

CATALONIA BACKGROUND INFORMATION [SERIES E / 2013 / 9.1 / EN]

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Author: Joaquim Albareda*

THE DEVELOPMENT OF PARLIAMENTARIANISM IN CATALONIA UNTIL 1714

Catalonia began to develop its own legal and political order after it was freed from the French Carolingian Empire by the Counts of Barcelona (987). *The Pau i Treva* Constitutions and the *Usatges* (customs) laid the foundations for the civil constitution of Catalonia, which was extended and refined in the following centuries. The Parliament of 1283 (called “the General Court for the Catalans”), one of the most established parliaments of medieval Europe according to Thomas N. Bisson (1997), institutionalized the role of the assembly of estates and its legislative powers shared with the king. It also consolidated the monarchy, basing the relationship with the king on pacts, a political doctrine establishing the sovereign's respect for the laws and the country's respect for the sovereign. In 1359 the *Diputació del General* (House of Commons) was created initially for the purpose of tax collection but it soon became the country's government and the institution that enforced its laws.

In 1422 the first compilation of Catalan laws was made by combining the *Usatges* of Barcelona, the Constitutions of Catalonia and the prevailing *capítols de cort* (laws proposed by Parliament). In 1589 this compilation became the official *Constitucions i altres drets de Catalunya* (Constitutions and other rights of Catalonia). This constitutional effort, understood as a development, not a national code but a national heritage (McIlwain, 1940), aimed to place limits on the power of the king and organize the *res publica*. It reached its maximum development when the Parliament of 1701-1702 and 1705-1706 passed measures to place the greatest possible limits on the power of the king and his ministers in order to maintain compliance with the law. Just before it was abolished by the triumphant Bourbon king Philip V at the end of the Spanish War of Succession in 1714, the Constitutions proved to be an effective tool for adapting to the demands of society. In addition to respecting the privileges of the nobility in this *ancien régime*, it protected social benefits for most people in the areas of taxation, war, justice, the economy and individual rights. In turn, the institutions had achieved considerable political capacity in the context of European parliamentarianism. It was a system based on political representation of the estates that allowed a high level of representation of common people in municipal government.

To assess the extent of this political development, it must be placed in the context of contemporary Europe. Michael A. R. Graves (2001) systematized the complex world of parliaments in Europe between the 16th and 18th centuries, when the continent suffered an onslaught of absolutism. He stated that the important features of the most solid and active parliaments included the right to consent and control royal taxation in addition to collecting it, the capacity to legislate, the capacity to present grievances before the approval of the grant awarded to the king in parliament, the existence of a permanent representative body, and a reciprocal oath between king and kingdom. The Catalan institutions had all these features among the genuine powers of the parliament (where the three estates were represented) and the *Diputació del General* (a permanent institution of government in which the three estates were also represented) and had significantly greater powers than those enjoyed by the parliaments of Castile and the French Estates-General (which had no legislative powers). Another characteristic of these institutions (unlike those of England, France and Castile) was that the king's allowance was linked to the presentation of grievances. Furthermore, few European institutions accrued as many powers of government as the Catalan *Diputació del General*.

The vigour of this constitutionalism is well reflected in a statement by the jurist Francesc Solanes in 1700: "the Prince should not be above the law but rather the law above the Prince". The strength of Catalonia's institutions was boosted by the transformations that occurred in Catalan society in the late 17th and early 18th century, thanks to the widespread emergence of economic activities (such as the production of brandy and its export to England and the United Provinces, as well as textile production), accompanied by specialization and by domestic and foreign trade. These activities led to the emergence of dynamic business groups, who had access to the lower ranks of the nobility and participated in government institutions. Because this permeability ensured the participation of the common people in government institutions and municipalities, Catalan constitutionalism was vigorous and enjoyed great support from society.

In the War of the Spanish Succession, the Catalans made a political and economic commitment to the Hapsburg Maritime Powers and the Allies. This commitment was not made for dynastic reasons but rather to preserve and strengthen Catalonia's own legal and institutional framework so as to advance business prospects for the rising social groups and the interests of the common people through the existing mechanisms of representation and participation that Catalan society of the time had already developed. For this reason, the Bourbon Marquess of Gironella considered that the victor Philip V had in his hands a "very timely opportunity to place all his dominions under the same law, so as to exalt the authority of the true nobility by limiting the excesses of the common people". He considered that the common people in Catalonia enjoyed too much representation in Barcelona's *Consell de Cent* (Council of One Hundred), composed of "artisans, artists and common people". The scholar Antoni de Capmany, a Member of the Parliament of Cadiz (1811), also referred to this issue: "This Barcelona municipal body continued with its popular formula until 1714, when the arms of Bourbon Philip V, more powerful than the laws, silenced the free institutions of Catalonia and Barcelona received a new city council,

remade according to the aristocracy-only model then existing in the other cities of the Castilian crown”.

As the legal historian Víctor Ferro wrote in 1987, “the institutions of Catalonia, which have had so many notable achievements, because of both their innovative nature and their absolute merits (de facto sharing of legislative power between the prince and the people; the subordination of all authority to consensual law; direct binding of officials to law; political and legal custody of public order and administration of public funds independent from the Prince by a permanent representative of the Estates; guarantees of personal safety and many others), all culminate in procedures that could not better achieve the aspirations implicit in all of them: preservation of the principle of freedom under the rule of law, defined and declared, if necessary, in a fair trial.” Indeed, the institutions of Catalonia did not die because they were anachronistic, ineffective, or a feudal relic in the hands of the nobility. They ceased to exist because they were defeated by force of arms, in the name of the “just right of conquest” proclaimed by Philip V. The trend of the last few years of the Catalonia Parliament, in its two sessions between 1701 and 1706, indicates that if its powers had not been curtailed, it could have followed the lines of English parliamentarianism. The new King Philip V was well aware of this when he wrote in 1713 that “the latest sessions of the Catalan Parliament have made them more republican than the outrageous English Parliament”.

*Joaquim Albareda, professor of modern history
at the Pompeu Fabra University, Barcelona