

‘You cannot solve a constitutional crisis with the penal code’

Spanish and Catalan nationalisms are to a large extent mirror images, argues historian Luka Lisjak Gabrijelčič; the clash between them represents a battle between competing ideas of sovereignty, and makes the Catalan dispute so important for wider European debates.

Veronika Cukrov: Your statement that the ‘hatred towards Catalonia is a Spanish version of anti-Semitism’ has become famous. Was it a provocation or was it meant seriously?

Luka Lisjak Gabrijelčič: The statement you are referring to was made in an interview for [the Slovenian weekly magazine] *Mladina* in the immediate aftermath of the 1 October 2017 referendum. I mentioned it in order to elucidate the peculiar character of the anti-Catalan animus in Spain. The editors thought it convenient to place it in the headline. I immediately realized how exaggerated and even offensive it might seem when stripped of the context in which it was uttered. However, the fact that something might be regarded as offensive doesn’t mean it’s a provocation. The analogy between anti-Semitism and anti-Catalanism was elaborated in the 1980s by Javier G. Pulido, the left-wing ‘organic intellectual’ of the Andalusian autonomist movement. The English historian Paul Preston, an authority on modern Spanish history, has also written about it. Pulido described ‘Catalanophobia’ as ‘the only mass manifestation of Spanish nationalism, apart from rooting for the national football team’. He claimed that Spanish nationalism was strong as a structure of power but weak as a mass phenomenon, because central Spain never went through a nationalization of the masses like the ones in western or central Europe – not having taken part in either the First or the Second World War has something to do with it. Therefore, anti-Catalan sentiment has served the purpose of stirring up proto-national emotions among the Castilian-speaking masses, as well as among the Catalan-speaking population in Valencia, preventing the creation of a ‘pan-Catalan’ national project that might have endangered the existing balance of powers. Pulido argued that national and local elites have used ‘Catalanophobia’ as an expedient way to channel popular discontent onto an internal/external enemy: whence the analogy with the Jews. Historian Paul Preston has stressed the

modern character of this resentment: there are few sources from earlier times testifying to strong prejudices against Catalans among the people, although they have always been present among Castilian elites. Catalonia was one of the first industrial regions in continental Europe, while the rest of Spain lagged behind in economic development. As a result, Catalans became the object of prejudices linked to the negative aspects of modernization: they are [portrayed as] stingy, calculating, hypocritical, under the pretext of universal ideas – democracy, self-determination, federalism – and protect their own interests at the expense of the general interests of the nation. At the same time, they are accused of particularism and smug cosmopolitanism, aggressiveness and effeminacy, exploitation and phony victimhood. These are all well-known elements in the history of anti-Semitism. Pulido and Preston suggest that this similarity is structural: in both cases, we have an ethnicized rejection of modernity. I find this thesis interesting. Without taking into account these peculiarities of anti-Catalanism, it is very difficult to understand the attitude of broad segments of Spanish society towards Catalonia. As the journalist Antoni Bassas pointed out, even at the height of ETA's terrorism, the backlash against the Basques wasn't even remotely as virulent as the one triggered by the peaceful and impeccably democratic Catalan demand for self-determination.

You have mentioned that Catalan nationalism lacks any significant nativist agenda, since most of the population is made up of immigrants and their descendants. If I understand you correctly, we are dealing with nationalism, but not a xenophobic nationalism like the Spanish one. The desire for an independent Catalonia originates from an aspiration of a better country: the people want to govern themselves as sovereign, without necessarily sharing the vision of belonging to an insoluble historical and cultural unit.

It would be a grave mistake to think of Spain as an intrinsically xenophobic country. I wouldn't even say that Spanish nationalism is intrinsically xenophobic. In fact, to a large extent, Spanish and Catalan nationalism are mirror images. They have developed in mimetic competition, which is what makes the conflict so acute. If Catalan nationalism were only about ethnic identity and fiscal autonomy, it could be easily appeased by cultural autonomy and financial

devolution; if Spanish nationalism were only about territorial cohesion and equality before the law it wouldn't have so virulently opposed such concessions. In reality, both nationalisms are civic and cultural-linguistic in equal measure. They compete for the same loyalties. The clash between them comes down to the question 'Who is sovereign?' It is a question that lies at the core of modern concepts of democracy and the nation state – this is what makes the Catalan conflict so important for present European debates.

The difference between Spanish and Catalan nationalism is in the asymmetry of power. As many historians have pointed out, Spain has constituted itself in a nation through opposition to what it perceives as the particularism of its integral parts, while Catalonia has constituted itself in a nation through resistance to a state that promoted the assimilation of ethnic and linguistic minorities. If you think about it this way, it's easy to see why Spanish nationalism has puts a strong stress on the state and tends to speak about democracy primarily as a rule-of-law issue, while Catalan nationalism puts such a strong emphasis on civil society and tends to speak about democracy primarily as an issue of participation. It also helps to understand the top-down character of the former, as opposed to the bottom-up character of the latter. This asymmetry of power fuels a dynamic, which is well known from central Europe. The historical relations between Hungarian and Slovak, Russian and Ukrainian, Austro-German and Czech nationalisms were quite similar. In a broader European comparative context, there is nothing unusual in the genesis of Catalan national identity. What is unusual is the very long period during which Catalonia was subjected to systematic repressive policies of assimilation: from the early 1920s to the mid 1970s, with an 8-year hiatus during the Second Spanish Republic, of which only 3 were relatively normal, since Catalan autonomy was suspended between October 1934 and February 1936, with its Government in prison, and in July 1936, the Civil War broke out. The second peculiarity is the enormous migratory influx. Between 1910 and 1990, the population of Catalonia tripled, from 2 to 6 million, mostly due to immigration from southern Spain. In the following 20 years, it rose to 7.5 million: these were mostly immigrants from Maghreb, Latin America, parts of Asia and eastern Europe. Already in the 1920s and 1930s, Catalan nationalism showed a great capacity for non-coercive assimilation.

Spanish nationalism, which had been very strong among immigrants in the Barcelona urban area before 1914, all but disappeared by 1931. Something similar happened from the 1960s onwards, when Catalan nationalism developed the notion of 'a single people' (*un sol poble*), according to which everyone who lives and works in Catalonia is a Catalan. This conception was first articulated by socialist and leftist Christian labour activists, and was later embraced by liberal and conservative nationalism, united in the coalition party CiU (*Convergència i Unió*). This party governed Catalonia for 23 years after the reestablishment of Catalan autonomy, leaving a deep impact on its essentially consociationalist political culture. In contrast with the ideological polarization of the Spanish (or Basque) public spheres, virtually all political forces in Catalonia shared the same heterogeneous public sphere and could enter in a variety of electoral alliances. This was the so-called 'civic unity of the Catalan people'.

Despite recent polarization, Catalan independentism maintains a civic, inclusive character. It cannot be otherwise, since an estimated 70% of Catalans have at least one grandparent born elsewhere. Immigration is inscribed in the family history of the vast majority of the population. If we take a look at the statistics, we see that families with Catalan as their main language of communication and Catalan cultural identity are concretely on the side of independence. The notorious 'rift in the Catalan society' is, in fact, a rift within bilingual and Spanish-speaking families. A majority of native Spanish speakers is, understandably, opposed to secession; however, there is a substantial minority which supports independence. Both in the 1 October referendum and in the December elections, there was a significant increase in pro-independence votes in the predominantly Spanish-speaking urban peripheries of Barcelona, where a third of the population lives. This increase is what kept the independentist project afloat, after widespread deflections from separatist parties in the most affluent Catalan-speaking areas. There are many cases of parents voting for unionist parties, and their children supporting independence. The daughter of the Spanish Government's representative in Catalonia, who is a high-ranking member of the ruling Popular Party, is an activist of the radical pro-independence CUP party; the husband of the regional leader of the staunchly pro-Spanish Ciudadanos party is a Catalan nationalist who supports

independence; the father of the former chairman of the Catalan Socialists has 'come out' as an independentist and has publicly criticized his son's unwillingness to support a binding referendum. Or take the case of Joan and Argelia Queralt, father and daughter, both constitutional lawyers at the University of Barcelona, who participate in the public sphere from diametrically opposing positions regarding the right to self-determination. This creates uneasy interpersonal dynamics, but it also prevents the breakdown of society into self-enclosed identity groups. If your partner or daughter has a different opinion, you still have to talk to her. Even if you vehemently disagree with each other, you react very viscerally to the threat of repression. Herein lies the reason why 80% of Catalans, including a majority of unionist voters, support a binding referendum on independence. It is obvious to them this is the only long-term solution to the problem.



Rally in support for the independence of Catalonia on 11 September 2015 in Barcelona, Spain.
Source: Depositphotos.com

Do you think this communal Catalan spirit is strong enough to legitimate the creation of a separate state?

When you have a large majority of people who believe they form a political body that has the right to decide the ultimate frame of their collective future, that people believes in its sovereignty. An issue arises, which has not been solved by democracy because it's the constitutive question of politics: the issue of the borders of the sovereign community, the borders of the sovereign people. Who constitutes 'the people', which is sovereign in a democracy? When two perceptions regarding the delimitation of the sovereign people clash within a democratic system, it can only end in a partial recognition of sovereignty to a territorialized minority, or in the destruction of democracy. Canada and the UK understood this. They knew how to channel separatist aspirations into a democratic process. By renouncing an archaic conception of indivisible sovereignty, they safeguarded both democracy and unity. Spain may lose both.

International law is a very interesting branch of law, as it is largely based on customs rather than legislation. It is interesting to look at how the state has been conceived throughout history: Alexander the Great, for example, captured Persia but he knew, as everyone around him, that he was a usurper, not the legitimate ruler, as long as the Persian king Darius III. was still alive. The concept of 'state' has shifted from the ruler as to the people as the sovereign that legitimizes its existence. How do you see future developments?

You have raised a crucial question. The British monarchical model is still based on a 'patrimonial' concept of statehood. The United Kingdom is a united country because – as its name spells it out – its ruler is the Queen of Great Britain (formed by the union of the English and the Scottish crowns) and of Northern Ireland, while she rules over the Channel Islands as the Duchess of Normandy; as the Queen of Australia, Canada, New Zealand, etc. she embodies the concentric communion of the Commonwealth countries. This model turns out to be very useful for heterogeneous entities. In his monograph on the Hapsburg Empire, historian Pieter Judson suggested that a model of governance which presupposes different sources of political legitimacy, and is based on a consensual relationship between different loyalties is more appropriate for a modern society than the notion of a unified people as the bearer of indivisible

sovereignty. In continental Europe, unlike in the Anglo-Saxon world, this latter understanding is still uncritically equated with the Enlightenment ideal.

It is a problem we know very well from central Europe. The moment when democratic ideas start to spread, the question of borders becomes crucial. If the sovereignty resides with the people, and not with the monarch, why are the borders of the sovereign entities drawn on the basis of the 'blood and sperm of rulers', a result of dynastic wars and marriages? Why shouldn't the people decide their borders for themselves? The problem is that, of course, there are other people on the other side, who have different ideas about the borders. The consequence is the history of the 20th century, with its genocides and ethnic cleansings. But if we say that we renounce changing the borders, this necessarily implies the recognition of the contingency and internal heterogeneity of countries made up of territories with divergent national allegiances, political traditions, historical experiences and narratives of collective identity. There are not many such composite countries left in Europe: in the EU, we only have Belgium, the UK and Spain (we could add Denmark, because of the Faeroe Islands and Greenland). We immediately see that Spain is the only one that still insists in a 'Rousseauian' or 'Jacobin' idea of nation. Despite a high level of decentralization, Spain insists on the concept of a unitary state, which is – as we know from the Yugoslav experience – extremely inappropriate for a multinational reality. The reason why most multinational states have disintegrated was their inability to manage diversity. As a rule, multinational states fall apart because of the nationalism of the centre, not because the separatism of the peripheries. If Spain renounced its inflexible concept of undivided sovereignty, it would be much easier to maintain the unity of the country, to the benefit of its constituent nations. But in central Spain, this is a taboo. Spanish political, media and intellectual culture has completely internalized the equation between modernity and equality-as-unity. Such understanding goes against its own history: Habsburg Spain was, just like Habsburg Austria, the prototype of a composite kingdom, where a complex system of privileges and contractual relations between the King and the Estates had maintained medieval freedoms for a very long time. With the destruction of this system in the 18th century, Spain diverged from an 'English' model of

governance, while a 'French' model could never take hold due to the economic and cultural weakness of the centre.

This homogeneous conception of sovereignty also goes against contemporary notions of liberal democracy, more sensitive to the rights of structural minorities. I tend to be critical of contemporary liberalism, but I value its insight according to which the concept of sovereignty cannot be maintained without radically rethinking the rights of minorities. This is a paramount contribution of postmodern liberalism, which must be taken into account. Spain's political, intellectual and academic culture hasn't assimilated that idea. It is enough to listen how top Spanish intellectuals equate the hegemonic culture with neutrality and modernity, and present peripheral identities as 'nationalist'. Mario Vargas Llosa is a prototypical example, but you can find the same attitude with more progressive figures. Catalan public TV, which is probably the best public broadcast in Southern Europe, is accused of 'indoctrinating' for the simple reason that it uses a different set of normative presuppositions from the ones that structure the public debate in Madrid. Postmodernism, with all its excesses, has done a magnificent job in deconstructing these false universalities that sustained 'Cold War liberalism'. Spanish hegemonic culture is stuck in an obsolete version of liberalism, quite impermeable to later developments. Something similar happened during the so-called 'Restoration period'. In the second half of the 19th century, Spanish elites pursued a superficial modernization on Western models; faced with new challenges of mass society, they stuck to outdated notions of what constitutes a 'liberal state', sabotaging the reforms that could have saved it. I see a similar pattern today. Look at the response of the Spanish ambassador in Slovenia to the open letter by our former president Milan Kučan, in which he expressed concern about the persecution of pro-independence leaders: his excellence refers to Spain as a country 'with a certificate of democracy'. It might be a clumsy translation, but I find the term symptomatic: democracy is perceived as a sort of driving licence or property register; as something you have earned once and for all, or you can easily update with routine checks. It's an old, well-known problem of Spain: its tendency towards atrophy, its inability to engage in systemic reforms. The transition to democracy was a rare case of successful reform in its history. Spanish elites have

extrapolated an entirely wrong cautionary tale from this experience by transforming it into a foundational myth. The transition successful because of its flexibility: it introduced new models from a rich legacy of positive traditions, compatible with new social realities. Instead of becoming a pragmatic inspiration, the transition became a normative framework. It was transformed into a mummy and placed on the throne.

Do you think it is crucial for a nation to set its own rules? Or is it a democratic participation in existing processes enough, coupled with a free expression of its linguistic and cultural peculiarities?

In the contemporary world, no nation can set the rules for itself. Every political order is a *quid pro quo*: I renounce something, and I get something else in return. In multinational communities, the implicit pact is usually loyalty in return for concessions (either cultural or territorial autonomy – depending on the nature of demands – or a share of power in the administration of the state, etc.). Conflicts tend to arise around different understandings of the pact, or a unilateral departure from it. In the Catalan case, we are dealing with both. Catalan nationalists – here, we must understand the concept in the broadest sense, as ‘*Catalanism*’, a political idea whereby Catalonia should enjoy the broadest level of autonomy, allowed by the solidarity with the rest of Spain (Catalanism, thus defined, includes the Catalan Socialists and the alternative left, that is at least 70% of the Catalan electorate) – have always understood autonomy as an inalienable right, a concession for renouncing independence. This is the origin of the *Generalitat*, the set of political institutions governing Catalan autonomy. It is the only institution in Spain that originates directly from the Second Republic. It was reestablished in October 1977, one year before the Spanish Constitution, on the basis of a bilateral agreement between the Spanish Prime Minister Suárez and the Catalan president in exile, Tarradellas. In that agreement, the Spanish state recognized the legitimacy and transferred part of its power to an institution founded together with the Spanish Republic, which had survived in exile during Francoist dictatorship. This means that the *Generalitat*, the institution embodying Catalan self-government, is a direct expression of the right of the Catalan people to self-determination. It doesn't

come from the Spanish constitution: it was established before the Republican Constitution – as the condition for the Catalan participation in the constitution-making process – and it was reestablished before the current Constitution. This is the interpretative framework that prevails in Catalonia, yet it has been completely disregarded by Spanish constitutional theory. According to the constitutional praxis of the past 15 years, all of Catalonia's rights come from the Constitution and are an expression of the sovereignty of the Spanish nation. The Spanish nation has constituted itself into a decentralized unitary state and all the rights enjoyed by Catalans are an emanation of this sovereign decision. This has very tangible consequences. Unlike in a federation, the relation between the state and the regions is hierarchical: state legislation overrides regional legislations, *de facto* preventing the regions from exercising coherent policies. On top of that, the central government has deliberately abused its constitutional prerogatives (for example, the right to bring any piece of regional legislation to the Constitutional Court) in order to emasculate regional autonomy.

Even from a purely legal perspective we see that the right to external self-determination, to secession, is a sort of nuclear button, which can be invoked by territories in multinational countries that see its self-government systematically infringed. Otherwise, states soon forget that loyalty and unity don't come for free. The only successful way to guarantee the rights of weaker minorities is to provide them with some sort of veto power. The exercise of self-determination is a useful threat in multinational countries; it has a similar function as strikes in labour relations or divorce in marriages. After all, even the Roman republic was born out of an agreement, forced unto the patricians by the plebeians. In the Spanish case, the state has forgotten about the foundational agreement: unity in exchange for self-government. Democracy has been wrongly understood as the rule of the majority and a system of laws. In reality, however, every political and social order is based on consensus and politics is little more than a reconfiguration of consensus. The right of citizens to withdraw consensus from established power is the foundation of all other rights. In a homogenous state, this right is channelled through elections; in the relations between a territorial minority and majority, the withdrawal of consensus can only take place through obstructions and blockades. Spain has never established a system that would

enable the autonomous regions to exercise a veto on crucial decisions, therefore the withdrawal of consensus could only be channelled in extra-constitutional, anti-systemic actions. This is no tragedy, since these actions have been entirely peaceful, non-violent and almost exclusively symbolic: no legitimate right of any citizen has been infringed in the process. However, the Spanish state has decided to respond to this essentially political challenge with judicial and police persecution. You cannot solve a constitutional crisis with the penal code. We often hear, mostly from the Spanish left, well-meaning warnings against the 'judicialization of politics'. Unfortunately, this is an euphemism of something far more pernicious: a politicization of justice. We can talk of the 'judicialization of politics' in the case of the US, where the courts decide on issues that would be better solved through political negotiations, but they rule according to rigorous legal criteria and by taking into account a wide array of legal theories. In Spain, on the other hand, we are witnessing the intrusion of openly political arguments in judicial decisions, which only take into account the perspective of one side in the argument, and exhibit a very narrow and unsophisticated etatistic mentality; on top of that, they go against their own precedents and against the explicitly expressed original intents of the legislators. With a brutal politicization of the penal procedures – political prisoners, jailing people for exercising fundamental civil rights, such as freedom of speech and peaceful protesting – Spain is heading down the path of destruction of its own democracy. The intervention of the EU, at least in the form of decisive informal pressures, will be necessary. Authoritarianism in the name of national interest, which we see in Spain, and under a different ideological guise in Poland or in Hungary, is a cancer which will soon begin to spread throughout the EU if we don't stop it.

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