

CATALAN SOCIAL SCIENCES REVIEW, 7: 77-86 (2017)
[Secció de Filosofia i Ciències Socials](#), IEC, Barcelona
ISSN: 2014-6035
DOI: 10.2436/20.3000.02.37
<http://revistes.iec.cat/index/CSSr>

The Parliament of Catalonia, representing a millenary people

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Original source:

Revista de Dret Històric Català, 13: 177-187 (2014)

(<http://revistes.iec.cat/index.php/RDHC/index>)

Translated from Catalan by Mary Black

Abstract

Catalonia is a millenary nation, which the current Spanish constitutional order frames as an “autonomous community”. However, Catalonia as a nation was not born with the Spanish Constitution in 1978, nor has any possibility for the future been democratically barred. The most important contribution to Catalonia made by the 1978 Constitution was to make it possible for the Catalan Statute to create the Catalan Parliament, an institution that democratically represents the people of Catalonia and legally structures and channels the people’s voice. The Parliament’s agreement at the end of the Ninth Legislature, which declares the need for the people of Catalonia to exercise the right of self-determination, opens up a new stage in the history of Catalonia.

Key words: Parliament, representative function, Catalonia, Constitution, people, self-determination, democracy.

Catalonia is a millenary nation, which the current Spanish constitutional order frames as an “autonomous community”. However, Catalonia as a nation was not born with the Spanish Constitution (SC) in 1978, nor has any possibility for the future been democratically barred. It seems obvious, but I believe it needs to be said, because some voices seem to have forgotten this, while others stubbornly deny it time and time again. Catalonia as a nation was not born in either 1978 or 1931, but instead has a millenary history and has been governed by a range of different institutions, some of which are exemplary and highly advanced for their time, although there have also been episodes of corruption (as is inevitable with so many years of history).

The Generalitat de Catalunya was founded in the 20th century during the Second Republic with the same basic characteristics that it has today. It revived the name of a mediaeval institution that emerged from the Courts or the General Court, the remote ancestor of the Parliament, whose roots date back to

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the early days of the formation of Catalonia as a nation. Just like in other aspects of our history, the most distant origins of the parliamentary institutions can be found around a thousand years ago, in the course of feudalisation, with the division of the Court of the Countship – after the 12th century – into two different bodies (the Council, which dealt with political considerations, and the Curia, which primarily covered the administration of justice) and with the birth and spread of the Assemblies of Peace and Truce, an institution which appeared in Catalonia in the first third of the 11th century. Not too many assemblies were called in the 12th century, but the majority of peace and truce agreements were reached in the prince's own court (Count of Barcelona and King of Aragon since 1137). In this way, the two institutions dovetailed. Many peace and truce provisions were codified in the Usatges of Barcelona, the first Catalan legislative text enacted by Count Ramon Berenguer I, and they were incorporated into Catalan civil and constitutional law during the late Middle Ages and modern age. Some even survive today in our current civil law. With the count-kings, and especially with Jaume I the Conqueror (1213-1276), the Constitutions of Peace and Truce, along with the Usatges de Barcelona, were the country's legislative support, and their assemblies became the embryo of the Catalan courts during the reign of Jaume I.

During the reign of Jaume I, the Court of the Countship became the General Courts of Catalonia as the number of members summoned gradually increased, and especially as it gained ground with the incorporation of the bourgeois estate represented by the leaders of the villages and cities. However, the decisive step was taken during the reign of his son, Pere II the Great (1276-1285), in the Courts of Barcelona in 1283, through the constitution *Volem, estatuïm*, when the pact-based system of sovereignty was established, a characteristic of mediaeval and modern Catalan constitutional law. According to this system, only the norms issued from the Courts through agreement between the sovereign and the local estates were valid, either on the initiative of the former (constitutions) or on the initiative of the latter (court chapters). Provisions enacted by the king during the interval when the Courts were not in session could be sanctioned by the Courts (Acts of Court, privileges, pragmatics and other rights). In fact, the king ceased being the exclusive legislative power.

The origin of modern parliamentarianism and constitutionalism lies in this gradual trimming of power. These Courts were obviously not a democratic parliament, as was no other parliament in the world during that period. But I think that we should feel proud that the forerunner of today's Parliament was one of the most advanced in its era, if not the single most advanced. Pau Casals recalled this in his celebrated speech to the United Nations (UN).

This is why I stress that Catalonia is a millenary nation which the current Spanish constitutional system frames as an autonomous community. But Catalonia as a nation was not born with the 1978 Spanish Constitution nor has any possibility for the future been democratically barred. The people of Catalonia already existed far before this norm, and it existed before any of the Spanish constitutions did simply because the people of Catalonia were a reality far before the first Spanish State was established. In fact, if we carefully read the articles of the 1978 Spanish Constitution, we will see that it is crystal clear that the Constitution recognises that there are national realities that predate it. Article 2 says that the Constitution "recognises" the nationalities' and regions' right to autonomy; it does not say that it "establishes" this right but logically

that it “recognises” a reality which predates it: the existence of nationalities within Spain. And the second transitory provision refers to the territories where there had been plebiscites on draft statutes of autonomy in the past. The text subjected to plebiscite with the people of Catalonia was not the 1932 Statute but the 1931 Draft Statute, called the *Statute of Núria*. Sometimes this is forgotten, but I think that it is worth recalling that the vast majority of citizens of Catalonia who were able to vote, in accordance with the rules at the time, did so (99% of the votes and 78% voter turnout) in favour of a text which declared the people of Catalonia’s right to self-determination and sought to make Catalonia a State.

In my opinion, it most important thing that the 1978 Constitution did for Catalonia was make it possible for the Statute to create the Parliament of Catalonia, that is, equipped it with a body, an institution, which democratically represents the people of Catalonia, which legally structures and channels the voice of the people of Catalonia. And this is essential because from then on there is a subject, there is a people, who can legitimately express their will. And therein lies democracy, whereupon anything is possible. Democracy, understood properly, cannot ignore the will of the people; to the contrary, it must provide the people with the legal means to express themselves freely.

“The Parliament represents the people of Catalonia”. This is the clear, concise way the current Statute of Autonomy of Catalonia (SAC) expresses it, the 2006 statute (art. 55.1), precisely in the same terms that the 1979 Statute said it (art. 30.1). We cannot find an expression like this in either the 1932 Statute or what is called the Interior Statute of 1933.

The representative function is the first of the Parliament’s functions, and all the others emanate from it. In accordance with the provisions of the Constitution (art. 152.1) and the Statute (art. 55 and 61), the functions of the Parliament of Catalonia can be distinguished as follows: the representative function, the legislative function (traditionally the most important one), the function of spearheading and controlling political and governing action (the most important one today), the elective function (which has become more important) and what we call the *function of the defence and expansion of self-government*. Within the latter we can include numerous attributions, such as the authority to file lawsuits on unconstitutionality and to appear before the Constitutional Court and other constitutional processes (art. 61e SAC), the possibility to request the State to transfer or delegate authorities (as in art. 150.2 SC) and the possibility of requesting legislative powers be attributed to it under the terms of art. 150.1 SC, as well as to propose the reform of the Statute and even the approval of resolutions which go beyond the reform of the Statute, such as the one approved on 27 September 2012 in the last session of the ninth legislature.

Of all of these functions, the representative one is unquestionably the most basic and important. The Parliament is the only body that is institutionally charged with the direct political representation of the Catalan people. The Parliament is the only body where all the people are represented, not just the majority, where society is conceived and viewed not as a homogeneous unit but as a heterogeneous unity made up of a variety of ideals, positions and interests, all of which must be represented and respected.

The Parliament is the organ of pluralism. This characteristic is predictable in any parliament. In a democratic state, the government expresses the unity of the majority, the constitutional court (where there is one) and the judicial authority express the unity of the legal system, and the head of state expresses the unity of the state. In contrast, by means of dialogue and majority decisions, the Parliament synthesises the will of the people and publicises the agreements of and dissensions with the people's will. This procedure is what gives its material decisions legitimacy (Molas, 1994: 8). Its representation of the people is legitimate because the people participate (or can participate) in electing their representatives through universal, free, equal and direct suffrage. This origin in democratic, direct elections is what makes the Parliament the prime institution of the Generalitat from which the other institutions comprising it emanate.

The representative nature of the Parliament has consequences on its organisation and functioning. The organic structure of the Parliament should integrate the pluralism reflected in the election results: the parliamentarians from the same party have the right to assemble into a parliamentary group, and the composition of all the bodies of the Parliament should proportionally integrate the parliamentary groups. The functioning of the Parliament should also respect the plurality of this representation: all the parliamentary groups (as well as individual parliamentarians, even though today's parliamentarism is comprised of groups) are guaranteed the right to present initiatives and to take part in the deliberations and decisions of all the acts of Parliament. Likewise, in order to ensure the permanence of the representation, the Statute provides for the Permanent Deputation for cases in which the legislature has ended and the new chamber has not yet been constituted. This is because the Parliament is a permanent institution, but its parliamentarians have a temporary mandate; therefore, this gap is bridged by the parliamentarians who belong to the Permanent Deputation. Another consequence of the representative nature of the Parliament is the guarantee of its organic and functional autonomy. After all, given the fact that the democratic system consists in the organisation of the self-governance of the people, and that the Parliament is the institution that represents them, it is logical that the Statute sets out to guarantee the independence of the Parliament and endow it with autonomy in order to prevent it from being subordinated to other powers. Finally, the Statute guarantees the Parliament, as the body that represents the people, the utmost freedom to reach agreements and frames it as an inviolable institution (that is, not responsible for the actions performed or agreements adopted), and this inviolability extends to its members regarding their opinions and votes cast in the exercise of their duty. Therefore, with the desire to officially state the importance of the Parliament and its functions (which should not be altered by any outside element), article 55.3 of the Statute proclaims the inviolability of the Parliament; in consequence, the violent entry into the Parliament or entry with the goal of intimidation or to attack or disturb parliamentary work are framed as crimes.

On the other hand, from a more sociological perspective, we could also analyse to what extent the composition of the Parliament does or does not represent the people, that is, whether the characteristics of its members are similar or different from Catalan society as a whole. According to some studies

performed,¹ the Parliament represents the cross-section of society that it should represent in an elitist and often biased way. The bias comes from educational level, economic level, age structure and, even though it has improved recently, the presence of women in the seats as well. One particular sign of this improved gender representation is the presidency of the Parliament, which for the first time in the history of Catalonia is held by a woman. There had never been a female president of the Parliament in the 1930s, or in exile, or from 1980 until this legislature that just concluded. It must have had a dozen presidents until the Parliament finally elected a female president. This relative bias or difference between the representatives and the represented is not a characteristic exclusive to the Parliament of Catalonia but is present to a greater or lesser extent in all countries. But this should not make us complacent, and I believe that improving the representation of the people in all their diversity is one aspect in which the Parliament of Catalonia could still improve. And one of the instruments that could qualitatively improve this representation and thereby increase the quality of democracy in Catalonia would be by having our own election law which would not only be more applicable to our local situation but would also be better than the additional election law we apply today. Not having approved a Catalan election law is clearly one of the most obvious glaring assignments that the Parliament has failed to do in the nine legislatures that have been held since 1980. The future Catalan election law should not only establish criteria of parity between men and women when drawing up the election lists (because this is a mandate of the Statute, art. 56.3 SAC), it should also determine such important issues as the election formula, the form of voting, the electoral threshold or barrier, the composition of the Election Board of Catalonia, the number of deputies in the Parliament (between the range established by the Statute, between 100 and 150) and the election districts (this latter issue is one of the factors that has caused the biggest breach of consensus among the different political forces).

However, despite the obvious shortcomings mentioned above, others that are not so obvious that have also existed, along with aspects that can always use improvement, I believe that the overall outcome of these 32 years of the Parliament in terms of its performance of all its functions has been more than acceptable, a B+, if I dared to give it a mark. The job of the Parliament of Catalonia during the years of the Second Republic was also quite admirable, even though, as we know, it existed in a state of normality when it was able to carry out its mandate for just a brief time, because not only did the war radically alter the context in which it had to work starting in July 1936, but from 1932 to 1936 the Parliament was unconstitutionally suspended for a year and a half (from October 1934 until March 1936). During all of those years and more recently, the Parliament has approved laws and adopted very important agreements in many spheres which affect the life of Catalonia's citizenry, even though, and I wish to underscore this, the Parliament of Catalonia can legislate on very few matters (because the majority of the authorities are currently executive or shared) and because furthermore, among the matters on which it does hold legislative authorities, there are few that are actually important. Thus,

¹ See, for example, Argelaguet & Argemí (1999); Calvet & Crespo (1999); Pitarch & Subirats (1982). Along similar lines, see Coller (2008); Alís & Pujol (2012).

of all the legislative and non-legislative acts approved, the most important act to date is one of the acts taken the last day of the last session.² And I view it as important because the agreement that states the need for the Catalan people to exercise their right to self-determination opens up a new stage in the history of Catalonia, along with the demonstration this past 11th of September (the largest one in the history of Catalonia) and the president of the Generalitat accepting the claims for independence which were heard there as his own. If the people so wish, this new era could mean embarking on the road to its own state. Certainly, on previous occasions the Parliament had already expressed that the people of Catalonia did not give up their right to self-determination, but now, by a very large majority of almost two-thirds,³ the Parliament has approved the proposal that demands the exercise of this right, the demand that a consultation be held, prioritarily during the next legislature, to determine the future of Catalonia. In this resolution, the Parliament states that “throughout these past 30 years, a very large part of the Catalanist movement has been sincerely committed to transforming the Spanish State in order for Catalonia to fit within it without having to give up our legitimate national aspirations, our desire for self-governance, or our continuity as a nation. However, Catalonia’s attempts to fit within the Spanish State and the State’s repeated responses are a dead end today. Catalonia must embark upon a new stage based on the right to decide.”

Some people have countered this new position of the body that represents the people of Catalonia with democracy and the Constitution, using this latter term as a limit which closes the doors to certain political options, even if they reflect the will of the majority of the people. Given this, perhaps it is worth recalling that there are fully democratic options which are outside the Spanish Constitution at this point but nonetheless are still fully democratic options, such as the republican option or a more effective concept of certain social rights which the SC merely views as guiding principles.

Legally speaking, the Constitution is what defines the people, the community of people who share the legal bond called ‘nationality’ with a given state; however, previous to this legal or regulatory act, there should be another act in the birth of any democratic state, an act of sovereignty, which is pre-judicial, to determine the subjects to whom that Constitution is applicable. Who the people are must be determined, or whether there is more than one. This is what is expressed in the first three words of the Constitution of the United States of America: “We the people”.

Defining the *demos*, the people, is a pre-judicial act, a materially constituent act. Catalonia within the Spanish state is neither a minority within a people nor a national minority. Catalonia is a minority nation within a state in which there are other nations, and one of these is more numerous than the others. The general interests of Catalonia may be not only different to but contradictory with those of the majority nation; it is a permanent minority. Using Pizzorusso’s (1993) terminology, a minority nation is not an occasional minority but a tendentially permanent minority. Therefore, the guarantee of a minority nation within a plurinational state is not determined by the fact of

² 27 September 2012 (*Diari de Sessions del Parlament de Catalunya*, session no. 39.3, pp. 23-24).

³ 84 votes in favour, 21 against and 25 abstentions.

being a minority that could one day become a majority. After all, what makes minorities accept the legitimacy of majority decisions? Is the majority always right? Are ten right more often than one? I don't believe that this is the right interpretation, and it is not just an issue of the likelihood of being right. In order for minorities to accept the legitimacy of the majority decision, they must be guaranteed not only the right to exist (the guarantee of not being annihilated) but also the right to have opinions, and therefore the right to become the majority by the means used in democracy: by convincing. In democracy, the idea is not to win but to convince. The minority should be guaranteed its participation in the deliberations before the decision is taken so it has the chance to convince and become the majority. Here is a key factor: some minorities will never accept the decision of the majority because they do not consider themselves a minority within a people but instead another people that is permanently in the minority within a state that is plurinational, whether it wants to be or not.

Nowadays, the physical (territorial and populational) aspects of states and the social and political pluralism inherent to free societies prevent unanimity from being reached in the majority of cases, if ever. Therefore, in order to adopt legitimate decisions in a democracy, a substitutional criterion should be adopted: if there is no unanimity after the proper deliberation (debate), the majority decides. This is majority rule. Therefore, democracy is based on two main guidelines: the quest for government by consensus and, if there is no consensus, the organisation of the government by the majority. Therefore, from both guidelines we can deduce that the previous deliberation, the debate, must be held not only to attempt to achieve a unanimous decision, if possible, but to guarantee that the minority can become the majority.

Therefore, I once again stress that herein lies a fundamental factor which precedes the fact that majority rule can be valid. Before organised democracy can be exercised, there must be awareness that one is part of a community, a people, and that one wishes this community to continue.

Summarising, a democratic state accepts the tenets of the rule of law (supremacy of the law, meant as the expression of the general will, the division of powers as the organisational principle of the state, and the proclamation and guarantee of rights and freedoms that everyone enjoys equally), and adds three new elements: popular sovereignty (which implies universal suffrage), political participation (exercised either directly via mechanisms like referenda or grassroots legislative initiative, or via the free, periodic election of representatives) and finally the recognition and expression of the society's pluralism, especially political pluralism, primarily but not exclusively channelled by the political parties. These are the three main cornerstones upon which the democratic state is grounded, the three main elements that define it. They are the requirements of democracy, but not the only requirements. There must be one people or more than one people who have freely decided to live together under the same state. Without this precondition, the very foundation of that democracy is flawed. Minority nations are a problem that is difficult to solve in plurinational states, especially when they are based on the conception of a single sovereign people, such that the democracy is founded upon an assumed national homogeneity and the principle of equality and freedom is built upon that. If the legal system does not recognise these minority nations and does not establish mechanisms to articulate this plurinational reality, then perhaps what

we should consider is whether, in the 21st century, these systems can truly be described as democratic, even if they operate via majority rule.

Democracy is a concept which has evolved. In classical Greece or in the early years after the United States was founded, what was called *democracy* was compatible with slavery for part of the population. Likewise, until just a few decades ago, democracy was based on universal suffrage among men, but it excluded women from the right to vote, just as it had previously excluded the majority of men in limited suffrage (only men who had the economic wherewithal or a certain educational level). By the late 20th century, these conditions on the democratic ideal seemed unworthy of this name. However, this evolution must continue. Democracy in the 21st century is still very perfectible.

In the purely legal sphere, what could guarantee the existence and accommodation of a minority nation (especially when it is a majority in its territorial sub-unit) within a plurinational state is a combination of three factors: 1) ensuring that the state is based on a policy that recognises its plurinationality by regulating its effects in the symbolic, linguistic, representational and institutional spheres; 2) ensuring that full national self-governance is defined (that is, the most important decisions for that nation are taken by local political institutions, with the exception of those that have to be delegated by the latter); and 3) establishing effective participation mechanisms in the bodies that determine the general will of the state, which allow the running of the state to be shared.⁴ All of this is theoretically possible if all the parties honestly and faithfully accept it. However, in the case of Catalonia, at the end of this last legislature the Parliament already made it clear in that agreement (adopted by a very broad majority) that it believes that this is a path that has been thoroughly explored already and is now a blind alley; it literally stated that the attempts to fit Catalonia within the Spanish state and its repeated responses are today “a dead-end”. Now a new path must be taken. I believe that this is what we are beginning to do, and the Parliament of Catalonia will continue to play a crucial role on this new path.

The day Catalonia has a state of its own will be a happy day for me and for many Catalans. It will put an end to one stage in Catalonia’s history and another one will begin, a stage in which all the people of Catalonia and their representatives will be faced with an even more important and interminable task: to make Catalan society a state with a high democratic quality and enormous social sensibility, striving to make it a state better than any other, with the Parliament of Catalonia constantly improving its representation of this millenary people.

⁴ See Requejo (1998: 129 and forward). This author could be an example of those who have shifted their position, who used to defend a model they called *plurinational federalism* and now advocate the route of independence for Catalonia (see, for example, F. Requejo, “Espanya és el passat”, *La Vanguardia* [2 July 2012], or F. Requejo, “Camins de democràcia. De l’autonomia a la independència”, *L’Avenç*, no. 361 [2010]).

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