

ETA and state action: The development of Spanish antiterrorism

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Abstract

On 20 October 2011 ETA announced the ‘definitive cessation of its armed activity’, which had been increasing since shortly after its inception in 1959. On 8 April 2017 it disarmed by handing over its weapons to intermediaries from civil society. On 2 May 2018 ETA announced its dissolution. This was the end of the last ongoing armed conflict in Europe from the wave of political violence – linked to national and class disputes – that swept over the continent starting in the 1960s. This article analyses the development of Spanish antiterrorism in relation to the Basque conflict, observing how a free and democratic Spanish state has responded to the challenge of an armed insurgency that has continued to the present. While the history of the organisation is well known, less so is the development of the reaction to deal with it. ETA’s progression cannot be understood in isolation, but rather needs to be placed into the context of the measures taken by the state, which influenced, shaped, and was shaped by it throughout the course of the conflict.

Keywords: ETA, terrorism, antiterrorism, the culture of emergency, the Basque Country, peace process

Introduction

On 20 October 2011 Euskadi Ta Askatasuna (ETA) announced the ‘definitive cessation of its armed activity’, which had been increasing since shortly after its inception. On 8 April 2017 it disarmed by handing over its weapons to intermediaries from civil society. On 2 May 2018 ETA announced its dissolution. This was the end of the last ongoing armed conflict in Europe from the wave of political violence – linked to national and class disputes – that swept over the continent starting in the 1960s, which was also known as ‘revolutionary terrorism’ (Crenshaw, 1972) or ‘ethnic separatism’ terrorism (Byman, 1998; Shughart, 2006). This armed organisation arose in 1959 at the height of Franco’s dictatorship from a split in the Christian democratic Basque Nationalist Party (Partido Nacionalista Vasco or PNV). As early as its fourth assembly in 1965 the organisation declared its socialist stance, bringing together class struggle and the struggle for national liberation, and approving the use of armed violence as one of its possible options. ETA’s first killing was that of an officer of the Guardia Civil, José Pardines¹ while he was on duty at a police checkpoint in 1968 and, in the same year, they also assassinated Melitón Manzanás, a police inspector and chief of the secret police (Brigada Político-Social), as well as a known torturer. As a result of this attack, those presumed responsible for Manzanás’s death were prosecuted in the ‘Burgos Trial’ of 1970, in which nine anti-Franco militants were sentenced to death. After a wave of solidarity with the condemned washed over Spain and Europe, the regime finally commuted their sentences (Salaberri, 1971). In 1973 the organisation assassinated Luis Carrero Blanco, the prime minister of Spain, thereby eliminating Franco’s chosen successor.

After the dictator’s own death in 1975 and the ratification of the Spanish Constitution of 1978, democracy returned to Spain four decades after the fascist coup d’état (Molinero, 1992), which

¹ Although several authors date ETA’s first victim to 1960 (De la Calle & Sánchez-Cuenca, 2004), it has not been included due to the lack of political or academic consensus.

had put an end to the innovative Second Spanish Republic (1931-39). The situation had changed but ETA continued its armed insurgency, despite having been founded and legitimised as part of the anti-Franco fight. Moreover from the time of ETA's seventh assembly in 1976 the number of casualties actually increased. Although prior to this the organisation's assassinations had been few – if highly symbolic and notable – after the political transition the lengthening of the list of victims acquired a marked regularity and armed activity became chronic. While the legalisation of the Communist Party and the signing of the Moncloa Agreements of 1977 succeeded in calming the situation in most of the state, the conflict in the Basque Country continued unabated. One figure shows that normalisation came to this region later than to others: only 34.9% of Basques voted in favour of the constitutional referendum. Subsequently some Basque nationalists (the Abertzale left) made no commitment to the building of self-governance through the Statute of Autonomy of the Basque Country of 1979. A significant number of Basque nationalists also opted out of the project of reconstructing Spain (Conversi, 2000). Rather than die with the return of democracy, ETA transformed and strengthened itself during the political transition and early years of democracy².

Fifty years after ETA's first killing, the situation was very different: the Basque Country and Spain have changed profoundly in economic, political, and cultural terms. Today political violence and, specifically, the organisation's armed insurgency find no social support in Western countries. The reasons for the end of the violence have been attributed to police successes and the weakening of ETA's military capacity (Escrivá, 2012; Zarzalejos, 2014 or Uriarte, 2012)³. Without denying the importance of these factors, the process of social delegitimisation that has grown over time has had a significant bearing on the fate of the organisation (Tejerina, 2015). The end of ETA violence is 'a case of transformation triggered by its constituency's withdrawal of support for the armed struggle' (Murua, 2015: 1). The Ajuria Enea Agreement of 1988, which was signed by all political stakeholders with the exception of Herri Batasuna (HB or Abertzale left party), was the first measure attempting to remove political violence from the Basque and Spanish scene through political consensus. Subsequently, during the 1990s, the growth of antiterrorist social movements of all political stripes and sociological composition finally began to show signs of a certain social apathy toward ETA (Funes, 1998). Mees (2003) points out that demonstrations during the kidnapping and after the assassination of Miguel Ángel Blanco in 1997 stimulated the beginnings of an internal debate among those on the Abertzale left. Also relevant at the turn of the millennium were the voices from within the Basque nationalist left calling for the end of the cycle. Additionally an exogenous factor, the jihadist attacks of 11 March 2004 in Madrid, which caused two hundred fatalities, marked a point of no return in the delegitimisation of armed violence (Tellidis, 2011).

By the end of the first decade of the new millennium, and after the failure of two rounds of negotiations between ETA and the Spanish government – the first with the People's Party (Partido Popular or PP) under the leadership of José María Aznar in 1999 and the second with the Spanish Socialist Workers' Party (Partido Socialista Obrero Español or PSOE) under José Luis Rodríguez Zapatero in 2006 – the Basque nationalist left unilaterally initiated the transition to exclusively democratic means. Some have noted that the organisation's pledge came late in the day, when their military structure and political and social base were already considerably weakened. This meant a diminished capacity to operate as a political actor and contribute to a negotiating framework. Still others might highlight the fact that the Spanish government, thanks to partisan political interests, took an inactive role in the peace process.

² On ETA's origin and evolution see, among others, Jáuregui (1981), Sullivan (1988), Ibarra (1989), Letamendía (1994), Elorza (2000), and Casanova (2008), and Muro (2008).

³ See Alonso (2011) for an analysis of variables that incentivised or discouraged the dissolution of ETA.

What is certain is that on the other side of the conflict lay the immovable presidency of Mariano Rajoy, who ruled out any possibility for dialogue (Zabala/Saratxo, 2015). There is strong academic and political consensus that the abandoning of armed violence is now irreversible. There are, however, still issues to be resolved: prisoners and fugitives, exceptional measures (Benavente and Manso, 2013), possible violent holdouts, the disbanding of the organisation, and reconciliation policies (Varona, 2013). Some researchers go even further by identifying the state (not the government) as a spoiler in the peace process, especially with respect to the two peace processes mentioned above (Conversi, 2006).

Theoretical and methodological reflections

This study aims to answer two questions: 1) Why did ETA, which was formed and legitimised during the dictatorship, continue after Francoism?; and 2) Why, now that ETA has halted armed activity and disarmed, is it so difficult for the Spanish state to end the conflict? It proceeds from the premise that to find the answers it is necessary to understand not only the development of the organisation – which has already been well covered elsewhere – but also the institutional reaction to deal with it: Spanish antiterrorism. State action was neither neutral nor static: it influenced, shaped, and was itself shaped by the twists and turns of the conflict. For this purpose, reference is made to studies of the consequences of conflicts and social movements, and specifically of their effects on public policies (Giugni 1998, Giugni, McAdam and Tilly). Of particular interest are the unforeseen and unintended outputs and outcomes, and conversely, the impact of public measures on conflict.

From the perspective of the study of social movements, and especially of political processes, Della Porta (1995) introduced the concept of the ‘policing of protest’ to carry out a detailed analysis of the policies for the management of public order that are implemented to deal with social movements. For Della Porta, the ‘policing of protest’ is a key explanatory factor in the escalation of violence and radicalisation of a movement, but at the same time it is the establishment of the conflict itself that leads to the emergence of new police practices and cultures. In other words, it is a dialectic relation between protesters and police, between social movements and the state: ‘Protesters and the police, social movements and the state influence each other in the strategic choices they make, in a process involving innovation and adaptation on both sides’ (Della Porta, 1995: 57). One of the author’s outstanding contributions has been the use of a dynamic and dialectical perspective on the analysis of conflict, social movements, and terrorism.

The present analysis builds on Della Porta’s work but is not limited to the study of just the police apparatus (and, more specifically, on the management of street protests), but rather extends to all aspects of the criminal justice system (the police, courts, prisons)⁴. To this end, the concept of the ‘culture of emergency’ from the sociology of law is employed to describe the response of not only the criminal justice system, but also that of the media and wider culture, which has been articulated in different European states since the 1970s, such as in the treatment of the specific phenomena of political violence (Bergalli, 1988; Baratta & Silbernagl, 1983). The fundamental explanatory criterion for the emergency is for reasons of the state, not legal ones, which are legitimised by the aim to ensure the ‘salvation of the state’ (Brandariz, 2007). The exceptionalism of antiterrorism that permeates the Spanish state’s response to the ETA phenomenon must be taken into consideration in order to broaden understanding of the general framework within which terrorist action is taken.

⁴ Bergalli (1996) notes the existence of a static criminal justice system – criminal, police, judicial, and penitentiary law – and a dynamic one – the police, the legal system, and prison. The latter is the one to which the article refers.

An interesting development in criminological literature on the effects of counter-terrorism measures in this type of conflict extends the application of the theories and methods used in the study of conventional crime to the analysis of political violence and terrorism. LaFree, Dugan and Korte (2009) analyse the effects of various counter-terrorist measures implemented in the conflict in Northern Ireland, while Argomaniz and Vidal-Diaz (2014) apply the model to the case of ETA. In both instances the state responses may have caused deterrence or backlash effects. Their findings indicate that severe state repression could exacerbate political violence, as well as facilitate the construction of analytical frameworks that increase support among the citizenry. Statistical analyses carried out in the field of criminology would clearly yield different results than those in the Basque case (Nervin, 2003; Barros, 2003; Gil-Alana and Pestana Barros, 2010), but all underline the importance of conducting an analysis that takes the state-armed group interrelationship into consideration.

In this article, the shaping of the state response to political violence is examined in its chronological context, in dialogue with ETA's actions. The first section covers the period of political transition and early years of democracy, and identifies the legacy of past state action against political violence. These state measures expanded in a period in which ETA shifted from occasional and symbolic acts to sustained and regular activity. The second section analyses the construction of the culture of emergency once democracy had become established. In 1982 the PSOE won the general election in Spain and began to draft its antiterrorism policy. Three stages in the construction of the emergency involving ETA can be identified: 1) An illegal emergency that, while actually having begun in the previous period, becomes firmly established with the creation of the Armed Liberation Groups (Grupos Armados de Liberación or GAL), which were formed and financed by the state; 2) a legal emergency in which the police apparatus is prominent, systematising the legislative antiterrorism framework wherein police action takes a leading role in the fight against political violence; and 3) a legal emergency in the growing role of the judiciary, in which existing punitive measures become more severe and criminalisation is extended to its 'entorno'⁵. In the last section the study of the Basque conflict is brought up to the present day: the end of ETA and the challenges remaining.

The political transition and the continuity of ETA: the legacy of policing and the armed violence of the far right

During the political transition ETA's armed activity, which until that point had seemed designed more for shock value through symbolic attacks, increased. ETA's history follows neither a linear nor uniform path, but is rather a complex space of debates, battles, and splits (Guittet, 2006: 55). In 1976, during the seventh assembly, there was a third split, this time between ETA-V and ETA-VI. Despite being a minority, the former managed to gain control of the organisation. From that point the next four years witnessed a certain regularity in armed violence – between 10 and 20 victims annually – and a very significant increase in intensity after 1978, with an all-time high of 94 fatalities in 1980 (De la Calle and Sánchez-Cuenca, 2004).

The 1977 general election was the first free and competitive election in Spain since the Second Republic. For the first time after four decades the Spanish could choose their political

⁵ The concept 'entorno', which was created by the judge of the 'Audiencia Nacional', Baltasar Garzón, refers to individual citizens as well as social and political organisations who sympathised with the nationalist left and that the Spanish doctrine considered as an extension of the strategy of ETA, as a part an 'ETA Complex' (Duhart, 2015). In this text, entorno has not been translated (the same with Audiencia Nacional, which is the special court that is heir to the Francoist Public Order Court for terrorist offenses and other serious crimes), as it stems from the specific political culture of the context and moment.

representatives. A democratic state based on the rule of law is not, however, built overnight: public institutions, the dynamics of the criminal justice system, and citizens' political culture do not transform considerably from one day to the next (Botella, 1986). The strategy to deal with ETA and political conflict bore the marks of the still somewhat disorderly and fragmented drafting of antiterrorism legislation⁶, the continuation of police conduct on the street with echoes of the past, and a certain permissiveness toward the armed violence of the far right in order to counter the pro-independence political violence of the left.

The legacy of policing: pressure in the street

Given the high degree of conflict in the last years of the Franco regime, and moreover during the transitional period, it is essential to analyse the role of the police apparatus (Recasens, 2001) and, above all, its most public activity: the management of demonstrations. In the transition from an authoritarian regime to a democratic one lay a key challenge for the transformation of police structures: they were no longer needed for the defense of a political system but rather for the interests of the citizenry (Jaime-Jiménez, 1996: 146). During the period in question a high level of militarisation and the belief that one of their primary functions was to battle against political dissent were still observable in the Spanish police apparatus. With a longing to modernise (but not yet to democratise) the Mobile Brigades (las Brigadas Móviles), charged with maintaining public order, were created in 1969.

During the first half of the 1970s, a significant number of deaths (18) occurred during demonstrations⁷, increasing considerably from 1976 until 1981. The majority of the fatalities from demonstrations in the second half of the 1970s came at the hands of the police (61 out of a total of 78), not including deaths caused by members of far right groups (12 of 78). Of particular note is the high number of casualties in the Basque Country. Nearly half (32 of 78) were in the Basque Country or Navarre. This led to negligible changes in the conduct of the security forces, as for instance in their gradual withdrawal from various conflict situations, but when they did intervene it was very similar to the way they had before (Jaime-Jiménez, 1996). It was not until the PSOE came to power in 1982 that there was a calming of the behaviour of the riot police at the same time as a decline in social unrest in the streets.

Far-right terrorism

To deal with those in favour of Basque independence and the left wing, there was intense mobilisation by groups on the far right that, according to various judicial and academic investigations, were related to some degree to parts of the secret services and some members of the police and the army, from whom they also enjoyed a certain level of permissiveness and protection. This was the time of the Apostolic Anticomunist Alliance (Alianza Apostólica Anticomunista or triple A), Spanish National Action (Acción Nacional Española or ANE), Anti-ETA Terrorism (Antiterrorismo ETA or ATE), Spanish Antiterrorist Groups (Grupos Antiterrorista Españoles or GAE), Basque Spanish Battalion (Batallón Vasco-español or BVE) and Warriors of Christ the King (Guerrilleros de Cristo Rey). Between 1977-1982 far-right violence accounted for 289 deaths (Piñuel, 1986). It is essential to emphasise that, in the conflict in question, the vast majority of the victims were Basques. These attacks sought not only to punish particular militants for their political affiliation, but also to cause instability and tensions in a society that had just restored democracy.

Table 1. Victims of armed and police violence during the political transition and early years of democracy

⁶ The most important legal texts of the dictatorial period are: Law 42/1971 of November 15, which modified the 'Law of Public Order' of 1959; the Criminal Code of 1973; and the Decree-Law 10/1975 of 26 August. An extensive anti-terrorist law was approved with the 'Decree-Law on Citizen Security' of June 1978, which was validated by the Permanent Council of the Courts and the Congress Plenary (in February and December 1979).

⁷ Data from Adell (1989) and updated by the author (see personal archive).

Victims of:	1974	1975	1976	1977	1978	1979	1980	1981	1982
armed violence by ETA	19	16	18	10	65	79	94	30	39
armed violence by the far right	85 (from 1972-75)		51		33		126		
police violence during demonstrations (Basque victims in parentheses)	2	5 (3)	12 (8)	14 (8)	5 (2)	9 (3)	2(1)	1	0

Source: Prepared by the author from data collected from De la Calle & Sánchez-Cuenca 2004, Piñuel 1986 and Adell 1989

It is clear that the different kinds of violence during the transition – armed (by ETA and the far right) and police – interacted with and fed into one another. The data illustrate the continuous feedback loop between conflict and reaction: the high degree of police action and alleged secret repression was in part a response to the existence of a radicalised conflict situation; while these types of actions – still by the logics of dictatorship – inflamed political violence, part of which was manifested in armed form by ETA.

Antiterrorism in democracy: GAL and the legal emergency

The impact of the attempted coup d'état of 23 February 1981 was the catalyst for the ETA Political-Military wing's announcing a one-year truce, which lasted in the end until August of the following year. There were a number of factors that influenced the decision. Critically, the Spanish government promoted the policy of socially reintegrating ETA (pm) members during this term. Negotiations took place between the centre-right government of the Union of the Democratic Centre (Unión de Centro Democrático or UCD) and ETA, which committed to the end of the armed activity of this branch of the organisation (Fernández Soldevilla, 2010). However, ETA Military continued killing and the annual number of victims rose until 1987, when there were 50 casualties. Worth noting are the organisation's first use of a car bomb in 1985, and the Barcelona Hipercor car bomb attack in 1987, which had a profound impact on the citizenry.

The establishing of illegal emergency: state terrorism (1983-87)

Beginning with the PSOE government in 1982 one can speak of the establishment of a commitment to comprehensive counterterrorism. There is a move from reaction to action, with inherited policies and practices being superseded by newly-designed measures to take on ETA's armed violence. On the one hand, legislative activity directed toward punishing terrorist action stepped up. It should be remembered that it was the Constitution of 1978 itself that left open the possibility of drafting special legislation in this area. For the first time in Europe, the suppression of certain fundamental rights during investigations into terrorist acts was constitutionalised⁸. Thus was passed the 'Act on attacks on persons or damage to property committed by means of explosive devices or substances' or Antiterrorism Act of 1984. In short, the penalties imposed on terrorists increased at the same time as reduced sentences were allowed for those who voluntarily abandoned a life of crime and confessed. In the context of fostering a culture of emergency (Bergalli, 1988) against ETA, 'illiberal means in a liberal democratic regime' were employed (Bigo et al, 2006), which lead to 'cloning the enemy' (Ruggiero, 2003). It should be noted that a 'dirty war' existed during this period but also that most anti-terrorist measures were drawn up within the bounds of legality and constitutionality.

⁸ Article 13.3 of the 1978 Constitution states that terrorist activity is not political activity: 'Extradition shall be granted only in compliance with a treaty or with the law, on the basis of the principle of reciprocity. Extradition shall be excluded for political offences; but acts of terrorism shall not be regarded as such'. Additionally, Article 55.2 introduces the possibility of establishing twin tracks in law: one ordinary and the other special.

In concert with this legislation, specific measures were also taken to manage the intense social unrest in the Basque Country and Navarre in the 1980s. The most relevant initiative was the ZEN Plan (Plan Zona Especial Norte), drafted by the Ministry of Interior, which was published in February 1983. The plan included a series of measures in the area of the fight against political violence, but also attempted to intervene in Basque society itself, extending its remit to social and even psychological intervention, as well as leaving the door open to unspecified 'other measures'. The Antiterrorism Act and the ZEN Plan were criticised by not only the Basque nationalist left, but also all peripheral nationalists, leftist groups in general, and defenders of human rights⁹. Both the Catalan and Basque parliaments appealed against the Act, with part of it declared unconstitutional in 1987 (Ruling No. 199/1987 of 16 March).

However, the most notable act during this period was the formation of an armed organisation financed and directed by political and police officials of the state: the Antiterrorism Liberation Groups (Grupos Antiterroristas de Liberación or GAL) (Woodworth, 2001). In this way, the repression of ETA was executed through a mirror organisation (Guittet, 2006). Their activities began in 1983 with the kidnapping of Segundo Marey. It bears repeating that what stands out is not just the conduct of this type of activity – more or less approved of and also facilitated – by groups on the far right, but that it went so far as the creation of an organisation parallel to ETA that was aided and led by officials of the state. As is clear from subsequent trials on the matter, most of the operations were undertaken by French mercenaries hired by the Spanish police, financed through funds specially set aside, and organised by the Minister of the Interior himself through those in charge of the fight against terrorism. From its inception to 1987, 23 people were assassinated.

While the adoption of an illegal emergency strategy had its roots in the previous period (1977-82) due to the connections with and permissiveness toward the armed violence of the far right by parts of the state, it was not systematised until the intervention of politicians and police commanders in the development of the GAL in a secret but organised and agreed upon manner. The fact that a state chooses to establish illegal emergency practices is of special interest for its impact on the quality of the rule of law, but also for the effectiveness of these practices. The implementation of state terrorism extended the feeling of solidarity with ETA beyond that which would have existed had there been no GAL. Additionally, the existence of a parastatal organisation added to the construction of a narrative that confirmed a conflict between two parties (the Spanish state and ETA). In this sense, the introduction of dirty-war tactics helped maintain a certain support base for the independence group even after democracy had been established.

Legal emergency (I): the role of the police apparatus (1988-1995)

The shock of ETA's recent activity (the Hipercor attack and other car bombing), the ruling of the Constitutional Court – which declared part of the antiterrorism legislation of the early democratic period to be unconstitutional – as well as the delegitimisation of the illegal emergency of the first socialist government with the creation of the GAL, led to the signing on 12 January 1988 of the Ajuria Enea Agreement at the seat of the Basque Government by representatives of all parties in the Basque parliament, with the sole exception of HB. The signing of this pact was linked to the Algiers negotiations and its most noteworthy elements were: the centrality of police action; the prevention of attacks and prosecution of their perpetrators; the defense of the principles that foster social harmony; the commitment to international collaboration; the defense that the rule of law would always be conducted legally; the support for reintegration into society for those who abandoned a life of violence; and the

⁹ Two press articles are good examples of the criticism at the time: on the Antiterrorism Act, see Bandrés (1985) and on the ZEN Plan, see Uriarte (1983).

pledge to dialogue between the state and those who decided to abandon violence. They also agreed that no special law was required and therefore backed the repeal of special antiterrorism legislation. The signing of the ‘Agreement for normalisation and peacebuilding in the Basque Country’ (or *Ajuria Enea Agreement*) was the successor to the agreements signed in Madrid by the majority of political parties in November 1987, which invited the Basque government to lead their further development. Additionally worth noting is that the Navarre Agreement was also signed.

Despite the content of the agreements, in the following months a comprehensive legal framework of antiterrorist exceptionalism was drawn up. At parliamentary headquarters key antiterrorism measures were approved through two acts: Organic Law 3/1988, the Amendment of the Criminal Code; and Organic Law 4/1988, the Amendment of the Criminal Procedure Act. These laws repealed the antiterrorism regulations that existed prior to the introduction of the ordinary legislation that dealt in the main with the suspension of rights that had not been struck down by the aforementioned ruling of the Constitutional Court. The United Left (*Izquierda Unida* or IU) and Basque Country Left (*Euskadiko Ezkerra* or EE) broke the agreement signed in November of the previous year. These two regulatory changes established twin tracks in the law: one for ordinary crimes and the other for those carried out by members of armed organisations (subsequently incorporated into Criminal Code of 1995, Articles 571-580)¹⁰. The figure of the ‘*incomunicado*’ and the possibility granted to the Ministry of Interior to intercept the communications of the ‘suspect’ without a warrant stand out in this legislation of emergency. Although challenged by some politicians and human rights specialists, the new antiterrorism legislation made these emergency measures legal and, in some ways, were comparable to those of other European countries also dealing with political violence (López Garrido, 1987; Faraldo, 2009):

The figure of the ‘*incomunicado*’ and the intensive role of the police

The police apparatus acquired a number of prerogatives in the detention of persons accused of terrorism. This figure meant that suspects were unable to communicate with their families wherever they were and were not allowed to see a trusted doctor or lawyer for five days (which could be extended to thirteen from 2003). International organisations and human rights associations claimed that the existence of this area of ‘no rights’ made torture possible (Ubasart-González, 2013). According to the NGO *Torturaron Aurkako Taldea* (TAT), almost all *incomunicados* in the 1980s experienced some form of torture or mistreatment, with the number decreasing relatively in later years. TAT states that there were 5,500 reports of torture during the democratic years, although its estimates have led it to raise the figure to 7,000.

A highlight from this period is the negotiations in Algiers between Felipe González’s government and ETA in 1989, though there had been preliminary contacts since 1987¹¹. When these negotiations ultimately failed, there were two effects: The first was the intensification of police pressure on ETA and the establishment of the policies of penitentiary dispersion, with Basque political prisoners distributed to prisons throughout Spain; the second was a resurgence in ETA activity, with the number of annual victims increasing until reaching one last peak of 45 killings in 1991.

The policy of penitentiary dispersion

¹⁰ This legal framework is complemented by the Organic Law 1/92 for the ‘protection of citizens’ security’ known as the ‘*Corcuera Law*’. In 1993 its controversial Article 21.2 on the entry into the domiciles without judicial authorization was struck down by the Constitutional Court.

¹¹ About negotiations ETA-State see Clark, 1990.

This involved the deliberate distribution throughout Spain of prisoners linked to ETA, most of them sent hundreds of kilometres away from their places of origin, contravening the general principles established in Organic Law 1/1979 of 26 September. The authorities justified this policy for reasons of security, as well as for the difficulties in resocialisation it would entail to have so many prisoners of this type in the same facilities. The government's main argument of the government was that this policy would prevent ETA from managing its prisoners. The practice placed a heavy burden on their families and a diminished guarantee of rights for the prisoners: the prisoner was far from their family and social circles, and trusted lawyers and doctors. Several authors had warned that this measure contravened Spanish law and the United Nations' 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', which recognises the prisoner's right to be incarcerated in the geographic area closest to their place of origin or family circle (Arzuaga, 2007).

In the mid-1990s an increasingly significant proportion of Basque and Spanish society began to publicly express its weariness with ETA and its armed strategy. This was the time when antiterrorist social movements from across the political spectrum, as well as citizen initiatives in favour of an end to the conflict through talks, began to gather steam (Funes, 1998). Within their own ranks there were more and more voices on the Basque nationalist left and in ETA that were in favour of abandoning their armed strategy. The consolidation of the collaboration between France and Spain in the fight against terrorism during this period is also worth underlining, the most relevant episode being the arrest of the organisation's leader in Bidart in 1992.

However, despite these conditions (or precisely because of them), the social base of HB – the political party of the Abertzale left – approved the document Oldartzen Report (Ponencia Oldartzen) in 1994. This document revealed the shift towards the 'socialisation of suffering' by widening the conflict to involve the whole of Spanish society in the dispute. If up to that time the members of the state security forces and the army were the primary targets of ETA action, thereafter the organisation would also attack militants in the political parties, especially those in the PP and PSOE¹². It was a 'war-civilian' strategy, similar of to that which prevailed in the conflict in Northern Ireland (Bigo and Guittet, 2003). This ran in parallel with an increase in urban guerrilla actions or *kale borroka*¹³. The intensification and socialisation of the violence did not lead to negotiation, so ETA changed the strategy and the nationalist left looked for a national alliance with moderate nationalists (the Lizarraga-Garazi process and Agreement). Some authors have called this the passing from a 'war of attrition' to the creation of a 'national front' (De la Calle and Sánchez-Cuenca, 2004).

Legal emergency (II): Centrality of the judiciary (1996-2011)

The following period began at the same time as the rise to power of the government of the PP, led by José María Aznar, in 1996. ETA continued its practice of targeting elected officials. The following year, among new ETA victims was a town councillor from Ermua, Miguel Ángel Blanco, whose killing shocked Spanish and Basque civil society. However, at the same time, the dynamics of the creation of new conditions that would lay the groundwork for a move towards peace may be seen. The 1995 Elkarri Peace Conference, promoted by civil society,

¹² 1995 saw the first victim from the PP, 1996 a member of the PSOE, 1997 two from the PP, 1998 four from the PP and one from the UPN, 2000 three from the PSOE and four from the PP, and 2001 one each from the PP, the PSOE, and the UPN. For more, see Letamendía (2002).

¹³ During the 1990s there was a much higher number of acts of *kale borroka* between 1995-97 than for the rest of the decade. While there were 287 incidents in 1994, this jumped to 925 in 1995, 1113 in 1996, and 970 in 1997, thereafter decreasing to 205 in 1998. See Letamendía (2002). On the impact of urban guerrilla tactics on economic activity in the period see Barros, Caporale and Gil-Alana (2009).

and 1996 Northern Ireland Forum, promoted by HB, were initiatives that preceded the building of a negotiating framework. This work in favour of detente made possible the signing of the Lizarra-Garazi Declaration on 12 September 1998 by nationalists and the Basque left wing (including the EAJ-PNV, HB, EE, EB-B and the LAB trade union). Four days later, on 16 September 1998, ETA announced a unilateral and indefinite ceasefire. José María Aznar's government agreed to open a dialogue and in May 1999 a meeting was held in Switzerland. The negotiations did not come to fruition and ETA announced the end of the ceasefire. On 21 January 2000 ETA killed again, this time assassinating Lieutenant Colonel Pedro Antonio Blanco García of the Spanish army in Madrid. The peace negotiations have no immediate effects on the peace process, but every step of this kind made it more inevitable.

There were notable changes in the antiterrorism response at this time. Punishments were extended judicially as well as legislatively: prosecutions were brought not only for those persons who belonged to or collaborated with ETA, but a narrative was also created that spoke of its 'entorno' and consequently the repression extended to activities that until that time had been legal and public. The arm of the state that gained greater centrality in this period was the judiciary, as a militant antiterrorism action by the courts – similar to that of the Italian 'giudice militante' (Ferrajoli 1981, 1983a) – became institutionalised. Also worth noting is a toughening of the legislation covering those charged with terrorism crimes during the second legislative session of the conservative party, which held an absolute majority between 2000-2004. Ciocchini & Khoury (2012) employ the concept of the 'state of exception' to analyse certain dynamics of the period, especially from 2001: a set of practices that were developed under the 'rule of law' and related to the exclusion of a significant minority from political life.

Intense activity by the judiciary against the 'entorno'

Facts of a diverse nature may be considered under this heading: 1) The HB national committee were sentenced in a Supreme Court ruling to seven years' imprisonment in December 1997 for collaboration with the armed group as a result of the attempt to replace televised electoral time allotted to the 1996 legislative elections with an ETA propaganda video. The Constitutional Court eventually overturned the Supreme Court decision and acquitted them all, though they did spend time in prison awaiting the results of the appeal; 2) business closures of the *Egin* newspaper and the *Egin Irratia* radio station in July 1998 by order of the Central Court of Instruction No. 5 of the Audiencia Nacional, a measure based on the suspicion of their manipulation by ETA (which would also be the case later in the closing of the *Euskaldunon Egunkaria* newspaper in February 2003); 3) judicial proceedings – known popularly as 18/98 in addition to others – against members of organisations and associations of the Basque nationalist left and other social movements, who were accused of membership of or collaboration with ETA because of an alleged relationship between the so-called Basque National Liberation Movement (Movimiento de Liberación Nacional Vasco or MLNV) with the armed group and a mere similarity of aims – in total 291 people were charged¹⁴; 4) arrest and imprisonment of leaders (Arnaldo Otegi and four others) of the Basque nationalist left who promoted the unilateral commitment of the left to achieving the termination of ETA activity (the Bateragune case).

Stiffer punishments for terrorism crimes

Organic Laws 5/2000 and 7/2000 on the criminal responsibility of minors were passed, granting the jurisdiction to the "Juzgado Central de Menores" (located in Madrid) to try minors in the case of crimes related to terrorism. The objective was to better manage

¹⁴ Similar to the Italian case. See Ferrajoli 1983b.

urban guerrilla actions or *kale borroka*. Organic Law 5/2003 was also passed, which among other measures created the Central Prison Supervisory Court to centralise the activity relating to ETA prisoners. Organic Law 7/2003 implemented measures for complete and effective serving of sentences and Organic Law 15/2003 or the Criminal Code of ‘security’ extended the period of solitary confinement from five to thirteen days, toughening the punishment for those accused of terrorism. A fact worth stressing is that this kind of restrictive measure infringing fundamental right to liberty is always subject to judicial oversight. It is important to emphasize it. The act signalling an important qualitative change with respect to the emergency of the previous phase was Organic Law 6/2002 on political parties, which was in essence the passing of certain procedures making it possible to outlaw parties of the Basque nationalist left. Thus, Batasuna, the successor organisation to HB, was banned.

ETA’s strategy of the ‘socialisation of suffering’ also sparked internal weariness with and resistance toward armed action. Paradoxically, however, and despite general consensus that the days of armed insurgency were numbered, the expansion of state repression meant that the community remained fairly cohesive and perhaps even built new solidarities: criticism of emergency practices came not only from sympathisers with the Basque nationalist left, but also extended to organisations and sectors that opposed a drift that cast doubt on fundamental rights and legal safeguards.

The end of ETA: from the final peace process to the unilateral abandonment of violence

The last round of negotiations between ETA and the government in pursuit of peace was shepherded by the new prime minister, José Luis Rodríguez Zapatero. On 22 March 2006 ETA declared a ‘permanent ceasefire’ that opened the door once again to dialogue. On 29 June President Zapatero announced the opening of talks with ETA at a press conference hosted at the Congress of Deputies. Meetings were held in Loyola-Geneva and Oslo at two separate tables: one for the three political parties (the PSOE, PNV, and HB) and one for ETA and the Spanish government. Difficulties arose during the negotiations¹⁵. On the one hand the PP led significant institutional and social opposition to the progress of the negotiations. On the other, the punitive pressure on its ‘entorno’, especially by the courts but also by the police, created tensions and divisions within the Basque nationalist left and ETA. On 30 December 2006 ETA broke the ceasefire and detonated a van loaded with explosives at Madrid Barajas Airport, an attack which killed two, bringing an end to the last round of negotiations. ETA committed the attack without having previously announced the breaking of the ceasefire and it was not until six months afterwards in June that they finally did so. This attack undermined the process but final talks were still held in Geneva until May 2007. From that moment, ETA’s efforts to abandon armed action could only be made unilaterally (Zulaika/Murua, 2016).

However, these negotiations came to nothing. Within the *Abertzale* left (and of the ETA itself) there was a growing awareness of the need to abandon armed violence (Zabalo and Saratxo, 2015). Several political and social leaders promoted internal debate, which led to the Declaration of Altsasu in November 2009: 110 representatives of the *Abertzale* left committed themselves to a political and democratic process. This process culminated in the Zutik Euskal Herria resolution. In March 2010 twenty international public figures with experience in the resolution of political conflicts signed the Declaration of Brussels, in which they praised the

¹⁵ There are different interpretations of the last negotiation process between ETA and the Spanish state: Sánchez-Cuenca (2009) expresses sympathy for the actions undertaken by the Zapatero government as “making peace means talking to the enemy” (Powell, 2018), but Buesa (2009) and Alonso (2012) are critical as adopting of a negotiated position bet, according to them, would have allowed the *Abertzale* left to strengthen itself politically.

steps taken by the Abertzale left, requested that ETA declare a permanent and verifiable ceasefire, and that the Spanish Government move in this direction. International participation had a significant impact on this process. In this respect, it may be said that the success of the peace process in Northern Ireland fostered the creation of a similar one in the Basque Country (Whitfield, 2014).

On 10 January 2011 ETA announced a ‘permanent and verifiable’ ceasefire. It would be the definitive end of the organisation’s armed activity. The transition would be unilateral, supported by national and international civil society, due to the Spanish government’s refusal to engage in a process of dialogue. The International Verification Commission, which would evaluate the cessation of armed activities, was presented on 28 September in Bilbao. On 17 October the International Peace Conference in San Sebastian was held with the participation of international figures such as Kofi Annan, Bertie Ahern, Gro Harlem Brundtland, Pierre Joxe, Gerry Adams and Jonathan Powell. On 20 October ETA announced the definitive cessation of armed activity. On 20 November the PP won the Spanish national elections, leading to a changing of the governing political guard.

During this period the driving force of the process was national and international civil society. In March 2017 ETA disarmed, handing over its arsenal in France through civil society facilitators. Members of the collective Artisans for Peace and international mediators from the International Verification Commission informed the French police of the location of the ‘zulos’. On 20 April 2018 ETA announced its immediate dissolution and apologised to the victims for the harm done. On 3 May ETA published a statement announcing that it had completed its historical cycle and was completely dismantling all of its structures.

Throughout this period there was a general consensus that the abandoning of violence was irreversible. However, there are still issues to be resolved: prisoners and fugitives, exceptional measures, possible violent redundancies, the dissolution of the organisation, and reconciliation policies. Why was the resolution of the process so difficult once ETA had renounced violence and had been disarmed? There were several diverse factors: 1) ETA’s military and organisational weakness and its social delegitimation; 2) the absence of consensus among the main parties of the Spanish state on how the conflict must be concluded; and 3) a ‘culture of emergency’ and antiterrorist exceptionality that have permeated in the institutions of the state and the mass media.

A sort of conclusion: the role of the Spanish State and ETA’s evolution

At this point it might be worth repeating the questions raised at the outset. Understanding the context, observing the interrelationship between the Spanish state and ETA, and analysing the construction of the Spanish antiterrorism framework allows for a richer response. Various factors must be taken into consideration in any account of why ETA survived after the Franco regime. The first had to do with the nature of the organisation, with the legitimacy earned in the struggle against Francoism, and for its Basque nationalist ideology. Therefore: 1) ETA was founded in a context of multiple struggles for democratisation. The organisation was one of the protagonists in winning the anti-Franco dispute and this conferred upon it some degree of legitimacy with some of the citizenry – among Basques but also throughout the Spanish state – during the transition and early years of democracy. 2) It was a conflict at the national level in which the community and region took on a major role and constituted an important support network for ETA. A narrative of the external enemy could be constructed more easily than in other types of conflict involving armed opposition.

There were, additionally, two other factors related to the reaction of the state and to the culture of emergency that was created. The response of the state during the transition and early years of democracy, with few guarantees from the state apparatus, fed and escalated the conflict. More specifically, it was: 3) The existence of far-right terrorism (which between 1977-81 left around 300 dead), which benefited from a certain degree of consent and a relationship with parts of the intelligence community and some members of the police and military. 4) The policing of demonstrations was not much different from that during the Franco years. Up to 1982 the actions of the police apparatus in the maintenance of public order underwent a structural transformation. In short, the logics of the antiterrorism activity during these years could have added fuel to the fire, encouraging the escalation of action-reaction.

ETA's activity has extended into the twenty-first century as the only instance of armed violence in Western Europe that continues to this date. The conflict in Northern Ireland has often been compared with that in the Basque Country because of its nationalist roots and the importance of the community in the history of the dispute (Conversi, 1993). However, the terminations of IRA and ETA activities differ. In the first case, the end came through a negotiated peace process between the armed organisation and the state, including as well the drafting of significant public reconciliation policies. In the second, ETA acted unilaterally and with the approval for disarmament by civil society. There are several factors that could explain why, once ETA abandoned armed action and surrendered its weapons, there is still so much reluctance on the part of the state to confirm an end to the conflict. The first has to do with the situation of the organisation. In the new millennium ETA had no alternative but to disarm and thus its capacity to pressure the state diminished with each passing day. ETA had to compete with violence by other actors: After the outbreak of jihadist terrorism in the West, and particularly in Spain on 11 March 2004, armed violence had serious legitimacy problems from both ethical and military perspectives. ETA was also weakened in its logistical, financial, and human resources. It had sustained several police and judicial setbacks during the first years of the new millennium, as well as a diminishing of its 'entorno', which might have been the reason for its reorganisation.

The second factor is the absence of consensus among the main parties of the state on a strategy to end the conflict. Today Rajoy's conservative government is a prisoner of its own denial of the existence of conflict during previous periods (especially during the Zapatero years). For so many years it argued that repressive options were the only ones that the state ought to take, which in a post-violence context short-circuits the possibility of acting, with stasis becoming the norm. Related to this is the third factor: the dynamics of exceptionalism that deprived the main institutional and political actors of the instruments for conflict resolution. The 'culture of emergency' (Bergalli, 1986) was an answer based on legislative, police and penitentiary exceptionalism that at the same time transcended them. This informed the actions of state institutions, as well as the media, political actors and other social bodies. Once the 'threat' ended, it was very difficult to deactivate the logics and dynamics produced. The difficulty in establishing a genuine peace process was in some ways similar to the state response formulated during the transition and the first years of democracy. The fight against the enemy within with strong Schmittian overtones made possible the introduction of illiberal practices in liberal democracies, which were then very difficult to dismantle (Ferrajoli, 2004).

In summary, all historical processes are influenced by a multiplicity of factors. This study has attempted to highlight the importance of the state response to political violence, as well as the interactive dynamics between the state and armed opposition, that partly explain the historical outcome. In analysing the phenomenon of political violence in Spain, failing to take into account the construction of the culture of emergency would mean missing some of the important reasons for this violence. The still partially authoritarian character of the state in its

dealings with ETA during the democratic transition, as well as the pervasiveness of the culture of emergency in its response in the legislative, police, and penitentiary realms – while also extending well beyond these areas – are indispensable to an understanding, at least in part, of the evolution of armed violence in Spain as well as the crucial moment of its resolution.

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