted wording of the principle of self-determination of peoples in key treaty instruments (e.g. the UN Covenants, Art. 1) and declarations (e.g. UNGA Resolutions 1514 (XV) and 2625 (XXV) or, in Europe, the 1975 Helsinki Final Act of the CSCE) has been used by myriad secessionist movements to further their pro-independence cause. However, a *full* reading of those texts – in context – does not support such a position. On the contrary, if the aforementioned instruments firmly establish any principle at all, it is that of the territorial integrity of the state, which everyone must respect. Even during the process of decolonization, no right of separation was recognized for colonial peoples. After all, international law is primarily shaped by states, and there is no reason to assume they are suicidal. There is an extensive body of Spanish literature on this topic rejecting that Catalonia is the holder of the right to external self-determination,[34] a position that we maintain here. Only a tangential minority have defended the contrary, and with scant legal basis.[35] Put succinctly, the principle of self-determination does not afford any right of separation from the territory to substate entities, for the following reasons.

First, we are talking about the interpretation of the content of a fundamental principle of international law, a *jus cogens* norm of general international law, which is

[33] The National High Court is investigating the case as a potential crime of terrorism. It was recently reported that several people are under investigation for their participation in Tsunami's organizational structure, including Mr. Puigdemont, Marta Rovira and Josep Lluis Alay (Decision of the National High Court [AAN] of 6 November 2023).

[34] Among others: Bermejo García (2019), Calduch Cervera (2019), Carrillo Salcedo (2013), Fernández de Casadevante Romani (2018, 2020), Fernández de Casadevante Mayordomo (2020), Fernández Liesa (2019a, b, 2021), González Vega (2019), Gutiérrez Espada (2019), Kolb and Gazzini (2021), López-Jacoiste Díaz (2019), López Martín and Perea Unceta (2018, 2022), Mangas Martín (2017), Martín y Pérez de Nanclares (2015), Pons Rafols (2014a, b, c, 2015), Remiro Brotons (2017), Remiro Brotóns and Andrés Sáenz de Santa María (2018a, b), Ruiz Miguel (2019), Saura Estapà (2014), Sobrino Heredia (2019), Soroeta Liceras (2018), Torroja Mateu (2019a, b, c), Torroja Mateu and Ripol Carulla (2020), Torroja Mateu (2020a, b, 2022a, b, 2023). Non-Spanish authors have come to similarly clear conclusions in this regard: among others, see the detailed study of Kolb and Gazzini (2021).

[35] See, among others: Daniel Turp, Public International Law professor, Université de Montréal, Montreal, "Cataluña se ha convertido ahora en un modelo para Quebec", https://www.elnacional.cat/es/politica/daniel-turp-quebec-catalunya_174651_102.html. See also: Alfred de Zayas in United Nations, Note by the Secretary-General, "Interim report of the Independent Expert on the promotion of a democratic and equitable international order", A/69/272, 7 August 2014, as well as his "Apuntes prácticos para la apreciación de actividades y alegaciones relativas al ejercicio pacífico y democrático del derecho de libre determinación de los pueblos", which the reader can find on the website https://dezayasalfred.wordpress.com/2018/02/.

a customary norm, as the International Court of Justice has made clear on multiple occasions. Several widespread interpretation errors result from the failure to follow the general secondary rules of interpretation of customary and *jus cogens* norms.[36] *One frequent mistake* is the belief that the right to self-determination of peoples is a right of a colonial people to separate from the territory of the metropolitan state as an exception to the principle of territorial integrity. But this is simply not true. What was established was that a state would allow its colonies to access sovereignty and independence should they so wish. What the colonial powers agreed to was a shift away from the traditional viewpoint that colonies were part of their own territory. That is the meaning of paragraph 6 of Resolution 2625 (XXV), 1970: "The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it…". Consequently, the colonies neither seceded nor separated from the territory, because they were not part of it to begin with. That is the consensus behind the norm.

A *second interpretation error* is to think that any internal right to separation that a given state might grant to a part of its population is based on an international norm that outranks the principles of territorial unity and integrity. If the UK or Canada – with their flexible constitutions – are able and want to allow a vote on separation for a part of their populations (Scotland and Quebec, respectively), so be it; they can do so at their own discretion. International law respects their right to do so, but it by no means imposes it as a universal model. On the contrary, management of domestic territory is a discretionary power, protected by the principle of sovereignty and independence, a fundamental norm of international law. There is no international duty for a state to allow a vote on separation for a part of its population.

A *third interpretation error* is to ignore the fact that the self-determination principle sets limits, including the prohibition of its use by secessionist groups seeking to fracture the territorial integrity of old or new states. This is a crucial point: international law is not neutral regarding a process of secession. The seventh paragraph of Resolution 2625 (XXV) is quite clear: "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States…". Through this paragraph, the states limited the principle's scope in terms of subjectivity, after having extended its internal dimension to include all peoples in the opening paragraph of Resolution 2625 (XV), among other texts. It is clearly established that the right's external dimension is

[36] We will not engage here in the debate over who has the right to external self-determination, as we believe this issue has already been settled: only people under colonial rule or military occupation (e.g. the Palestinians) have the right to self-determination. If states had wanted to give ethnic, linguistic or cultural minorities the right to sovereignty and independence, there would now be some four or five hundred African countries rather than the around 50 there actually are. That is not what states wanted. They clearly established that the right was for the peoples of the colonial territory – a group that might comprise multiple ethnicities, religions and languages. Furthermore, to guard against the possibility of endless claims of sovereignty, they specified that the borders of the colonized territory be determined in accordance with the principle of *uti possidetis* or the *pacta sunt servanda,* applied to agreements between colonial powers. See: Torroja Mateu (2019a, b, c).

not for use by any part of a state's population. A careful reading of the text shows that what is forbidden is the use (re: interpretation) of the self-determination norm to promote the dismemberment of a state's territory. States were so fearful of secession, they dared not even call it by its name. But, of course, they wanted to prevent it. Here, it may seem that, in its Kosovo opinion, the ICJ took a position contrary to the one just explained. In it, it held that international law was neutral regarding unilateral declarations of independence and that the principle of territorial integrity did not apply internally, only in relations between states. Nevertheless, it is worth recalling that the Court surprisingly decided to limit the scope of its arguments, stopping short of examining and considering the *jus cogens* norm of self-determination.[37] Naturally, it thus never reached the conclusion that preventing secessions is exactly what the norm does and that the territorial integrity principle thus does have an internal application.

A fourth interpretation error is the belief that, in the second and last sentence of that same seventh paragraph of Resolution 2625 (XXV), states established a right of separation as an exception to the principle of territorial integrity in cases of discrimination or human rights violations, the so-called *right to remedial secession.* All authors who have sustained this, since professor Buchheit, who was among the first to argue it in 1978,[38] base their reasoning on the second and last sentence of this paragraph. The idea was already present in the Aaland Case, but as an idea only, not a description of an international norm. Indeed, the paragraph could be read *literally* as saying that if a government is not representative, the portion of the population discriminated against have the right to separate.[39] But the general secondary rule of interpretation does not provide: *a text may only be interpreted literally*. It says that a *text should be taken in its context and in consideration of its object and purpose*. As noted, the states were very reluctant to give even their colonies a right to separation; why would they then turn around and make exceptions, giving it to any minority at all in virtually the last paragraph of the UNGA Resolution? To claim that this was their intention would be absurd. Indeed, Professor Cassese has confirmed that the final wording was the result of a last-minute change made unilaterally by the drafting committee.[40] If we consider the preliminary debates in the UNGA, we can see that the safeguard against discrimination (referred to by some as the "democratic

[37] The ICJ declined to answer the question of whether the right to self-determination allows a part of a state's population to separate (para. 83). See ICJ (2010), *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, 22/VII/2010, paras. 59–56 and 82–83.

[38] Buchheit (1978, pp. 221–222).

[39] Para. 7 of Resolution 2625 (XXV), second and final line: "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

[40] Drafting Committee of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States of the UN General Assembly. See: Cassese (1995, pp. 117 and 123).

clause") was established to protect victims of *apartheid* from racist minorities in power (as in the cases of Southern Rhodesia and the South African Bantustans), to ensure they were allowed to participate in the internal democratic decision on self-determination; it was not conceived of to give them a right to secede. In any case, the International Court of Justice has established the *lege ferenda* status of this "remedial secession" doctrine (Kosovo Advisory Opinion, 2010), as has the Supreme Court of Canada (Secession of Quebec Decision, 1998).

A final interpretation error concerns the facts and evolution of international law. Have events since 1989 changed the *ius cogens* customary norm? Europe has witnessed a fair number of changes in sovereignty since then, in a variety of legal circumstances. Some were consensual devolutions; others were secessions, alterations in sovereignty against the will of the parent state. Have these secessions changed the norm? No. Events do not change customary norms, despite what a certain body of literature or certain special rapporteurs of the UN Council on Human Rights might have us think.[41]

In short, it is quite clear to us that the norm does not include any right to separate from the state; it was not attributed to colonial peoples or to any minority (or majority) of any fraction of a state's population, or in any other circumstances, such as human rights violations (remedial secession). In any case, to claim that a situation warranting this non-existent right to remedial secession could exist in a democratic Member State of the EU such as Spain is a preposterous, nonsensical claim. Are the situations of Kosovo or failed states such as South Sudan and Eritrea really comparable to that of the Catalan population in the contemporary Spanish political system? To argue that they are would be dishonest.

3.3 "Democracy is Voting"? "Right to Decide"? Playing Politics with the Democratic Principle

There has been no shortage of support in the literature for the theories revolving around the "democratic principle", including, in the Catalan case, from scholars of international law. Among them, Marc Weller, a full professor at the University of Oxford, published part of a report he co-authored with colleagues, commissioned by the Catalan political party *Esquerra Republicana de Catalunya* [Republican Left of Catalonia, ERC], in *EJIL Talk*. The report concluded that Catalonia did not have a right of self-determination under international law and, thus, that the only solution was to assert a democratic principle. A democratic principle understood as the superiority of the decision of the majority of the Parliament of Catalonia,

[41] Alfred Zayas in Note SG (2014), "Interim report of the Independent Expert on the promotion of a democratic and equitable international order", A/69/272, 7 August 2014, paras. 28–29. Any change to a *jus cogens* customary norm must be brought about by another *jus cogens* customary norm. In any case, should a secession come to pass through the creation of a new state, it would not retroactively attribute a right to separation to the part of the population that had sought a revolution at the start of the secessionist process.

surpassing even the Spanish Constitution and the population of Spain as a whole. Consequently, it concluded that the Spanish central authorities *had to negotiate (engage in a dialogue) with the secessionist leaders.*[42] It is not hard to see that this idea of a political – not legal – democratic principle conceals a direct attack on the rule of law, an inextricable element of any constitutional democratic state, as defined in the context of the EU and CoE. However, it is also a direct attack on the fundamental rights and freedoms of the population of the state as a whole. The *academic* status of a report is deduced from its nature and method, not from whether it was authored by this or that scholar.[43] There is a difference between a report on the right of separation from the state and a report to justify separation from the state as a right. A scholar who becomes an advocate for one of the parties will have no scruples turning a conclusion into a premise for that party's reasoning.

Certainly, for the *Generalitat* and its associates, denying Catalans' *right to decide* on the future of Catalonia is intrinsically *anti-democratic*. However, *is it not seeking to usurp from the rest of Spaniards a right that belongs to all what is truly anti-democratic*? In Spain, the *demos* that holds the sovereign *kratos* is the Spanish people "from whom emanate the powers of the State" (Art. 1.2 CE). The Greek chorus accompanying the separatist *procés* confuse their claim with a right they do not have, even as they share in the *revolutionary act.* The Spanish Supreme Court was quite clear in its critique of the legal grounds of the "right to decide".[44] When states proclaimed the self-determination principle in the three well-known

[42] With the tacit suggestion (in our view, this can be inferred from his words) that, should the Spanish authorities refuse to negotiate, the solution would be the path chosen by Croatia or Bosnia Herzegovina, i.e. *what happened in those countries, namely, a war.* Hence, the only possible negotiation would be to cede to the pro-independence movement's demands, lest it decide to follow in the footsteps of Croatia or Bosnia Herzegovina. Could that truly be what they meant? Readers can interpret it as they will. See: Weller (2017).

[43] See: Catalonia's Legitimate Right to Decide. Paths to Self-Determination, A Report by a Commission Of International Experts, Nicolas Levrat, Professor at the University of Geneva, Coordinator of the Report; Sandrina Antunes, Professor at the Universida de Do Minho; Guillaume Tusseau, Professor at Sciences Po, Paris; Paul Williams, Professor at American University in Washington, Dc. And: Report of the International Group of Experts. The Catalan Independence Referendum: an Assessment of the Process of Self-Determination, by Nina Caspersen, Professor, University of York, Matt Qvrotrup, Professor, Coventry University, Daniel Turp Professor, University of Montreal, Yanina Welp, Professor, University of Zurich, IRAI, No 01, September 2017.

[44] In its 2019 judgement on the *procés*, the Supreme Court ruled on the right to decide. It argued that "[b]ecause the expression is not reflected in the law, [the defendants] attributed a political nature to it, whereby the right would be based on a supposed *democratic principle*, namely, the right of every community to decide its own future. For the Court, the 'right to decide' is a euphemism used to explain an 'evolved conception' of the right to self-determination contained in Article 1 of the International Covenant on Civil and Political Rights (ICCPR), through an 'adaptive effort' (p. 200 [of the judgment]; p. 196 of the English version), combined with the transformation of the monist conception of sovereignty on which the 1978 Spanish Constitution is based into a diffuse and shared conception of sovereignty" (Torroja Mateu 2020a, b). See: Supreme Court of Spain (Criminal Division), Judgment 459/2019, of 14 October 2019, on the *procés*.

international texts, they made sure that it was all the people in each pre-existing state who had *the collective right to decide their political future, including their territorial integrity*.[45] Hence, it is the Spanish people as a whole, including all Catalans, even those against secession, who have a basic collective human right to decide their territory's future. When part of a state's population denies this collective right to the rest through an unconstitutional referendum to decide on secession, it is breaching the international norm that attributes the right to internal self-determination to that state's entire people. Does this right not matter? We fail to see why not.[46]

Let's take things one step further. In a democracy such as Spain, the constitution protects the basic human rights of the whole population, i.e. of everyone. As seen, basic human rights are inextricably linked to two other elements: the rule of law and democratic representation. These three elements are inseparable for the CoE and the EU. Therefore, no matter what the secessionist Catalan politicians might claim, democracy is *not* simply voting. Democracy without respect for the law is not democracy, nor does it respect human rights. Does the Spanish Constitution hold no value whatsoever? In short, as Professor Joseph H.H. Weiler has argued, it is a fallacy to invoke the alleged democratic principle, when its purpose is to undermine the democratic political system itself.[47]

4 Access to Statehood: Independence, Effectiveness and State Recognition

A unilateral declaration of independence that violates a state's constitution is, in any country, a crime. For international law, however, it is initially irrelevant. International law will pay attention to the declaration's effectiveness – i.e. the effective assumption of territorial and personal powers by the issuers of the declaration of independence and the recognition of this fact by other sovereign subjects. This recognition will be legally irreproachable – whatever opinion it might merit from a political point of view – as long as the subject doing the recognizing has not interfered in the internal affairs of the state experiencing the secession of part of its territory and bases its recognition on the objective verification of the effectiveness of the declared independence. Of course, recognition of the new state by the state from which it is breaking away gets rid of all sorts of problems – except for those of succession in rights and obligations – since until this recognition takes place, the old state's right to restore its lost territorial integrity remains intact.

[45] It is a right of internal self-determination belonging to all the people in the state. This is in accordance with the definition of the term 'people' in the General Assembly's resolutions and in Art. 1 of both of the 1966 human rights covenants (text, context, object and purpose). See: Remiro Brotóns (2002). On this internal right and its relation to democracy, see also: Andrés Sáenz de Santa María (2018).

[46] But this is not what some scholars see. In this regard, see, for instance, Weller (2017) and Kirsh (2013).

[47] Joseph H.H. Weiler is a professor at New York University. See: Weiler (2018, p. 12). In this regard, see also: Weiler (2012a, b, c).

As already noted, Catalonia's independence could be a *fact*, but not the outcome of the exercise of a right that is not recognized under international law or, of course, by the Spanish Constitution. A declaration of independence is, per se, manifestly illegal in the constitutional order – however *symbolic* one might wish to make it appear – and irrelevant in the international order, unless it is accompanied by *effectiveness ad intra* and *recognition ad extra.* This explains why the former president of the *Generalitat* Artur Mas, currently disqualified from holding office, sounded a wake-up call, warning that Catalonia was not yet ready to make a declaration of independence effective.[48] Indeed, one might even suspect that his aulic council may have inspired certain behaviours after independence was declared. Once the programmatic nature of the declaration had been affirmed, it was a matter of gaining time, preparing for the struggle with the state for control of the territory and strategic facilities and the assumption of state powers in the areas of finance, justice, transport and roads; in short, of stripping the state of its essential services, heritage, infrastructure, etc., until it was nothing but an empty shell.

This is where a central government ready to defend democracy and the constitutional rule of law should have drawn its line of defence, denying control of the territory to the *Generalitat*, protecting its strategic facilities, unwaveringly combatting the creation of a parallel treasury and judiciary, and, of course, assuming the powers of the regional institutions should they, as they did in 2017, return to their old ways. After all, today, in late 2023, the separatist Catalan parties are negotiating amnesty bills without the slightest intention of changing, some of them willing to unilaterally execute their plans with utter disregard for the law. Although the "pro-independence front" has dwindled, as a result of the electoral laws and parliamentary arithmetic, it holds the key to the new government of Spain, in exchange for which it demands amnesty and self-determination.

As for *recognition,* even if one acknowledges that it is a unilateral act declarative – not constitutive – of the international subjectivity of the self-proclaimed sovereign party, there is no denying its extraordinary importance. Without it, there is no way to exercise the rights predicated on the state as a subject of international law. Furthermore, recognition transforms what would otherwise be acts of interference into assistance for the new state in its struggle against the state trying to defend its unity and integrity. Of course, if that recognition is based on virtual rather than effective grounds, it can be premature and, thus, illegal, as it can be in situations induced by interference or even the use of force by a foreign power. But often such judgments are confined to the scholarly literature.

Apparently, in 2017, it was thought that only countries with horrible relations with Spain (there has been talk of North Korea, with the inspiring choreography of its colourful and disciplined mass movements) or that Spain does not recognize as sovereign states (e.g. Kosovo) might recognize, even prematurely, the *Estat Català,* making for presumably awkward bedfellows for even the brashest proponents of Catalan independence. Support may also have been sought from beyond

[48] In remarks made a few days after 1 October. See*:* El Plural (2017).

the bounds of Western democracy. Today, Russia is known to have directly or indirectly influenced support for independence: a case has been brought before a Barcelona court, but it is also the subject of investigation and debate in the European Parliament.[49] Whatever the case, there was ultimately no recognition by any state at all.

Within the European Union, recognition of Catalan secession would have entailed – and would still entail in a similar situation in the future – a serious violation of primary EU law, in particular Article 4.2 TEU. What support the Catalan pro-independence factions did manage to garner at the parliamentary, social or media level in Member States did not translate to recognition.

And what about recognition of Catalan independence by Spain? In cases of secession, revolutionary acts, recognition by the old state of the new one puts an end to the legal worries for all the others. The old state's recognition greenlights the recognition of the new state by third states, with all the attendant consequences. It goes without saying that recognition of Catalan independence by Spain could only happen as a result of a monumental political and diplomatic failure coupled with an inability to control the territory. Even then, it would be possible to maintain the legal title indefinitely, hoping for a change of circumstances that would enable its recovery. With recognition, title is transferred to the newly recognized state and what comes into play is the complex negotiation of succession with regard to assets and debts, archives, nationality, etc., in short, the terrain in which the proponents of independence wish to situate their *dialogue* and in which they have, with all due foresight, obtained preliminary studies.

5 Amnesty and a Fresh Start?

What if the Catalan institutions persist in their secessionist goals, with militant social support, channelled by civil-society associations such as the ANC and *Òmnium Cultural*, the shock troops of the anti-system radicals of the CUP and their audacious youths, public media that dote on the pro-independence cause, cover from the *Mossos d'Esquadra* in their new role as the police of the *poble català*, and even some religious leaders especially vulnerable to fanaticism, willing either to light the bonfire or immolate themselves atop it? With the arrival of the Socialist government in Spain, the pardons, the amendment of the offence of misappropriation of funds and elimination of that of sedition, the secessionist fever in Catalan society seems to have cooled. In the most recent Spanish parliamentary elections, held on 23 July

[49] Contacts between people from Puigdemont's inner circle and people close to the Russian government and with influence in it are known to have taken place. See: Coll (2020). The European Parliament is currently investigating Russian intervention in attempts to destabilize the EU, including the connection between Russia and the Catalan secessionist movement. See*:* European Parliament resolution of 1 June 2023 on foreign interference in all democratic processes in the European Union, including disinformation, 2022/2075/INI, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0219_EN.html, para. 73. On the judicial investigation of Russian interference in Spain and the European Parliament's investigation, see also: Torroja Mateu (2023).

2023, the constitutionalist forces (*Partit dels Socialistes de Catalunya* the Catalan socialist party, or PSC; *En Comú* (Together); the PP; and VOX) won in Catalonia. Yet the Catalan government is currently still led by the nationalist Republican Left of Catalonia party (*Esquerra Republicana de Catalunya* or ERC), which managed to form a government with the support of the nationalist right Together for Catalonia party (*Junts per Catalunya* or *Junts*), after the regional elections of 2021.[50] And the current political situation, after the PSOE's negotiation of an amnesty law with the Catalan pro-independence leaders to secure the votes they need to govern in Spain, is emboldening the pro-independence movement once again. The draft law was registered by the *Congreso de los Diputados* (the lower chamber of the Spanish Parliament) on 13 November 2023 by the PSOE acting alone.[51] That is where we are today. To the extent that demonstrations in favour of the constitution are dismissed as "Catalanophobia".[52] Nor is there any lack of people who would prefer to see a new right-wing victory in any central Parliament elections so as to once again promote civil disobedience, riots, manipulation of social networks and international media, calls to action to cause public disturbances in order to level accusations of violations of human rights and individual freedoms, etc. All of that may, once again, form part of a deplorable scenario. Pro-independence sentiments, populist nationalism, have penetrated deep into the social body in terms that have managed to take the rest of Spain by surprise. Just when it was thought that the discrediting of the nationalist leaders, in view of the overwhelming inconsistency of their actions, would trigger a mass shift away from pro-independence positions, we have run smack into an unqualified indulgence of whatever their behaviour may have been, in or out of prison or in Brussels. Nowadays the extreme division into two sides of the Catalan population seen in 2017 has been translated to an extreme division into two sides of the Spanish population as a whole. Some say that the Catalan process now stands at the centre of Spanish politics. And from there, it is spreading to Europe; witness the European Parliament's debate on the PSOE's proposed amnesty law on 22 November 2023.[53] The EP's division into two extreme positions was likewise clearly visible: one insisting that the passage of an amnesty law by the Spanish Parliament is an internal affair; the other defending the international character of the defence of the rule of law, under threat in Spain. It is worth recalling that the political agreements between the PSOE and the Catalan secessionist parties also

[50] Elections of 14 February 2021, called by Decree 147/2020, of 21 December, on the automatic dissolution of the Parliament of Catalonia and calling of elections (*BOE*, 22 December 2020). The results are available on the website of the Central Election Board at: https://www.juntaelectoralcentral.es/cs/jec/elecciones/Catalunya-febrero2021?p=1379061524629#resultados.

[51] Draft Law 122/000019, proposal for an organic law on amnesty for institutional, political and social normalization in Catalonia, submitted by the Socialist parliamentary group, *Boletín Oficial de las Cortes Generales, Congreso de los Diputados* [Official Gazette of the Spanish Parliament, Lower House] Series B, no. 32–1, 24 November 2023.

[52] Statement by the spokesperson of the *Generalitat* on the constitutionalist demonstration of 8 October 2023 in Barcelona (https://www.youtube.com/watch?v=2JBTCsp9E44).

[53] https://multimedia.europarl.europa.eu/en/webstreaming/plenary-session_20231122-0900-PLENARY: Threat to rule of law as a consequence of the governmental agreement in Spain (debate) (16:11:51–18:05:18 CET).

include the creation of special commissions in the Spanish Parliament to investigate the judiciary, accused of partiality in its decisions (lawfare).

In 2017, the central government was held by the PP. On 2 June 2018, following a vote of no confidence, Pedro Sánchez, Secretary General of the PSOE, became prime minister. He remained in office following the general elections of 28 April 2019 (in which he was unable to form a government), 10 November 2019 (which resulted in his second swearing in) and 23 July 2023 (which resulted in his third swearing in, the second to follow general elections since, as noted, his first term was the result of a vote of no confidence). He currently leads a coalition government with the party *Sumar* [Add], after securing the congressional support of ERC, *Junts*, *Euskal Herria Bildu* [Basque Country Unite or *Bildu*], the *Partido Nacionalista Vasco* [Basque Nationalist Party or PNV], the *Bloque Nacionalista Galego* [Galician Nationalist Bloc or BNG] and *Coalición Canaria* [Canary Islands Coalition or CC]. As noted, the candidate of the winner of the July 2023 elections, the PP, failed to secure the majority needed to be sworn in as prime minister (according to the CE, an absolute majority in the first round, and a simple majority in the second). The King then tasked Pedro Sánchez, as the leader of the second largest party in the Parliament, the PSOE, with trying, and he needed the votes of all the nationalist minorities, including the pro-independence parties, to succeed. This was the context in which the negotiation of an amnesty law between Mr. Puigdemont's party and the PSOE must be understood. Such a law would enable Mr. Puigdemont, who currently resides in the *Casa de la República* [House of the (Catalan) Republic] in Waterloo (Belgium), to return to Spain, at the cost of sacrificing the constitutional and democratic rule of law, the separation of powers and the equality of all citizens before the law for personal gain. The image of the acting second deputy prime minister of Spain, Ms. Yolanda Díaz, posing, relaxed and cordial, for pictures with the fugitive coup leader turned MEP Mr. Puigdemont is nothing short of embarrassing.[54]

Even though Mr. Sánchez managed to form a government thanks to the votes of the Catalan separatists, whose leaders have been pardoned and will most likely soon even be granted amnesty, it will be difficult to restore trust and peaceful co-existence in Catalonia and between Catalonia and Spain's other autonomous communities, starting with the reform of the constitutional and statutory framework. We do not believe that the majority of citizens, in the various autonomous communities, are willing to endorse with their vote a state stripped of its substance or that a broad agreement can be reached on this basis. At the opposite extreme are those who raise their voices against the privileges of some autonomous communities and devolutions of powers that have ultimately undermined the strength of the state as a common life project, especially in the areas of education, healthcare and security, where the principle of equality quivers every day.

The pro-independence leaders have given no sign that they regret their actions or that they intend henceforth always to abide by the law. On the contrary, their slogan

[54] See for instance: https://www.elperiodico.com/es/entre-todos/participacion/imagenes-yolanda-diaz-puigdemont-pensar-carta-lector-jordi-querol-91714866.

is “we’ll do it again”. Amnesty and unilateral delcaration of independence against the Spanish Constitution go hand in hand in their proposals.

6 Conclusion

The attempt to secede (i.e. to separate a part from the whole against the domestic law and/or central power) in a democratic state lacks not only a legal basis, but a moral foundation. The respect for Catalonia’s linguistic and cultural identity and broader self-government afforded to it by the 1978 Spanish Constitution show that this demand – which can nevertheless be pursued as a policy of reform within the constitutional framework – is deeply selfish and disrespectful of the rights – including equality – of all Spaniards. The presentation of national separatism as a progressive movement in a democratic state is a clear symptom of social illness. That said, upholding the constitution and the rule of law does not mean supporting the PP government led by Mariano Rajoy, in charge during the events of 2017, whose responsibility by omission has been consistently pointed out. Nor does it mean supporting those who have succeeded him as the head of his party. Or those of any other. However, those on the left who, even as they provide objective support for the pro-independence movement’s proposals, seek to transfer the confusion and social fracture that the separatists have sown in Catalonia to the rest of the country are hardly the *patriots* they claim to be either.

In historical terms, Spain has been in decline since our first constitution. The Spanish Constitution provisions proclaiming unity and territorial integrity have not been an effective bulwark, since a law, no matter how basic, does not operate in a vacuum, but within a political, economic and social context that, when adverse, can render it paper-thin. Moreover, in a democratic state, the occupation of *regional* institutions by those who act with systematic disloyalty to the constitution, the starting point for their disdain for the law, feeds centrifugal forces that, when they have the social support of the street, are difficult to combat no matter how strong the legal grounds for doing so. Coercive actions to impose respect for the constitutional order are thrilling for separatists, who are ever ready to present themselves as victims and denounce the violation of all manner of rights and freedoms, even as they engage in *kale borroka* [street violence] and exert social and psychological violence over those who do not support the national movement. The democratic state has its work cut out for it to repress, in accordance with the law, those who, by trampling all the laws, would rather see it implode.

What has happened in Catalonia is in every sense a secessionist process, a revolutionary act, an act against the principles of the rule of law, human rights and democracy, all of which are protected by the Spanish Constitution. The abusive interpretations of the international norm of the self-determination of peoples by secessionist groups in liberal democracies violate the fundamental political rights and freedoms of the entire population of the state in question. The problem in Catalonia during the secession process, was not one of an oppressive state (Spain) violating the basic rights of a part of its population (in Catalonia). On the

contrary, the problem was that, in a highly decentralized state, a *regional state power* (the Catalan government and Parliament or *Generalitat*) decided to clash with another large part of that state's population, denying and violating their basic rights and, most certainly, their political ones. As a result, still today we have a territory with a divided society. And this schism is growing under the influence of the hegemonic power in Catalonia, fostering a sort of exclusive nationalism, something we thought had been – or, in any case, should be – eradicated from both Western and Eastern Europe.

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