WINNING DEBATES AND LOSING VOTES: THE PARLIAMENTARY USES OF SELF-DETERMINATION[1]

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Self-determination is a recurring question in Spanish politics. It is an odd issue for a country achieving one of the most decentralised government models in the world, but experience shows that the further decentralisation proceeds (for democratic reasons), the higher secessionist claims rise, notably in two autonomous regions: Catalonia and the Basque Country. In just a few years, since 2004, self-determination initiatives have forced the constitutional system (integrated by the constitution and the statutes of the seventeen autonomous regions) to a point that crucially tests its internal consistency and its capacity to perform its proper functions.

Ever since the adoption of the 1978 Constitution, after the retrieval of democracy, such tension has conditioned Spanish politics. In this article, I will pay attention to some recent parliamentary debates and to their most significant antecedent, namely a session on self-determination held at the Basque Parliament in 1990. The discussions are full of interesting theoretical remarks, innovative in some cases, unoriginal in others. From the point of view of parliamentary rhetoric, there are a great many cases of vibrant and eloquent speeches covering the whole spectrum of political views on secession and democracy. Over time an intriguing pattern has come into sight: in most debates the constitutionalist positions have won the battle of ideas but lost the votes.

Focusing on the Basque case, my aim is to show that the self-determination debates have left the regional parliament in an odd position, as a number of the adopted measures, by challenging the constitutional order, seem to go clearly beyond its institutional capacity. Furthermore, as a result of this gamble with constitutional rules, the traditional political division along nationalist lines has gained a new dimension in public life. Each victory by the nationalist parties has been solemnly proclaimed in parliament to embody the truest and genuine expression of the political will of the Basque people – an imaginary construct not corresponding with the constitutional concept of the Basque citizenry.

I will argue that it is constitutionally doubtful that parliamentary resolutions of this kind rightfully represent the political will of the people. Yet to criticise this assumption has become tricky. The parliamentary proceedings show how powerful the nationalist rhetoric has become in parliament and in public life at large, as the burden of the proof easily falls on the dissenters and as a mere criticism of such sovereignty claim is swiftly described as an antipatriotic attack. Ironically, similar arguments have been and still are pursued in the successful Catalan case.

Incentives for constitutional reform

Spain's first democratic constitution of the twentieth century, issued in 1931, barely lasted eight years. Its accidental history reproduced the nineteenth-century climate of continuous constitutional bargaining among the political parties. Constitutions played then a pivotal role in general elections, during electoral campaigns and in parliamentary discussions. Time after time the promise of a new constitution created in the citizenry the illusion of both political stability and efficient government. Neither was achieved for long. On the contrary, as a result of this, constitutions became associated to instability and weak governments.

By the beginning of the civil war in 1936 the constitution, unable to reverse the tide, had lost its original legitimacy (Payne 2006, 294-368). In contrast, the second democratic constitution, approved in 1978, was intended as a very different endeavour: pragmatic, not visionary; reformist, not revolutionary. Negotiated by all parties with

parliamentary representation, it had a double political aim: to decentralise the state, thus creating power sharing mechanisms among the regional governments (autonomous communities), the autonomous enclave cities of Ceuta and Melilla and the central government; and, through the electoral law, to facilitate governability within a pluralist party system.[2]

To this end, by introducing a modified proportional representation formula, the electoral law, issued in 1985, stimulated the consolidation of two major national parties, while granting regional (peripheral) nationalist groups a strong presence in the national parliament, which have been overrepresented thanks to that concession (Lago-Penas 2004). Given the difficulty to get absolute majorities to uphold governments, alternation was provided mostly by coalitions between the major national and the minority nationalist parties.

For the last three decades the system has worked reasonably well, to judge by the annual reports on the performance of the "state of the autonomies":[3] power sharing has entailed the redistribution of wealth among the regions and the reduction of inequalities among taxpayers. The degree of devolution is comparatively higher than the usual ones found in other federal or federal-like states, comprising the control of education, health care, commerce, agriculture, regional police, and the administration of justice or the capacity to collect taxes.

It is not unjustified then to think that in practice Spain has become a federal state (Moreno 2001), although for some authors, and some political parties, to reach that level would mean a further transformation of the constitutional balances of the state of the autonomies (Requejo 2005). Two arguments underlie that interpretation, also known as asymmetrical federalism. The first one points out that the fiscal arrangements treat unfairly the richest regions. A *properly* federal state should not charge them to compensate for the wealth difference of poorer regions. The second one claims that more decentralisation would lead to more and better self-government, an increase in wealth and the possibility of playing an independent role in international politics. The autonomous communities can only get this through constitutional reform.

Concerning the first argument, it should be noted that it is individuals, not regions, who pay taxes, although political discussions in both the national and regional parliaments usually take regions as if they were the real taxpayers. Furthermore, the central government's

fiscal policy benefits both rich and poor regions and the reduction of inequalities tends to benefit all of them. Thirty years of the state of the autonomies model have produced a more egalitarian country, while differences among regions remain mostly constant.[4] What has changed, is the current inequalities, which do not constitute, as they did in the past, strong forms of rights deprivation, to use Amartya Sen's concept (Sen 1999, 87-110). Besides, any situation in GDP terms is the result of a number of factors. For example, the wealth of the regions is produced by the commercial exchanges within Spain (more than 60% of their GDP) and heavily depends on the national fiscal arrangements.

As for the second argument, devolution is not an unlimited procedure, if the aim is to make the principle of subsidiarity work. At some point a stable balance is needed. As pointed out by *The Economist*, "The central government now accounts for just 18% of public spending; the regional governments spend 38%, the *ayuntamientos* (municipal councils) 13% and the social-security system the rest."[5] Regional governments have become the net beneficiaries of this notable downsizing of the state, at the cost of reducing its already diminished intervention capacity. But it is not a necessary consequence, as it remains undemonstrated, that further decentralisation produces more regional wealth.

However, against all evidence, as the pressure to decentralise the state risks dismantling the safety net and the redistribution system created by the 1978 constitutional order, no other political expectation has proved more alluring than the promise of further benefits by reforming the constitution in that direction. And no other measure would meet such high expectation for regional nationalists as self-determination or secession.

The issue of reform is intricate. The 1978 Constitution was designed as a rigid constitution, whose amendment requires qualified majorities of three-fifths in the parliament's two chambers and a referendum to ratify the amendment (articles 166 to 169 of the Spanish Constitution).[6] Likewise indirect reform through any of its constituent parts, the regional statutes, is also forbidden. For reasons of normative priority, any amendment of the regional statutes must be approved by the national parliament through an "organic law" according to the same conditions and norms for constitutional amendment (art. 147.3 of the Spanish Constitution). But the inflexibility of the procedure

somehow explains the recourse to indirect reform in recent years and the kind of forced revision began in 2004. Furthermore, the Constitutional Court has authorised it in the case of the new Valencia Statute of 2006[7] and could confirm this way by refuting some pending unconstitutionality claims on the new Catalan Statute (De Esteban 2008).

Other reasons help understand why the issue of constitutional reform has re-entered party politics. Among them, and next to the sovereignty claims, probably the most salient reason was the government's need to secure stability during the 2004 legislature through a series of agreements with the regional nationalist parties. Many of those agreements have been updated after the new victory of the Socialist Party at the March 2008 general elections. And reinforced by the realignment in constitutional matters of the centre-right Popular Party, that has backed the reform of regional statutes in Valencia or Andalusia, for example, assuming unequivocal nationalist claims. These have been only contested by the newly created party, Union, Progress and Democracy, which won a seat in the Congress of Deputies (the lower chamber of parliament) and is expected to grow in future elections.

To reform the statutes should not be in principle a big problem, although some of the reasons claimed are extra-constitutional. In practice, a number of the changes adopted affect the core of the constitutional order. Within the constitutional system, the amendment of any of its parts is not inconsequential for the rest. So even if directly no mention is made to altering the constitution, indirectly a *de iure* partial amendment of some regional statutes could entail a *de facto* general reform.

This is what is happening, since the partial, regional reforms are leading to procedural and content changes as regards, for example, the financial agreements and transfers between the central and the regional governments or the exercise of basic rights. This latter aspect, involving the principle of equality before the law, can be easily tested in the treatment of Spanish in some bilingual communities:

> Franco banned the public use of Catalan, Euskera (Basque) and Gallego. The constitution made these languages official ones alongside Spanish in their respective territories. In Catalonia the official policy of the Generalitat (the regional government), under both the nationalists [...] and now the Socialists, is one of "bilingualism". In practice this means that all primary

> and secondary schooling is conducted in Catalan, with Spanish taught as a foreign language. [...] The Basque government allows schools to choose between three alternative curriculums, one in Euskera, another in Spanish and the third half and half. But in practice only schools in poor immigrant areas now offer the Spanish curriculum.[8]

The rationale surrounding the changes avoids any explicit mention to constitutional reform, but plays with the idea rhetorically, raising sometimes the expectation that the changes could go further than suggested. And indeed they do. As argued by Jorge de Esteban, a more flexible procedure would have facilitated partial reforms (like the much needed transformation of the Senate into a truly territorial chamber) and avoided the current constitutional impasse.

All in all the chronology of recent events, witnessing the general widespread of amendment debates, describes how the 1978 constitutional order has become under question, and under pressure, for reasons other than its institutional functioning. Thirty years of constitutional performance should allow for a serious and serene evaluation, which could lead eventually to an agreement on the nature and extent of the amendments. This opportunity seems to be missing hitherto. The consensus needed far exceeds the current conditions for political compromise.

Self-determination debates in the Basque Parliament

Of this state of affairs, the Basque case is representative, although it has other, distinctive features. In December 2004 the Basque Parliament voted for a proposal to substitute the 1979 regional statute of autonomy. It came with the promise of eradicating terrorist violence and introduced a formula of associated statehood with the rest of Spain, which resumed and further developed the resolution passed in February 1990 on the “right to self-determination by the Basque people”. The Spanish Congress turned down the proposal in February 2005.

The initiative has since remained dormant, but after the regional elections of April 2005, the nationalist-coalition government agreed to ask authorisation to the regional parliament to call a referendum on the proposed new political statute. Apparently, a perfectly legal procedure, but a law of 1980 regulates the practice of referenda, which

in all cases falls under the jurisdiction of the state, not the regional governments (arts. 92.1 and 149.1.32 of the Spanish Constitution).

Somehow in parallel, in September 2005 the Catalan Parliament voted for a draft of a statute of autonomy replacing the 1979 one. In its preamble the draft defined Catalonia as a nation. A modified text, though keeping that symbolic mention, was passed by the Spanish Parliament in March 2006, and finally approved by referendum in June 2006.

In both cases the political majorities in parliament have proved instrumental to further the regional political autonomy towards a pre-independence stage. What is politically relevant about this advanced level is its challenging edge status, which allows regional governments to negotiate with the Spanish central government a kind of exclusive fast-track decentralisation while, at the same time, a preferential distribution of the national budget.

So there is little romanticism at the sovereignty demands, as long as they produce political revenues. But the overall political costs are bigger. By accepting bilateral agreements or making unilateral concessions, the government may be, even unwillingly, contributing to undermine the fragile but indispensable balance created by multilateral negotiations.[9]

While in the Catalan case the initiative secured the endorsement of the Spanish Parliament, though in a kind of Pyrrhic vote that displayed the strong division separating the major political parties, and the Catalan citizenry, in such constitutional matters, in the Basque case, the defeat at the Spanish Parliament has but nurtured a new reaction by the regional government, issuing in September 2007 an official "road map" towards secession.

What distinguishes the Basque case from the rest is the permanent presence of terrorist violence by ETA (meaning Basque Homeland and Freedom) and its extortion organisation. Violence is justified on the assumption that a people, the Basque People (not the Basque citizens) live dispersed in a number of separated territories belonging to France and Spain. Hence, the nationalists argue, there is a political conflict, the negation of the right to self-determination to the Basque People by both states, which explains the recourse to terrorism.

It would be naive to assume that its resolution in parliament would mean an end to violence. Terror is the negation of politics, but politics alone is not enough means to remove terrorism from public life, es-

pecially when it has become a way of living, quite profitable indeed, for several thousand individuals. Yet, the parliamentary discussion of self-determination and secession has contributed to de-radicalise, though partially, the dispute by clarifying the underlying political assumptions and their practical aims.

A brief look at the debates could help highlight their apparently evolving nature. The first one took place some ten years after the enactment of the autonomy statute. It was on the occasion of the discussion of a non-law proposal about the "right to self-determination of the Basque people", that the parliamentary groups Basque Nationalists (the Basque Nationalist Party) and Euskadiko Ezkerra (Basque Country Left) laid before the regional parliament on 15 February 1990 (for an overview see Zubero 2002). Surprisingly enough, a comparison with later self-determination debates, held from 2004 to 2008, shows that there has been no remarkable theoretical progression since then regarding the main nationalist and constitutionalist arguments.

The discussion has remained halted in time, but it has produced the effect of somehow validating all arguments, because of the reiteration over the years of the same positions. Furthermore, weird legal mistakes like considering the so-called "right to decide" a democratic right[10] or inventions like asserting that the Basque Country has enjoyed a previous history of statehood (as taught for decades in school texts) have been resumed and stated by nationalist politicians as if they were universal truths or, more precisely, with the aim of turning them into acceptable political propositions.

But the truth of the matter is that this presentation of the nationalist cause, arbitrarily interpreting political concepts and inventing history, has become the official version of the Basque question. Moreover, the nationalist rhetoric has been uncritically accepted by many scholars in and outside Spain, thanks mostly to the institutional backing of the Basque governments since the 1980s[11] – a difficult tide to overturn, after so many years of nationalist pressure, and a serious obstacle to understand the complexity of politics.

Autonomy or independence?

With some antecedents since 1985, the 15 February 1990 session stands as an exemplary case of parliamentary rhetoric. During the debate

all political options, from conservative to liberal (centrist) to socialist and nationalist were duly presented at length. And furthermore, the debate gave voice to the anti-systemic stance of Herri Batasuna (Unity of the People), by then ETA's political wing, which rejected the constitutional order, denied legitimacy to its institutions, but still kept accepting public funds. It was one of the few occasions where representatives of the radical left-nationalists participated in parliament. Later performances have limited to lending votes to uphold minority nationalist governments.

The positions were clearly demarcated before and during the debate. On the nationalist side, the assumption that the granting of the right to self-determination and, next, of independence, would mean the end to terrorism and the definitive achievement of peace. On the constitutionalist side, next to the denunciation of the threat of violence, the argument that the nationalist inference was fallacious, claiming that autonomy under the constitution had created for the first time in the history of the Basque Country the experience of democratic self-ruling; and that the international law provisions concerning self-determination did not apply to a democratic country.[12]

At the beginning, Herri Batasuna made the case for secession in the name of the "Basque movement for national liberation", a denomination for a number of groups and associations of the so-called "patriotic left". Iñigo Iruin, its speaker, emphatically declared: "Today we have reached the debate; tomorrow, the acceptance of the right [to self-determination]; at the end, its adoption."[13] The only acceptable recognition of that claim as a right should come with the acknowledgment of the demand for territoriality, an aspiration that at that time separated the patriotic left (which in turn included violent and non-violent views) from other nationalist positions: "The own international character of the right to self-determination, being Spain and France members of the European Community, makes that the recognition of Euskal Herria's right to self-determination enjoys both an international and a communitarian dimension" (S-DD, 26).[14]

The assumption is based on a disputable interpretation of the international law. Leaving aside the different instances where the right to self-determination was applied from 1919 to 1945, which reflected the polysemy of the term "people", after 1945 and, particularly, after 1966 it has been interpreted in a more precise way. Indeed, the two International Covenants of Human Rights referred to it and it had

been previously developed by the United Nations General Assembly Resolution 1514 (XV), of 14 December 1960, but its adoption has been limited to the recognition of both "external self-determination", in the context of decolonisation, and "internal self-determination", in the cases of foreign invasion (Hannum 1990, 35-49).

Yet, the speech proceeded by taking for granted that the mere enunciation of the claim to independence legitimised it. Self-determination meant a double process of secession in two countries to constitute a new state. The thesis as such was not exactly submitted to discussion. It was simply stated as a non-negotiable claim. Or, better, it was presented inviting the other political groups to demonstrate that the right to self-determination could be achieved through the institutions of Spanish democracy. Otherwise, Iruin argued, "[they] had no right to protest if the solution to this problem was searched through other, non institutional ways. And this is precisely what means the negotiation between ETA and the state." His concluding remarks were unequivocal: "Consequently, the granting of this right to Euskal Herria, guaranteeing its further exercise, is the only way for the normalisation and peace of our people" (S-DD, 27).

In the sequence of interventions, the opposing political views alternated. What at the beginning was a certainly difficult procedure turned out to be a growingly passionate discussion. The following turn was Julen Guimón's of the Basque Popular Party. He argued that there was no orthodox form of being Basque, that Basque society was plural, and that the public institutions should accommodate this plurality. On the claim to secession, Guimón pointed out how the General Assembly Resolution 2625 (XXV), of 24 October 1970, the Declaration on Friendly Relations, had been misread by the representative of Herri Batasuna (S-DD, 29). In truth, the document stated:

> 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.[15]

He then recalled how the two chambers of parliament when issuing the 1978 Constitution had overwhelmingly rejected self-determination, meaning secession. And furthermore, that the choice of autonomy had proved a success in terms of rights and freedoms dividends. Concerning the degree of self-ruling enjoyed by the Spanish autonomous communities, he reminded that the Basque statute granted the Basque Country "more legislative competences than any German Land [could have]", "more taxing capacities than any of the cantons of the Swiss Confederation", "more spending attributions than any state of the United States" (S-DD, 29). Was secession even financially justified? The proper answer came later in the debate.

In his turn, the next speaker, the moderate nationalist Kepa Aulestia of Euskadiko Ezkerra, addressed the issue again as a matter of principle, but his intervention lacked the needed conceptual accuracy. Moreover, under the intention of mediating the discussion with a conciliatory formula, it underestimated the practical consequences of theory experimentation in this case.

But first and foremost, he denounced the instrumentalisation of the institutions by Herri Batasuna: "You have come to act at the margins of and against democratic rules" (S-DD, 32). The representatives of Eusko Alkartasuna, another left-nationalist party, and the right-wing Basque Nationalist Party, the other two democratic parties from the nationalist family, joined him in his critique. Self-determination, Aulestia argued, "means also to debate and vote in this parliament and means above all to assume and accept the decision adopted by the parliament itself, the outcome of the vote" (S-DD, 31). Herri Batasuna's disloyalty was provocative, but it shared with the other non-violent nationalist parties a common political project. This tension explains the love-hate relations within the nationalist family and, particularly, the Basque Nationalist Party's condescendence towards Herri Batasuna and its later electoral brands after successive legal bans of ETA's political surrogates.

Aulestia equated the terms self-determination and democracy, while rejecting its identification with independence. Self-determination as a democratic principle was, he argued, the expression of civic participation in politics, and hence of civic self-ruling (S-DD, 34). Yet his interpretation went beyond the constitution. He made no reference to previous constitutional debates that clarified the meanings of constitutional concepts. Within the Spanish constitutional order, self-

determination and self-ruling represented opposite political options. A constitutional recognition of self-determination would mean a way of authorising unilateral secession. His closing remarks were an appeal to a better, imagined future, but stayed away from the real world of politics: “We defend self-determination against the caducity of frontiers and the caducity of states, without any pretension of raising new frontiers or states; with the sincere and firm intention of demolishing all the walls, the walls that separate us Basques from ourselves and from the rest” (S-DD, 35).

In the name of the left-nationalist Eusko Alkartasuna (Basque Solidarity) Juan Porres significantly added: “To vindicate the self-determination of the Basque people, to declare it today to be a right of the Basque people, means to defend and claim the right of Basque citizens, of all Basque citizens, to decide in a free, sovereign and democratic way how they want to build their present and future. In sum, the right to decide the way they want to build the nation, from within and on the outside, without any external limitation, without any internal or external opposition, from peace and democracy” (S-DD, 36). By then Eusko Alkartasuna deemed the state of the autonomies could provide an adequate basis for an eventual secessionist development. Over the years it has embraced the cause of independence as a clear rupture with the constitutional order. The argument already had a touch of escape from reality, of flight forward.

On behalf of the parliamentary group Basque Nationalists, Luis Bandrés presented the official position of the Basque Nationalist Party, the party that has been in power ever since the 1980 regional elections to 2009. The most relevant aspect of his intervention was not his awkward reading of the international law concerning the principle of self-determination, when he confused the different treatments assigned before and after World War I (S-DD, 39), not even his (party’s) thesis on the origin of the “conflict”, imputed to the Jacobinism of the Cadiz liberal Constitution of 1812 that consecrated “a single nation, a single law, a single constitution” and, assumedly, overruled all previous regional entitlements (S-DD, 40).

Disputable as such historical interpretations are, the most significant aspect of Bandrés’s intervention was his repudiation of the 1978 Constitution. “Basque nationalists”, he argued, “did not vote for the constitutional text”. In truth, the Basque Nationalist Party neither voted nor rejected the constitution. It was a significant case of cal-

culated abstention, which would be subsequently used as a weapon depending on the political circumstances of the day. Moreover, Bandrés warned, the support given to the autonomy statute was "under the condition of an explicit reservation of rights", namely to claim and exercise the right to self-determination (S-DD, 40; on the ideological evolution of the party, see Antxustegi 2007 and De la Granja 2008). This ambiguity towards the constitutional order has not been inconsequential. Rather, it sheds light into the changing constitutional loyalties of Basque governments.

Two following remarks by members of minority parties deserve mention. Pablo Mosquera of the autonomist Unidad Alavesa (Alava's Unity) criticised that the debate had moved the focus of attention from real to imaginary problems, thus provoking political instability (S-DD, 43-4). Alfredo Marco of Democratic and Social Centre declared that, given the circumstances, he preferred the straightforwardness of Herri Batasuna to the ambiguities of the other nationalist parties. Parliament, he argued, should be the place for political clarity and institutional loyalty, but both had arrived only of late to the regional parliament. Voters could have reliable information on the opposing political views at last (S-DD, 40).

In his turn, Fernando Buesa of the Basque Socialist Party distinguished the constitutional meaning of self-determination as independence from a more general political meaning, identified with the exercise of civic freedoms, and criticised the use of both meanings as interchangeable. According to the international law, he pointed out, "there is no immediate or direct relation between nation and right to self-determination". Rather, the law, and specifically the United Nations resolutions, favours multinational states (S-DD, 48-9). In Spain, Buesa argued, "the democratic state is instituted when the Francoist state is replaced by the constitutional order. The constitutional order has established in Spain, besides a system of democratic freedoms and rights, a specific form of the democratic state based on the unity of the Spanish nation and the right to autonomy in order for the nationalities and regions that form it to access to self-ruling" (S-DD, 49).

Buesa, who would be assassinated by ETA in 2000, agreed that the claim to self-determination "should be made within the constitutional order by legal means" (S-DD, 54). Even if the claim was legally flawed, even if Herri Batasuna was a disloyal party that only took part in the deliberations to make public its case, but would not accept a

contrary vote, and even if ETA kept murdering people (19 in 1989, 25 in 1990). But he reminded that "The claim to the self-determination of the peoples that belong to Spain, which included an eventual right to secession or separation, was then, at the constituent moment of 1978 –and it is convenient to recall this–, expressly debated and rejected. The citizens of the Autonomous Community of the Basque Country, members of the Spanish people, have affirmed our legitimate system of civil life when by establishing democracy we have bestowed upon us a constitution and the statute of autonomy" (S-DD, 49-50).

He then carefully examined the political consequences of secession, which in his view would endanger the recently conquered liberties, and criticised the opportunistic change of attitude by the nationalist politicians when claiming to embark on a new political adventure. Buesa raised the issue of constitutional loyalty and argued that one defining, essential feature of a democracy was the loyalty of their citizens. Otherwise, the institutional system and the liberties it protected and promoted would be de-legitimised. But next to the citizens' patriotism, which is a test for civic responsibility, democracy rests on the institutional loyalty of its component units. "No federal system can work", Buesa claimed, "and we have examples in the United States and the Federal Republic of Germany, without the ideas of loyalty or *Bundestreue*, which are ideas that constitute indispensable elements, structural pieces of the own constitution of the state". So it is no mere symbolic statement: "Cooperation, coordination, loyalty and fidelity thus express the principle of the autonomous regions' trust" (S-DD, 51).

Buesa questioned the change of criteria by the Basque Nationalist Party and Euskadiko Ezkerra concerning the constitution and the constitutional role of the autonomy statute: "And you, gentlemen, are breaking the basis of the state of the autonomies by claiming at the same time a loyal development of the statute. Paradoxical loyalty! Loyalty is clearly the key question: loyalty of the state to the autonomous community and of the community to the state" (S-DD, 51).

In the order of the debate then followed the replies to all previous interventions, which were to a great extent reiterated statements. Voting was the crucial moment of the session. The non-law proposal on self-determination was, as expected, rejected by an overwhelming vote. It was also a kind of response to Herri Batasuna's threatening position. "This Parliament", had outlined Iruin, is not "a Basque na-

tional institution and, consequently, lacks the presumed legitimacy over Euskal Herria" (S-DD, 27). In any case, Iruin admitted, only by overcoming the constitutional system would the right to self-determination be properly achieved.

However, an amendment submitted by the Basque Nationalist Party, Eusko Alkartasuna and Euskadiko Ezkerra reached the unexpected support to get passed. It did it by 38 out of 62 votes counted, being 75 the number of representatives, so by absolute majority; the 13 representatives of Herri Batasuna did not cast their votes. The amendment recognised the right to self-determination of the Basque people within the constitutional order. The proponents assumed that self-determination and autonomy could be friend principles and refute this way the constitutional interpretation on their mutual opposition. History proved otherwise.

Constitutional concepts and parliamentary votes

Over the years the issue has been resumed in different moments, but only in 2002 its political consequences became fully apparent, when the Basque premier (*lehendakari*), Juan José Ibarretxe, launched an attempt to replace the 1979 autonomy statute. The occasion was the annual debate on general politics. The premier introduced what he called "an initiative for living together", which rested on the assumption that terrorism would end by granting the right to self-determination. It was not properly a concession to ETA's pressure. Rather, he presented it almost from the point of view of an independent spectator and as a pragmatic turn that took the nationalist claim to self-determination as the only option left for Basque society to overcoming "the spiral of division and confrontation".[16]

Unlike the previous debate, the 27 September 2002 parliamentary session made for a poor discussion. The premier's references to the international law as an argument of authority were not contested, even though he took for granted that they were directly applicable to the Basque Country.[17] Neither the Socialist Party leader, Patxi López, nor the representative of the Basque Popular Party, Jaime Mayor, responded properly to that challenge by uncovering the mistaken legal interpretation. That way, it remained unquestioned.

Moreover, the premier declared that the acknowledgement of secession as a right was a matter of majority rule. "As long as the required majorities are reached [in parliament]," Ibarretxe claimed, "the Basque society will have the right to settle a new political agreement", meaning a new autonomy statute based on "the free association and shared sovereignty" with the state. [18]

His use of concepts was ambiguous, but the ideas behind, the means and the consequences involved were perfectly understandable. The premier's uncontested assumption was a counterexample of what Domingo Blanco has called "the principle of the priority of the constitution over majority rule". He mentions this case with sadness to illustrate the weak political education in democratic values and practices demonstrated by Basque politicians and to argue that parliament should be a prominent place for the education of political judgement (Blanco 2009).

This assumption was issued again and again in all subsequent parliamentary debates on self-determination. The conquest of that aspiration was just a matter of time, of insistence, of winning a vote, as the Basque premier recognised. A new parliamentary discussion was scheduled for 30 December 2004. It centred on the project of reforming the autonomy statute. The *Ibarretxe plan*, named after the Basque premier, openly demanded a bilateral negotiation with the state to grant the Basque Country the status of free, associated state.[19] Assumedly, giving the financial costs of independence and the impossibility of annexing other Spanish and French territories, it opted for an intermediate status, retaining the financial benefits of being a part of Spain but acting as an independent state – all that skipping the multilateral agreements among the regions and the state created by the constitutional order.

The parliamentary session, held on 30 December 2004, was a kind of re-edition of the 1990 debate. Among the nationalist groups, Batasuna included, there was a clear affinity to mark the distance from the autonomy statute: the Basque premier by almost silencing it and appealing instead to what, in his view, awaited an independent Euskadi – a future of wealth and freedom; Arnaldo Otegi of Batasuna by denouncing its lack of legitimacy. They were two different styles of argumentation, visionary and cynical, at the service of the same cause. On the constitutionalist side, similar arguments but claimed with resignation at what was presented before parliament as a fait accompli.

This time, the constitutionalist parties did not win the debate of ideas and arguments and lost the vote.

As expected, the draft was passed by a vote of 39 to 35. The regional government considered it the confirmation to the rightfulness of its initiative, which added to the decision of the Constitutional Court establishing that as a political proposal, it was not illegal.[20] It was surprising as among other conditions, the proposal warned that if no bilateral agreement could be reached with the state, the Basque Country was entitled to proceed with its partial separation from Spain.[21] Accordingly, the vote was said to represent the true will of the Basque people. Later on, in February 2005, the Spanish Congress turned it down on constitutional grounds.[22]

At that moment the initiative looked dying, but it was revived after the regional elections of April 2005. During the electoral campaign and after a new-old government was formed, and a similar parliament too, the Basque government assumed the role of victim of a "national conspiracy". The defeat nurtured resentment and nothing could vindicate the harm inflicted except a new, definitive chance. It came, again, during the yearly debate on general politics at the regional parliament, held on 28 September 2007.

Finishing his intervention, the premier declared: "I am going to make the pledge I took with this people in 2001 and 2005 [the dates of the previous regional elections]. To this end, within a profoundly democratic and transparent process, I will put forward a clear road map, which will have concrete political consequences." This "clear road map", aimed at "achieving peace and solving the Basque conflict", explained the *lehendakari*, "includes a commitment and a fundamental date". The commitment: to call a referendum on self-determination. The date: 25 October 2008.[23]

During the debate, a curious analogy between a road map and a constitution allowed Miren Erauskin, representative of Ezker Abertzalea (Patriotic Left), a new brand of the outlawed Batasuna, to freely contend: "The road map the Spanish state offered this people, with the support of the Basque Nationalist Party, no longer works. It does not work to negate this people or to violate their rights; it does not work to divide the territory. That is what the majority of this people say. But it seems that some of the parties –Popular Party, Socialist Party [and] Basque Nationalist Party– have not noticed it. It seems

that they want to continue the same sterile way already 30 years old, disregarding the will of the people."[24]

Her view was representative of a state of opinion and of a style of parliamentary politics. Of the different replies, it is worth recalling a fragment of the speech by María San Gil, then of the Basque Popular Party. San Gil argued that the road map was a mere escapist pretext not to tackle directly the problem of violence, thus silencing the situation of thousands of non-nationalist citizens who could not freely exercise their rights: "Mr. Ibarretxe, do not deceive Basque society any longer and let us speak clearly that the only real conflict of the Basque Country is terrorism. But you do not want to defeat terrorism. Rather, you are helping it each time, like this morning, that you attempt to impose on us a pro-sovereignty project."[25]

In response to the supposed "right to decide," claimed by the Basque premier as a "democratic right", San Gil stated: "Since 1977 [the date of the first general elections], Mr Ibarretxe, the Basque citizens have exercised our right to decide in forty-two occasions [counting European, general, regional and local elections]. But do you know what is absurd? That many Basque citizens have never exercised in freedom our right to decide, and this is a right you never talk about. I would like that you no longer speak of the absurd right to decide and begin, at last, to talk about the right to freedom." San Gil reminded then an essential point: "You clearly know that the only possible advancement is that we defeat the terrorist band. But you do not want to defeat ETA. You do not want to defeat ETA because you are afraid that if we get it, your pro-sovereignty project will deflate like a balloon and your theory on the conflict [that there is a political conflict] will deflate like a balloon too. And you do not want to defeat ETA because you need the existence of terrorism to occupy a political space that, otherwise, you couldn't."[26]

Some months later, on 27 June 2008 the Basque Parliament passed a referendum proposal. On 15 July it was officially published as a law in the *Boletin Oficial del País Vasco*.[27] That same day the Spanish government filed a claim before the Constitutional Court, which in September overruled it.[28] For all that, the secessionist aspiration seemed to be far from over.

Some practical lessons

The document had the formal appearance of a law, although it was illegal. But that was precisely the issue, namely to challenge the legal system and, moreover, to challenge the legitimacy of the constitutional order. The foreseeable overturning by the Constitutional Court of the 'referendum law', as the premier called it persistently in press conferences, was just a new step in a very well calculated political move. The Basque government made public its intention to pursue this legal battle to the end, which means until it gets what it wants. Will the Basque citizens back this endeavour? Roughly thirty percent of them favour independence,[29] but that is not an obstacle for visionary governments. After the March 2009 regional elections, a non-nationalist government was formed for the first time in thirty years. In a strong reaction, the nationalist parties, which still kept control of the majority of the local and supra-municipal governments, reissued their pro-sovereignty programme.

Secession, not unilaterally decided, but multilaterally negotiated, might be eventually addressed, as long as terrorism ends and as long as the negotiations are not conditioned by the threat of violence. Independence would imply both the end to mutual obligations and the loss of mutual benefits, as the Canadian Supreme Court argued in its 1998 response to the question on an eventual secession of Québec (Rosales 2008).[30] The Basque singularity lies in the very claim to secession, which is inexorably associated to the aspiration to found the state of Euskal Herria. Ironically, this impossible aim makes it for nationalists a permanent source of complaint, and a profitable political argument.

One of the messages sent by the Canadian 2000 Clarity Act (a government-backed bill that further clarified the conditions to initiate independence negotiations), namely that the constitutional rules of democracy cannot be altered to accommodate electoral interests, is especially relevant for the discussion of the Basque question.[31] In light of the Canadian experience, and also according to a basic principle of constitutional law, parliamentary votes like the ones referred above of 1990, 2004 and 2008 do not rightfully represent the definitive political will of the Basque citizens on self-determination. Lacking the conditions of an undeniable end of violence, a proper civic debate carried out in freedom and a proven institutional loyalty by nationalist par-

ties, the parliamentary discussions are at best an incomplete attempt to address the issue of independence.

During the last thirty years the nationalist parties and organisations, with the institutional support of the regional governments, have appropriated the symbols and civic practices of patriotism. As a result, half of the population is left in the unfair position of renegade citizens assumedly supporting "Spanish nationalism", whatever it means. For constitutionalist politicians, entering this game has become problematic, indeed a political dilemma. If they enter, they are lost by tacitly accepting unconstitutional rules. But if they do not enter, their nationalist counterparts expose them to permanent criticism for not responding to their dialogue offer. Either way it is certainly difficult to respond with intelligence and still remain untouched in the combat.

The own issue of self-determination is especially complex. On the one hand it is open to all kinds of theoretical speculations, right and wrong, political and legal; to the most varied interpretations of the international law, from sound to distorted and anachronistic views; to accommodations of circumstances that make sometimes unrecognisable the invocation of legal precedents. On the other hand, the concept is so widely and vaguely used that its meaning has to be constantly delimited. As seen in the parliamentary sessions referred above, it is used having at the same time contradictory senses, like democratic self-ruling under the law versus secession. The debates in the Basque parliament have not solved this polysemy. They have contributed to the clarifying of the political uses of the term. However, in the end, the institution itself does not escape from the pressure, facilitated by the nationalist governments. For all the expectations created, many opportunities have been lost at the parliamentary debates to properly address the issue of self-determination and the most basic one of the lack of freedoms.

Looking back in time, the consequences of the parliamentary session of 15 February 1990, the best example of this paradoxical situation, look disheartening but instructive. A first lesson can be drawn: playing with constitutional concepts in parliamentary deliberations and votes produces political and, likewise, constitutional consequences. Some of them, long-term consequences, have put at risk the constitutional order for reasons other than its own institutional performance. This insecure move was criticised by some representatives. Yet, others

thought it was perfectly safe to enter the game, curiously in the name of democracy. At some moments, the debate looked like an amateur's game. The only problem was that it involved professional politicians freely interpreting concepts and norms of the international law.

Another lesson has to do with the political significance of parliamentary debates in one sense, namely that political responsibility cannot be detached from parliamentary rhetoric. Parliamentarians are neither rhetoricians nor intellectuals discussing political issues theoretically. Rather, they are representatives acting politically. Not only do they have a stronger responsibility than intellectuals when they engage in political disputes. As professional politicians, they are subject to the principle of political responsibility. What they agree in parliament, national or regional, they do as representatives.

Why did the constitutionalists win the debate if they lost the vote? A debate is a free discussion on a contentious issue whose results, unsettled in advance, depend on a battle of ideas and arguments. That is in theory. The 1990 parliamentary debate had two moments. The first one dealt with the proposal of assuming self-determination as a new constitutional principle. Such proposal was defeated in the vote. The second part, swiftly developed in the very last minutes of the session, dealt with endorsing an appeal to self-determination within the constitutional order, namely as a right coterminous with the constitutional right to self-ruling. It was not exactly the same claim, but it pointed to a similar end. Yet the recognition of self-determination as a right would fracture the constitutional system. Certainly that was not the explicit intention of its proponents in the Basque parliament, but its formal approval left the door open to further claims in that direction.

The constitutionalists lost the vote. From a rhetorical point of view, the vote is the last phase of a debate. It is not an independent moment, even if in cases like this one, the result can be anticipated. So, it should be conceded that they also lost the debate. Furthermore, even if the advocates of the self-determination motion employed fallacious arguments, they not only succeeded in the vote, they won the debate because procedurally the vote is not detached from the debate itself.

Yet, there are reasons to contend that the constitutionalist parties won the debate. In what sense? Let me recapitulate the main points of the argument and present them. Firstly, the claim that the principles of self-ruling and self-determination were compatible within

the constitutional order challenged both the international law provisions concerning self-determination and the meaning of autonomy or self-ruling under the Spanish Constitution. The fact that it was passed by vote in the regional parliament did not turn that challenge into a rightful constitutional claim. Besides, as it did not become a legal norm, no constitutional revision was ever sought, and so for years it was considered a mere symbolic declaration. That was the understanding of the left-wing party Euskadiko Ezkerra, which argued that the motion was an imaginative formula to reconcile nationalists and constitutionalists. However, on the part of the nationalist parties, the approval was deemed a first constitutional acknowledgment of their secessionist aspiration.

Secondly, no democratic constitution of a federal type of state recognises self-determination as a right to be invoked by any of its constituent units. Yet, all democratic constitutions contain amendment procedures. But the indirect reform of the constitutional system, namely through the unilateral amendment of any of its parts, is forbidden. The claim to recognise self-determination "as a right of the Basque people" fits in with this unauthorised case. So to assume that a regional parliament can regulate reform of its own accord, thereby overruling the national parliament, is a clear challenge to the constitutional system. It is in principle illegal. But even to expect that such a move can be politically acceptable goes beyond the reasonable.

Thirdly, a parliamentary debate is a political discussion. At stake is not the theoretical quality of the arguments presented, but their persuasive force. Reasons and interests are discussed and a rational expectation is that, as a result of this confrontation, the best arguments are selected. Not the best ones in, for example, theoretical or scientific terms, but in civic terms, meaning the arguments that better represent and advance the civic interests. The selection is made through a vote and anything can be voted as long as it has been accepted in the parliamentary agenda.

The voting procedure of the 1990 session was formally in accordance with the regional parliament's own code.[32] Understandably, the code does not say anything on the content of the agenda, simply because the parliament is a bulwark for civilised political discussion. So, no matter how irrational or even outrageous an argument may be, it can be discussed in a civilised way at the parliament. The only problem is that, with the exception of the constitutionalist representatives,

both the parliament speaker and the rest of representatives forgot, or maybe were unaware, that constitutional concepts are performative concepts. They formulate ideas, but they also embody their institutional achievements. The recognition of such claim as a right entailed easily anticipated consequences, since it meant a real challenge to the constitutional system. An unwritten rule of the parliamentary practices assumes that their practitioners, political representatives, enter them guided by fair play, which in this case meant the observance of constitutional loyalty.

NOTES

1. A previous version of this article was presented at the Workshop *Parliament in Perspective of Rhetoric and Conceptual History*, XVth NOPSA Conference, University of Tromsø, August 2008. I'm grateful to the participants, particularly the convenors Suvi Soininen and Björn Hammar, for their comments, and the journal's anonymous referees for their helpful indications. This paper is part of the project FFI2008-00039, funded by Spanish Ministry of Science and Innovation.
2. See the preparatory proceedings of the constitutional convention at Sainz Moreno 1980. For further information on why and how self-determination was excluded from the constitutional text see Solozábal 1998. On the cases of Catalonia and the Basque Country see the early and interesting analysis by Hannum 1990, 263-79.
3. Since 2001 the Autonomic (Regional) Political Observatory has published a comparative annual survey on the performance of the state of the autonomies in Andalusia, Catalonia, Galicia and the Basque Country, being the degree of citizen satisfaction around 70% in Andalusia, 60% in Catalonia and Galicia and 40% in the Basque Country: www.opa151.com. All electronic references have been checked in April 2009.
4. Official data available at the webpages of the Ministry of Economy (www.meh.es/Portal/Estadistica+e+Informes/Estadisticas+territoriales/) and the Economic Database of the Spanish Public Sector (BADESPE), prepared by the Fiscal Studies Institute (www.estadief.meh.es).
5. "The party's over: A special report on Spain", *The Economist*, 11 November 2008, 11; online version: www.economist.com/specialreports/displaystory.cfm?story_id=12501023. Data of the Ministry of Public Administrations: www.map.es/documentacion/politica_autonomica/info_ecofin/3inverpub/inver_pub_territ/inversiones_reales_07.html.
6. An unofficial translation can be read at http://en.wikisource.org/wiki/Spanish_Constitution_of_1978.
7. Constitutional Court's Ruling (STC) 247/2007, of 12 December 2007, available at www.tribunalconstitucional.es/jurisprudencia/Stc2007/STC2007-7288-2006.html.
8. "The party's over: A special report on Spain", 10. This is not a Spanish exception. In other European countries there are similar linguistic policies (Toscano 2005). A selection of correspondence by readers was published on the 29 November 2008 issue, Letters to the Editor section, 16, also available online at www.economist.com/opin-

ion/displaystory.cfm?story_id=12675868.
9. By the end of 2008, as a result of the enactment of new autonomy statutes, bilateral agreements went under way in Andalusia, Catalonia and Valencia (www.map.es/documentacion/politica_autonomica/Cooperacion_Autonomica/Coop_Bilateral). With other reformed statutes coming, more bilateral negotiations were expected.
10. I'm grateful to Manuel Toscano for calling my attention to this almost neglected point.
11. As an example, see the Frequently Asked Questions webpage section of the Center for Basque Studies at the University of Nevada, Reno, at /www.basque.unr.edu/16/16.1t/16.1.1.faqs1.htm.
12. I use the term 'constitutionalist' to identify the supporters of the constitutional order, namely the Socialist Party, the Popular Party and the Democratic and Social Centre. They were referred to by the nationalists as "Spanish nationalists", a derogatory expression still in use. The majority of Popular Alliance representatives, the precursor of the Popular Party (established in 1989), endorsed both the constitution in 1978 and the statute of autonomy in 1979. On the other hand, with the exception of Herri Batasuna, the other two nationalist parties were semi-loyal to the constitutional order. In fact, only the Basque Nationalist Party was. Eusko Akartasuna was created in 1987 out of the Basque Nationalist Party. The socialist Euskadiko Ezkerra, which merged with the Socialist Party in 1991, had voted against the constitution in 1978 – an interesting, if complicated, evolution of constitutional loyalties during the first years of Spanish democracy. Yet part of the confusion has survived to our time. Official data available at the website of the Spanish Constitution: http://narros.congreso.es/constitucion/elecciones/referendos/index.htm.
13. All citations come from the *Diary of Sessions of the Basque Parliament [Bilkura-Egunkaria / Diario de Sesiones],* IInd-IIIrd Legislature, No. 55 (15 February 1990), 23. Thereafter S-DD (self-determination debate), followed by the page numbers. The proceedings are available at the parliament's website: www.parlamento.euskadi.net. My translations.
14. In a cultural sense, Euskal Herria (Basque People) refers to the territories where euskera is spoken. Politically, the name refers to the three provinces of the current Basque Autonomous Community or Basque Country, the Community of Navarre and the French Basque Country as if together they formed, or were entitled to form, a political entity. Never in history have they formed an independent state.
15. Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations: General Assembly Resolution 2625, Annex, 25 UN GAOR, Supp. (No. 28), UN Doc. A/5217 (1970), 124; available online at www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625%20(XXV).
16. *Diary of Sessions of the Basque Parliament*, VIIth Legislature, No. 41 (27 September 2002), 3.
17. *Diary of Sessions of the Basque Parliament*, VIIth Legislature, No. 41 (27 September 2002), 32-3.
18. *Diary of Sessions of the Basque Parliament*, VIIth Legislature, No. 41 (27 September 2002), 21 and 29 respectively.
19. *Diary of Sessions of the Basque Parliament,* VIIth Legislature, No. 114 (30 December 2004), 7-18.
20. Decision 135/2004, of 20 April 2004: www.tribunalconstitucional.es/AUTOS2004/ATC2004-135.html.

21. Official English version: www.nuevoestatutodeeuskadi.net/propuesta.asp?hizk=ing.
22. *Diary of Sessions of the Congress of Deputies*, VIIth Legislature, No. 65 (1 February 2005): www.congreso.es/portal/page/portal/Congreso/Congreso/Publicaciones/DiaSes.
23. *Diary of Sessions of the Basque Parliament*, VIIIth Legislature, No. 68 (28 September 2007), 36-7.
24. *Diary of Sessions of the Basque Parliament*, VIIIth Legislature, No. 68 (28 September 2007), 72.
25. *Diary of Sessions of the Basque Parliament*, VIIIth Legislature, No. 68 (28 September 2007), 78.
26. *Diary of Sessions of the Basque Parliament*, VIIIth Legislature, No. 68 (28 September 2007), 79. For a legal and political analysis of ETA's survival and the long presence of terrorism in Spanish politics see Martínez Soria 2004.
27. *Boletín Oficial del País Vasco*, No. 134 (15 July 2008): www.euskadi.net/cgi-bin_k54/bopv_00.
28. Constitutional Court's Ruling (STC) 103/2008, of 11 September 2008: www.tribunalconstitucional.es/jurisprudencia/Stc2008/STC2008-103.html.
29. According to the Euskobarómetro periodical surveys, the percentage has remained steady for the last two decades: www.ehu.es/cpvweb/pags_directas/euskobarometroFR.html.
30. Reference re Secession of Québec, [1998] 2 S.C.R. 217: scc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html.
31. Clarity Act (Bill C-20): http://laws.justice.gc.ca/en/c-31.8/228755.html.
32. Reglamento del Parlamento Vasco, art. 55: *Boletín Oficial del País Vasco*, No. 25 (26 February 1983), 46-7, unavailable online, but a facsimile reproduction can be found at www.aelpa.org/Reglamentos/RPV05.pdf.

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