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CORRUPTION AND CATALAN INDEPENDENCE

Ryan T. Judd*

It pleases me to speak the language of those wise ones,
Who filled the world with their customs and laws,
The language of those strong ones who kings respected,
They defended their rights, they avenged their injuries.

Bonaventura Carles Aribau¹

INTRODUCTION

Just over a decade through the doorway of the new millennium, rumblings of independence from territories within established European nations have steadily gathered into an ominous storm on the political horizon—such that the rest of the world cannot help but take notice. As Scotland moves steadily forward in its fight to secede from the United Kingdom, with an eye toward a referendum vote on independence in September 2014,² its leaders simultaneously labor

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toward potential admission to the European Union. In Belgium, the rising call by Dutch separatist groups in northern Flanders for secession from the French-speaking Wallonia region looms over any efforts by the newly crowned monarch to foster unification. Still further south on the Mediterranean coast, the comunitat autònoma of Catalonia presses toward its own referendum on independence, even as Madrid declares such a prospect "illegal" under the national constitution.

Arguably, this recent trend toward territorial independence in Europe was birthed in 1999, when NATO initiated military strikes against Serbia in support of Kosovo's cause for independence. Ultimately, Kosovo's declaration of independence in 2008 was recognized by over ninety nations, including the United States and most European Union members. In the wake of a secessionist movement on the European continent, which found strong international allies and ultimately achieved its goal, it was not long before separatist groups in Scotland, Flanders, and Catalonia began to press their own ambitions for independence.

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8 Id.
Although Kosovo certainly proved that autonomy for a subnational territory is attainable in twenty-first-century Europe, the resulting fledgling government was not successful. In May 2010, the International Crisis Group (ICG) reported that Kosovo was struggling mightily with an “uneven rule of law” characterized by a “weak justice system that [was] failing its citizens,” along with “widespread and growing” corruption. Despite continued efforts by outside groups, most notably the European Union Rule of Law Mission (EULEX), which arrived on the scene in 2008 to assist in strengthening Kosovo’s rule of law, it does not appear the situation has improved, nor is it likely to improve in the foreseeable future. In October 2012, the European Court of Auditors (ECA) found that despite EULEX’s efforts in Kosovo, “[l]evels of organized crime and corruption . . . remain high,” while the judiciary “continues to suffer from political interference, inefficiency and a lack of transparency and enforcement.” Further, the ECA expressed concern for the near-total failure to establish the rule of law in the Serb-dominated northern region of Kosovo, where crime bosses operate unchecked by essentially Serb-run criminal courts and refuse to cooperate with the U.N.-mandated Kosovo Police (KP). Tragically, these flaws were illustrated all too clearly in September 2013 when a Lithuanian member of EULEX was shot dead during a routine assignment near the northern city of Mitrovica.

While the current dire situation in Kosovo is the product of its own particular history and circumstances, it nevertheless begs crucial questions for other historical European territories seeking their
autonomy. As they emerge from the crucible that is the process of independence, how quickly will these newly independent nations develop from a rule of law standpoint? More specifically, will their government infrastructure be strong enough to bear the pressure of political transition, or will factors like crime and corruption impede them from achieving the goals that they envisioned for their nations?

In Spain, where Catalonia's separatist movement has gathered unprecedented strength in recent years, international rule of law and anti-corruption organizations have noted particular vulnerabilities to corruption in the current structure of the Spanish government.¹⁶ Those weaknesses were exposed¹⁷ when Spain's prominent role in the global financial crisis brought extensive scrutiny on the political and economic dynamics that led to the European Union's €100 billion bailout of the Spanish banking sector in 2012.¹⁸ With each new revelation of backroom deals between Spanish politicians and bankers that helped bring about the current state of national austerity, the prospect of a new start only grows more attractive for the Catalan people.¹⁹

In light of these circumstances, this note will examine the present state of corruption in Spain and its potential effects on the Catalan independence movement. Specifically, part I.A. will review the history of Catalonia's struggle for independence, and Part I.B. will explore the national and subnational framework under which the current Catalan government exists. Part I.C. will evaluate the current state of Catalonia's movement toward independence with an eye on its future.

Shifting from a historical-political perspective to a rule of law analysis, Part II.A. will focus on the laws, institutions, and conventions that provide the legal structure for preventing corruption within Spain and Catalonia. Part II.B. will assess the current state of

¹⁶ See infra Part II.B.
¹⁷ See infra Part III.
corruption in Spain and Catalonia from the perspective of international organizations and the Spanish people. Finally, Part III will consider the effects that corruption could have on a potentially independent Catalonia.

I. THE RISE OF THE CATALAN INDEPENDENCE MOVEMENT

A. ORIGINS OF CATALAN SEPARATISM

Catalonia has pursued separatist ambitions since the early eighteenth century when the Treaty of Utrecht ended the War of the Spanish Succession, and united all the territories of Spain under the Bourbon monarch, Philip V.\(^\text{20}\) In 1716, King Philip signed the *Nueva Planta* decree,\(^\text{21}\) which incorporated Catalonia into his centralized administration and revoked its status as a distinct and autonomous principality.\(^\text{22}\) This pronouncement of a “New Order” correspondingly “dissolved all Catalan political bodies, abolished its

\(^{20}\) See 2 STANLEY G. PAYNE, *A HISTORY OF SPAIN AND PORTUGAL* 351–57 (1973), available at http://libro.uca.edu/payne2/paynel6.htm. The War of the Spanish Succession (1702–1714) was a struggle between two powerful European alliances over the right to succeed King Charles II of Spain. See *id.* at 351–52. On one side, Louis XIV of France sought the crown for his grandson, Philip, and found support from Spain (except Aragon, Valencia, and Catalonia) and the German states of Bavaria and Cologne. See *id.* at 352. The other side was led by Austria in an attempt to thwart the unification of the French and Spanish crowns, with the support of England, the Crown of Aragon, the German states of Prussia and Hanover, and the Netherlands. See *id.* at 352–55. Under the Treaty of Utrecht (1713), Philip was confirmed as the successor to Charles II, but was compelled to renounce any right to the French throne for himself or his descendants. See *id.* at 358.

\(^{21}\) The *Decretos de Nueva Planta* (1706–1716) were a series of orders issued by Philip V’s court—both during and after the War of the Spanish Succession—that invalidated the ancient charters, or *fueros*, of the polities that had formerly been subject to the Crown of Aragon. See *id.* at 355. Pursuant to modeling Spain after the centralized state of his native France, King Philip signed *Nueva Planta* (New Order) decrees for Valencia and Aragon in 1707, Mallorca and the Balearic Islands in 1715, and finally, Catalonia in 1716. *Id.* at 355–56.

public law,” and forbade the use of the Catalan language in all legal and official matters.\textsuperscript{23}

Over the next century, although Catalan law and politics remained subjugated to the royal seat in Madrid, the independent spirit of the people of Catalonia never extinguished. The early nineteenth century saw the emergence of the \textit{Renaixença}, a cultural movement inspired by the currents of European Romanticism that sought to resurrect Catalan language and tradition, primarily through a revival of its literature and historical narrative.\textsuperscript{24} Through poetry, literature, and theater; writers like Bonaventura Carles Aribau, Manuel Milà i Fontanals, and Jacint Verdaguer sought to venerate the old Catalan ways while preserving them for future generations.\textsuperscript{25} By the time Catalan General Juan Prim led the Glorious Revolution that removed Queen Isabella II in 1868, the \textit{Renaixença} movement had developed the clear ideological desire to regain Catalan autonomy within the framework of a unified Spain.\textsuperscript{26}

This newfound political will reached a high watermark in the 1931 national elections as the \textit{Esquerra Republicana de Catalunya} (ERC) party gained control of Catalonia’s political machine on a platform of reestablishing Catalan autonomy.\textsuperscript{27} That same

\textsuperscript{23}Id.
\textsuperscript{24}See \textit{La Renaixença (The Catalan Cultural Renaissance)}, \textsc{Lletra}, http://www.lletra.net/en/period/la-renaixenca (last visited June 20, 2014).
\textsuperscript{25}Aribau published the poem \textit{La Pàtria} in 1833, which is widely acknowledged as the inception of the \textit{Renaixença} movement. \textit{Id.} Manuel Milà i Fontanals was another highly influential figure who contributed to the movement as a linguist, philologist, and literary scholar. \textit{See Josep Miàs i Miàs, Manuel Milà i Fontanals, ASS’N CATALAN LANGUAGE WRITERS, http://www.escriptors.cat/autors/milaifontanalsm/pagina.php?id_sec=3793 (last visited June 20, 2014). For his part, Verdaguer is renowned for writing the Catalan national epic, \textit{Canigó} (1886). \textit{See Jacint Verdaguer, \textsc{Lletra}, http://www.lletra.net/en/author/jacint-verdaguer/detail (last visited June 20, 2014).}

In 1866, Prim led a rebellion at San Gil barracks in Madrid, which prompted a widespread revolt by the military leaders against the reigning Isabella II. \textit{Payne, supra} note 20, at 463–64. The beleaguered queen left for exile in Paris in 1868, and revolutionary leaders eventually replaced her with an Italian prince, Amadeo of Savoy, in 1870. \textit{Id.}.

\textsuperscript{27}See \textit{Republican Left of Catalonia, Esquerra Republicana}, http://www.esquerra.cat/language/english (last visited June 20, 2014). \textit{Esquerra Republicana de Catalunya} is Catalan for “Republican Left of Catalonia.” \textit{Id.} Repressed during Franco’s dictatorship, the ERC began to regain power with
year, the newly minted Spanish Republic partially granted the ERC’s wish by recognizing Catalonia’s right to self-government—including a proprietary parliament, president, and prime minister—but stopped short of offering the total autonomy that the party sought.\textsuperscript{28} Unfortunately, even these restorative measures proved fleeting as an uprising led by General Francisco Franco in 1936 initiated the Spanish Civil War, which dovetailed into an oppressive dictatorship spanning the next four decades.\textsuperscript{29} In 1939, when Franco’s administration unilaterally abolished the outgoing Republic’s recognition of Catalonia’s autonomy and proclaimed Castilian the official language of the state, Catalonia once again found itself in a state of cultural repression—this time even more severe than the century of the \textit{Nueva Planta}.\textsuperscript{30}

\textbf{B. CATALONIAN AUTONOMY UNDER THE CONSTITUTION OF 1978}

Ultimately, the Francoist regime ended with Franco’s death in 1975, and leaders of the emergent Spanish democracy sought to

\textsuperscript{28} Colomines, \textit{supra} note 27, at 67–70. The Second Spanish Republic began in April 1931 when anti-monarchists swept elections throughout Spain and declared a new republic, prompting King Alfonso XIII to depart for exile in Rome. \textit{See id.} at 65–67. By December, the provisional government had approved a new Spanish Constitution, which generally provided “for full civil liberties and representative rights.” \textit{Payne, supra} note 20, at 632. Unfortunately, the new constitution included significantly anti-Catholic provisions, a point of contention that soon helped bring about the Civil War and the rapid demise of the Republic. \textit{See id.} at 632–43.

\textsuperscript{29} \textit{See Payne, supra} note 20, at 684–97.

\textsuperscript{30} At the end of the Civil War, Franco’s regime killed thousands of political opponents throughout Spain, while many others fled into exile. \textit{See Conxita Mir, The Francoist Repression in the Catalan Countries, 1 Catalan Hist. Rev. 133, 134–36 (2008).} Further, the official ban on dialects other than Castilian extended to all government, legal, and commercial matters, as well as schools, shop advertisements, and road signs. \textit{See id.} at 143. In many Catalan towns, citizens ceased to speak Catalan entirely other than in their own homes. \textit{See id.}
balance a policy of centralism with the strong territorial and cultural identities of Catalonia and other historically self-governing regions.

In an attempt to find a middle ground, the Constitution of 1978 declared its foundation to be in “the indissoluble unity of the Spanish Nation, [and] the common and indivisible homeland of all Spaniards,” while concurrently guaranteeing “the right to self-government of the nationalities and regions of which it is composed.” Despite this uncomfortable paradox at the heart of the new government’s charter, Catalan nationalists took some consolation in the constitution’s promise to “[p]rotect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.”

The new constitutional framework recognized seventeen such nationalities and regions, termed “Autonomous Communities,” and it provided them with two distinct paths to self-governance: a slow

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31 Centralism is defined as “the concentration of power and control” in a central authority for an organization or political system. Centralism Definition, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/centralism (last visited June 20, 2014).

32 Along with Catalonia, the Basque Region and Galicia were both granted statutes of autonomy under the Second Republic and both sought to reacquire their legal status as autonomous regions under the new constitution. See Daniele Conversi, The Smooth Transition: Spain’s 1978 Constitution and the Nationalities Question, 4 NAT’L IDENTITIES, 223, 232 (2002).


34 In Castilian: “Proteger a todos los españoles y pueblos de España en el ejercicio de los derechos humanos, sus culturas y tradiciones, lenguas e instituciones.” C.E., B.O.E. n. 311, Dec. 29, 1978, pmbl. (Spain), available at http://www.tribunalconstitucional.es/Lists/constPDF/Constituci%C3%B3nEspa%C3%B1a%20-%20Texto%20consolidado.pdf; see also Spanish Constitution, supra note 33, pmbl.
track and a fast track.\textsuperscript{35} The majority of the communities were bound to the standard "slow track" provisions of Article 143, which gave them the right to form a self-governing community.\textsuperscript{36} Under Article 148, after a period of five years, these "slow track" autonomous communities would be able to negotiate with the central government to "progressively enlarge their powers within the framework" of Article 149.\textsuperscript{37}

Alternatively, Article 151 provided a "fast track" to self-governance for those communities that were qualified as "historical

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36 Article 143 states:

(1) In the exercise of the right to self-government recognized in section 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Self-governing Communities . . . in conformity with the provisions contained in this Part and in the respective Statutes.

(2) The right to initiate the process towards self-government lies with all the Provincial Councils concerned or with the corresponding inter-island body and with two thirds of the municipalities whose population represents at least the majority of the electorate of each province or island. These requirements must be met within six months from the initial agreement reached to this aim by any of the local Corporations concerned.

(3) If this initiative is not successful, it may be repeated only after five years have elapsed.

C.E., B.O.E. n. 311, Dec. 29, 1978, art. 143 (Spain); see also Spanish Constitution, supra note 33, sec. 143.

37 C.E., B.O.E. n. 311, Dec. 29, 1978, art. 148 (Spain); see also Spanish Constitution, supra note 33, sec. 148.
\end{flushleft}
nationalities" under Article 143— the Basque Country, Catalonia, and Galicia—with the intention of swiftly restoring them to the recognized autonomy they had been granted by the Second Spanish Republic. Taking advantage of the opportunity to recover most of the rights to self-determination they had lost under Franco, Catalonia celebrated the passage of its Estatut d’Autonomia in 1979.

For Catalonia and the other fast-tracked autonomous communities, the Constitution of 1978 instituted a parliamentary system consisting of an elected Legislative Assembly, a President, an Executive Council and a High Court of Justice. As established

38 (1) It shall not be necessary to wait for the five-year period referred to in section 148, subsection 2, to elapse when the initiative for the autonomy process is agreed upon within the time limit specified in section 143, subsection 2, not only by the corresponding Provincial Councils or inter-island bodies, but also by three-quarters of the municipalities of each province concerned, representing at least the majority of the electorate of each one, and said initiative is ratified in a referendum by the overall majority of electors in each province, under the terms to be laid down by an organic act.

Spanish Constitution, supra note 33, sec. 151; see also C.E., B.O.E. n. 311, Dec. 29, 1978, art. 151 (Spain).

39 Initially, only Catalonia, the Basque country, and Galicia were offered the “fast track” to autonomy under the new constitution, but other regions were offered later. See Lewis, supra note 5.

40 Under the structure established by the Constitution of 1978, each of the seventeen autonomous communities in Spain has its own Estatut d’Autonomia, Catalan for “statute of autonomy,” which provides its basic institutional regulations, including the rights and obligations of its citizens, its political institutions and their relationship to the rest of Spain, and the government’s financing structure. See C.E., B.O.E. n. 311, Dec 29, 1978, arts. 143–48 (Spain); see also Spanish Constitution, supra note 33, secs. 143–48.

41 A parliamentary system is a democratic form of government in which the power to both make and execute laws is held by the parliament (or legislative) branch. See Parliamentary Government Definition, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/parliamentary%20government (last visited June 20, 2014). This stands in contrast to a “presidential” system (e.g., the United States), in which the legislative branch passes laws and the executive branch administers them. As opposed to a presidential system, the head of state in a parliamentary system is normally different than the head of government.

42 Article 152 states:
under Article 152, the Parliament of Catalonia represents the most powerful branch of government, and it is elected by universal suffrage through proportional representation of the territory. The President of Catalonia, elected and held accountable by the Catalan Parliament, oversees the Executive Council in the dispatch of its

(1) In the case of Statutes passed by means of the procedure referred to in the foregoing section, the institutional self-government organization shall be based on a Legislative Assembly elected by universal suffrage under a system of proportional representation which shall also assure the representation of the various areas of the territory; an Executive Council with executive and administrative functions and a President elected by the Assembly among its members and appointed by the King. The President shall assume leadership of the Executive Council, the supreme representation of the Community and the State's ordinary representation in the latter. The President and the members of the Executive Council shall be politically accountable to the Assembly.

A High Court of Justice, without prejudice to the jurisdiction of the Supreme Court, shall be the head of Judicial Power in the territory of the Self-governing Community. The Statutes of Autonomy may make provision for the circumstances and the manner in which the Community is to take part in the setting-up of the judicial districts of the territory. Provided that they must conform to the provisions of the Organic Act on the Judicial Power and to the principles of unity and independence of the judicial power.

Without prejudice to the provisions of section 123, successive proceedings, if any, shall be held before judicial bodies located in the same territory of the Self-governing Community in which the Court having jurisdiction in the first instance is located.

C.E., B.O.E. n. 311, Dec. 29. 1978, art. 152 (Spain); see also Spanish Constitution, supra note 33, sec. 152.

43 See C.E., B.O.E. n. 311, Dec. 29. 1978, art. 152 (Spain); see also Spanish Constitution, supra note 33, sec. 152.
executive and administrative functions.\textsuperscript{44} The High Court of Catalonia represents the highest judicial body within the territory,\textsuperscript{45} but it must function "without prejudice" to Spain's Supreme Court and must submit to governance by the General Council of the Judicial Power.\textsuperscript{46} In Catalonia, this collective body of political institutions is known as the Generalitat, representing the restoration of its governing entity of the same name, which was first established in the thirteenth century.\textsuperscript{47}

\textsuperscript{44} Once elected by the Legislative Assembly of an autonomous community, the President of that community must pass through the formality of official appointment by the King of Spain. C.E., B.O.E. n. 311, Dec. 29, 1978, art. 152 (Spain); see also Spanish Constitution, supra note 33, sec. 152.

\textsuperscript{45} The Tribunal Superior de Justicia (TSJ) is headed by its own chairman and is divided into three sections: the Civil and Criminal Court (\textit{Sala de lo Civil y Penal}), the Contentious Administrative Court (\textit{Sala de lo Contencioso y Administrativo}), and the Labor Court (\textit{Sala de lo Social}). See \textit{What is the HCJ Catalonia?}, PODER JUDICIAL ESPAÑA, http://www.poderjudicial.es/cgpj/en/Judiciary/High_Courts_of_Justice/HJC_Catalonia/Institutional_information/What_is_the_HCJ_Catalonia_ (last visited June 21, 2014).

\textsuperscript{46} The General Council of the Judiciary was established under Article 122 of the Constitution of 1978, and has administrative jurisdiction over all Spanish courts and judges, including the organization, operation, and internal functions of the courts. See C.E., B.O.E. n. 311, Dec. 29, 1978, arts. 122, 152 (Spain); see also Spanish Constitution, supra note 33, secs. 122, 152.

C. CATALONIAN SEPARATISM IN THE 21ST CENTURY

Since its reinstitution in 1979, the Generalitat has continued to make strides toward greater self-governance. Catalonia now enjoys exclusive jurisdiction over the environment, communications, transportation, commerce, public safety, local government, and many aspects of culture, while deferring to the central government regarding education, health, and justice. After sharing jurisdiction with Spain's Policía Nacional and Guardia Civil for decades, Catalonia's proprietary police force, the Mossos d'Esquadra, assumed full authority for law enforcement in Catalonia in 2008. Finally, while Catalonia is generally subject to the laws of the Spanish government, its historic civil code survives in certain areas of law, in particular for purchase and leasing agreements, family law, and inheritance law.

In 2005, the Catalan Parliament drafted and approved a proposal to reform its Estatut, which included a provision that would define Catalonia as a “nation,” as opposed to its current status as a “nationality,” along with other expansions of Catalan autonomy. After negotiations and amendments in the Cortes Generales, both


49 Initially formed in 1719 as the Esquadres de Catalunya (Catalonian Squad) to protect Catalonian citizens from crime during the War of the Spanish Succession, the Mossos d’Esquadra (Squad Lads) is “one of the oldest civil police forces in Europe.” See History of Mossos d’Esquadra, Nebur81 Police Patches Collector, http://nebur81.jimdo.com/about-mossos-d-esquadra/ (last visited June 20, 2014).

50 See id.


52 Along with granting Catalonia “nation” status, the proposed amendment to the Estatut gave the Generalitat greater power over taxation and judicial matters, as well as increased control over airports, ports, and immigration. See Catalonia Endorses Autonomy Plan, BBC News, http://news.bbc.co.uk/2/hi/europe/5091572.stm (last updated June 19, 2006).

53 The Cortes Generales is the bicameral Parliament of Spain, consisting of the Congreso de los Diputados (Congress of Deputies) and the Senado (Senate). See CORTES GENERALES, http://www.cortesgenerales.es/ (last visited June 20, 2014) (translation of site by author).
houses passed the proposal in May 2006 despite the lack of support from a divided Catalan Nationalist Party.\(^{54}\) When brought to a referendum vote in June of that year, the amendment passed easily with nearly 74% approval, although only 49% of the Catalan electorate turned out to vote.\(^{55}\) While Spain’s Prime Minister, Zapatero, maintained that the Catalan people had “spoken clearly” in favor of the amendment that would bring “greater recognition of the identity” of the region,\(^{56}\) members of the press concluded that the lackluster turnout reflected the electorate’s disillusion with a slow and uncertain path to independence, and a Catalan political leadership it perceived as ineffective in leading it there.\(^{57}\)

Six years later, fervor for separatism in Catalonia gained renewed momentum in the wake of Spain’s severe economic crisis.\(^{58}\) Ahead of the November 2012 elections, more than one million citizens took to the streets of Barcelona to demonstrate their desire for an independent Catalonia.\(^{59}\) While somewhat fueled by the historical arguments for independence, including discrimination against the Catalan language and culture,\(^{60}\) the demonstrations ahead of the November 2012 elections indicate that the current wave


\(^{55}\) Catalonia Endorses Autonomy Plan, supra note 52.

\(^{56}\) Id.


of Catalan separatism is focused on economic and political factors. Catalan nationalists argue that though they represent one of the most prosperous regions of the country, thereby funding a large portion of Spain’s government through their tax contributions, they are “short-changed” on the return of those funds through government spending to the tune of €16 billion per year. Making matters worse, the current economic crisis has battered Catalonia with a 22% unemployment rate coupled with significant cutbacks in health and education programs due to current national austerity measures.

The result of this groundswell has been a push for a referendum on Catalan independence in 2014 championed by the current president of the Generalitat, Arturo Mas. However, Spanish Prime Minister, Rajoy, has unswervingly maintained that any such referendum is illegal due to the “indissoluble unity of the Spanish nation” referred to in Article 2 of the Constitution of 1978. In September 2013, Mas affirmed that he is “absolutely determined” to bring the referendum to a vote in Catalonia, with or without Madrid’s approval.

II. THE RULE OF LAW, CORRUPTION, AND CATALONIA

In the highly connected global community of the twenty-first century, there is a renewed recognition of the necessity of nation-
building for new or developing states.\textsuperscript{68} Under today’s paradigm of a nascent government, the key to long-term development and conflict prevention is a state that can govern well.\textsuperscript{69} International governmental bodies, private foundations, and non-governmental organizations (NGOs) collectively invest billions each year to assist emerging nations,\textsuperscript{70} with the humanitarian aim of improving the well-being of their citizens and the self-interested goal of reducing the negative spillover effects that a new state’s failure could have on global stability and security.\textsuperscript{71}

In general terms, “the rule of law” is the authority and influence of law in a community, particularly as a constraint upon individual and institutional behavior, and is affected by factors such as government corruption, access to justice, enforcement of laws, and human rights.\textsuperscript{72}


\footnotesize{\textsuperscript{69} Id.}

\footnotesize{\textsuperscript{70} Order in the Jungle, \textit{Economist}, Mar. 13, 2008, at 83–85.}

\footnotesize{\textsuperscript{71} See id.}


\begin{quote}
[T]he rule of law refers to a system in which the following four universal principles are upheld:
I. The government and its officials and agents as well as individuals and private entities are accountable under the law.
II. The laws are clear, publicized, stable, and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
III. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
IV. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of
\end{quote}
Almost universally, the rule of law is regarded as a good unto itself and a cause of other positive trends, such as social advancement, and strong political participation. The World Justice Project maintains that establishing the rule of law is essential for any emerging nation that hopes to achieve "sustainable economic development, accountable government, and respect for fundamental rights."

While the international community now recognizes that the effective implementation of the rule of law plays a vital role in any new nation's success, there is also a broad consensus that "the degree of corruption within that state can fundamentally alter whether laws lift people up or ... pull them under." Corruption is an expansive term that may refer to a wide range of behaviors from lower-level "administrative" corruption, such as bribery of a mid-level bureaucrat, to "grand" corruption, such as a large corporation's promise of campaign financing to a national legislator to gain influence over policy at the highest level. The World Justice Project broadly characterizes corruption as "the use of public power for private gain," and—more specifically—as "a manifestation of the extent to which government officials abuse their power or fulfill their obligations under the law."

Corruption is typically thought to involve a monetary exchange, but its currency can be more insidious, such as a promise of future favor, an offer to secure a tenured job for a friend or family member, or a pledge of political support from a powerful interest group.

Transparency International contends that more extreme forms of corruption can lead to "the capture of the state itself, whereby

sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

Id.  
73 See Order in the Jungle, supra note 70.  
74 WJP INDEX 2012–2013, supra note 72, at 1.  
75 O'Donnell, supra note 68.  
76 Id. at 225.  
79 Transparency International (TI) is a leading non-governmental organization in the fight against corruption. From its headquarters in Berlin,
powerful individuals, institutions, companies, or groups use [it] to shape a whole nation’s policies, legal environment and economy to serve their own private interests." Other critics have asserted that widespread government corruption can effectively “derail political and economic transitions, undermine state capacity and legitimacy, exacerbate poverty, and inflame grievances linked to conflict.” As one commentator pointed out: “Corruption undermines both state effectiveness (the ability to govern) and state legitimacy (the recognition of the right to govern). While effectiveness may matter over time, legitimacy is essential for sustaining fragile states that are not yet effective.”

From the global economic community’s perspective, the degree of corruption within a state reflects the health of its government’s relationship with domestic business interests as well as its susceptibility to undue influence from international sources. In the late twentieth century, the consensus among economists was that in order for new states to grow, it was essential for them to “get the policies right” on matters like national budgeting and exchange rates. However, the collapse of the Asian markets in the late nineties and the financial difficulties of former Soviet states that had the “right” policies in place caused analysts to reexamine their thinking. Today, international economists place a greater focus on the “institutional setting of policymaking” and in particular, the rule of law, with the understanding that “[i]f the rules of the game [are] a mess, . . . no amount of tinkering with macroeconomic policy w[ill] produce the desired results.” At the same time, economic experts recognize that without effective efforts to control corruption, “well-connected” politicians and individuals in developing countries will often capitalize on the opportunity to “grab an unfair share of the

TI presently works in over 100 countries to raise awareness of the damaging effects of corruption and directs them to work with partners in government, business, and civil society to develop and implement effective measures to address corruption. See Who We Are, TRANSPARENCY INT’L http://www.transparency.org/whoweare/organisation (last visited June 21, 2014).

\(^{80}\) TRANSPARENCY INT’L, supra note 77, at 7.
\(^{81}\) O’Donnell, supra note 68, at 225.
\(^{82}\) Id. at 227.
\(^{83}\) See id. at 229.
\(^{84}\) Order in the Jungle, supra note 70.
\(^{85}\) Id.
\(^{86}\) Id.
spoils of growth."\(^{87}\) Left unchecked, these elements of corruption will ultimately slow—or even reverse—economic growth by discouraging outside investment.\(^{88}\)

In light of the current consensus on its effect on nation-building and economic development, corruption represents a force that could significantly disrupt Catalonia's potential success as an independent nation. Corruption in Spain degrades the rule of law for citizens in present-day Catalonia on two fronts. On one hand, the Catalans' frustration that the dishonesty of national politicians contributed to the current financial crisis fuels their distrust of the central government and thereby emboldens their desire for independence. On the other hand, evidence of corruption among Catalan representatives redirects that cynicism toward their own political institutions and thereby undermines the "legitimacy" and "effectiveness" of their current subnational government.\(^{89}\) Were Catalonia to achieve independence, this dynamic could have a significant impact on its success or failure as a new state.\(^{90}\)

### A. Catalonia's Anti-Corruption Framework

In present-day Catalonia, a tapestry of national, subnational, and international laws and institutions regulate corruption.\(^{91}\) Until the establishment of the Anti-Fraud Office of Catalonia in 2008, there was no consolidated strategy to fight corruption; consequently, the Spanish Parliament and the Parliament of the Generalitat passed anti-corruption laws on an ad hoc basis.\(^{92}\) In addition, European and other international bodies have added further layers of anti-corruption law that have affected efforts in Spain and Catalonia in recent years.\(^{93}\)

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\(^{87}\) Id.

\(^{88}\) See id.

\(^{89}\) See O'Donnell, supra note 68, at 227.

\(^{90}\) See id.


\(^{92}\) See id.

\(^{93}\) See infra, Parts II.A.4–6.
1. National Laws

The national anti-corruption framework was initiated by Ley 53/1984 de 26 de diciembre, which defines a prohibition against conflicts of interest for all government employees. With Ley 30/1992 de 26 de noviembre, the Parliament of Spain established the legal regime for the administration and the procedure of all government bodies, which also includes a duty to abstain from intervening in any proceeding in which they have a conflict of interest. Under this law, if a government employee "[has] a personal interest in the subject at hand or in another which could be influenced by the outcome of the current proceeding," that employee must immediately abstain from further intervention in the proceeding and communicate the conflict of interest to his immediate superior. In addition, a government worker must abstain from a matter if he has worked for "any natural person or legal entity with a direct interest in the subject" within the previous two years.

In Ley 7/2007 de 12 de abril, the Cortes Generales provides the basic statute for the duties of all public employees, including an obligation to perform all functions with a spirit of "equality, objectivity and transparency." Similar rules on conflicts of interest

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96 Such conflict explicitly includes having a blood relation of the fourth degree, or an "intimate friendship or manifest enmity" with any interested party, including the administrators of any related entity or organization with an interest in the outcome of the proceeding. Law on the Judicial Regime of Public Administration and of Common Administrative Procedure art. 28(2)(a) (B.O.E. 1992, 285), available at http://noticias.juridicas.com/base_dados/Admin/130-1992.t2.html (translation by author).

97 Id. art. 28(2)(e).


for all regional governments are provided for under Ley 5/2006 de 10 de abril.\textsuperscript{100}

2. Regional Laws

At the subnational level, the Generalitat has enacted its own legal regime to fight corruption. The code of duties and responsibilities for the Catalan Parliament are provided by Decreto Legislativo 1/1997 de 31 de octubre,\textsuperscript{101} which deems it a “very grave” offense for any member of Parliament to “violate neutrality or political independence” in any form.\textsuperscript{102} In 2005, the Spanish Parliament also approved a Code of Good Governance for the members of all regional governments with the express purpose of “avoiding any activity or interest that could compromise their independence or impartiality, or diminish the performance of their public duties.”\textsuperscript{103}

In 1987, the Ley 21/1987 de 26 de noviembre established the regulatory scheme for incompatibilities and conflicts of interest in Catalonia.\textsuperscript{104} With a predominantly fiscal perspective, the law

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\textsuperscript{101} Id. at art. 115(g) (translation by author).

\textsuperscript{102} Id. at art. 115(g) (translation by author).

\end{flushleft}
established obligations upon members of the Catalan government to ensure their "independence, impartiality and objectivity" in all of their functions.\textsuperscript{105}

3. The Anti-Fraud Office of Catalonia

In 2008, with the passage of \textit{Acto 14/2008 de 5 de noviembre}, the Anti-Fraud Office of Catalonia (\textit{Oficina}) was instituted in Barcelona to prevent and investigate corruption within the Catalan territory.\textsuperscript{106} While its Director ultimately reports to the Catalan Parliament, the Anti-Fraud Office was expressly established as an institution possessing its own legal personality, acting independently of other government departments in the exercise of its authority.\textsuperscript{107}

\begin{itemize}
\item[105] Id. at Exposición de Motivos [Explanation of Motives] (translation by author).
\end{itemize}

The sphere of action of the Anti-Fraud Office of Catalonia is the public sector of Catalonia, made up of the government of the \textit{Generalitat}, the local entities and the public universities, including in all cases their bodies and associated entities and public companies that report to them. In relation to the local entities and public universities, the [Office] acts in compliance with the principles of local and university autonomy guaranteed under the Constitution and the Statute of Autonomy of Catalonia.

\begin{itemize}
\item[107] The \textit{Oficina’s} independence as its own legal entity further fulfills the mandate of Article 6 of the UNCAC, which provides that
\end{itemize}

\begin{itemize}
\item[108] \textit{[e]ach State Party shall grant the body ... referred to ... the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body ... to carry out its ... functions effectively and free from any undue influence.}
\end{itemize}

Catalonia's leading anti-corruption body, the Oficina works to enhance the "establishment, the implementation, and the modification of . . . regulatory frameworks" by "promoting social values" that it hopes will stand as "obstacles to the emergence of [an uncritical] and resigned acceptance of corrupt practices" and stands as a constant guard against those that demonstrate a lack of integrity within the public and private sectors. In its investigative role, the Oficina is charged with making inquiry into cases of corruption punishable by "administrative penalty or criminal conviction," which it then brings to the attention of either the judiciary or public prosecutor.

Since its foundation in 2009, the Anti-Fraud Office's functions have included formal meetings with other national, regional, and international institutions to discuss initiatives and policies that address corruption. Each year, the director and his staff visit corresponding anti-corruption offices throughout the world in addition to attending a full slate of conferences held by bodies such as the European Forum on Anti-Corruption, the International Association of Anti-Corruption Authorities (IAACA), and the Organization for Economic Cooperation and Development (OECD).

While international forums have enhanced the Oficina's foundational knowledge and strategy, its primary work occurs within Catalonia. The Oficina regularly contributes to the legislative process through regulatory initiatives related to the prevention of corruption. In order to safeguard its institutional neutrality and

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109 Id.
111 See id.
independence, the Oficina makes its recommendations by testimony during the public information phase of regulatory creation.\footnote{See id.}

In addition, the Oficina provides anti-corruption training of public servants, both in Catalonia and in other regions of Spain.\footnote{See id. at 33–34.} Representatives coordinate on-the-job anti-corruption training in public and private offices as well as programs for students attending the School of Public Administration of Catalonia, the Judicial Law College, and various universities throughout Spain.\footnote{See id.} Finally, the Oficina conducts studies and data collection projects with the purpose of understanding the scope of corruption within Catalonia and discerning the best methods for confronting it.\footnote{See id. at 36–37.}

The creation of the Oficina represented a fulfillment of Article 6 of the United Nations Convention Against Corruption (UNCAC), which exhorts its signatory parties to establish specialized and independent entities to prevent and investigate corruption.\footnote{See id., art. 6.1. The relevant text of Article 6 states:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in . . . this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

Id.} It is of note that while it is Spain who is a party to the UNCAC, and not Catalonia, the Oficina is seated in Barcelona and has the primary responsibility of regulating corruption in the Catalan territory. Therefore, the creation and function of the Oficina arguably falls short of fulfilling Spain’s mandate under Article 6 of the UNCAC and the Oficina has done less than it might have to cure what ails Spain’s national anti-corruption framework as Catalonia is not the only Spanish territory ridden with corruption.\footnote{See id; see also supra, note 106 and accompanying text.}

On the other hand, a February 2014 report by the European Commission on anti-corruption efforts in the EU applauds the Anti-Fraud Office of Catalonia for “achiev[ing] a solid track-record of investigations and
prosecutions, including in high-level cases involving allegations of complex schemes of illegal party funding.”

4. European Union Law

As a member of the European Union (EU), Spain and its territories are also subject to EU laws and treaties governing the codes and duties of public officials. In May 1997, Spain signed the Convention on the Fight Against Corruption Involving Officials of Member States of the European Union, which requires that all member states take necessary measures to make acts of corruption criminal offenses punishable by “effective, proportionate and dissuasive criminal penalties.”

On May 10, 2005, Spain signed on to both the Criminal and Civil Law Conventions on Corruption established by the Council of Europe. When first introduced in 1999, these conventions

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indicated the EU members’ recognition of the significant threat of corruption to the rule of law and the “importance of strengthening international co-operation in the fight against” it. 125 The Criminal Law Convention on Corruption establishes clear guidelines for the criminalization of corruption and for the international collaboration in its prosecution. 126 For its part, the Civil Law Convention on Corruption “attempt[s] to define common international rules” for corruption under civil law and specifically “requires states to provide legal remedies . . . for persons who [suffer] damage[s]” resulting from corruption. 127 In addition, Article 14 of the Civil Law Convention established the Group of States Against Corruption (GRECO), which is an EU body responsible for monitoring the member states’ compliance with the Criminal and Civil Conventions on Corruption as well as future EU anti-corruption instruments. 128


125 Civil Law Convention on Corruption, supra note 123, at pmbl.; Criminal Law Convention on Corruption, supra note 122, pmbl. (“Believing that an effective fight against corruption requires increased, rapid and well-functioning international co-operation in criminal matters.”).


128 See Civil Law Convention on Corruption, supra note 123, art. 14 (“The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.”); Council of Europe Civil Law Convention on Corruption, supra note 127.
5. United Nations Convention Against Corruption

In September 2005, Spain became a signatory to the United Nations Convention Against Corruption (UNCAC), both as a nation and as a member of the European Union. Similar to the EU criminal and civil anti-corruption conventions, the UNCAC focuses on the prevention and criminalization of corrupt acts and practices, international cooperation, and legal measures. In addition, the UNCAC provides model preventative policies such as recommendations that signatory nations institute independent anti-corruption entities and enact laws that promote greater transparency in the financing of political parties and election campaigns. The Convention also represents a significant development in the area of legal remedies, which it terms “asset recovery.” Article 51 provides legal and procedural means by which illicit assets, that were moved to another country for protection, may be recovered by a state or a private party through international cooperation.

6. OECD Convention on Combating Bribery

As a founding member of the Organization for Economic Cooperation and Development (OECD), Spain has committed itself to international policies that recognize economic interdependence and a global standard for public and private business transactions. In December 1997, Spain signed the OECD’s

130 See UNCAC, supra note 107, pmbl.
131 Id. art. 6.
132 See id. arts. 14, 15.
133 Id. pmbl.
134 See id. art. 51, 52.
Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention), which entered into force within all Spanish territories in March 2000. The primary thrust of the Anti-Bribery Convention is a requirement that each of its signatories implement laws that criminalize the act of bribing a foreign public official. Though the OECD retains no authority to enforce the Convention, it utilizes a

Canada to form the OECD, which was born out of the previous Organization for European Economic Cooperation (OEEC), which was established in 1948 to carry out the post-World War II reconstruction of Europe under the Marshall Plan. See id.


138 See OECD Ratification Status, supra note 137.

139 See OECD Convention, supra note 137, art. 1, ¶ 1

Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official . . . in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

Id.

\section*{B. RECENT ANALYSIS OF CORRUPTION IN SPAIN}

While the layering of subnational, national, EU, and international law provides a substantial legal framework for the prevention and eradication of corruption within Spain, recent assessments by international organizations have pointed out significant weaknesses that leave Spain's central, regional, and local governments vulnerable to corruption. In the last two years, reports by the World Justice Project, Transparency International, and the OECD collectively suggest that the current legal and governmental institutions in Spain are significantly lacking in the prevention and investigation of corruption in many forms.

1. The World Justice Project

The World Justice Project's 2012–2013 Rule of Law Index (WJP Index) ranked Spain ninth out of sixteen Western European nations that were evaluated for the absence of corruption.\footnote{See WJP INDEX 2012–2013, supra note 72, at 139. The WJP publishes an annual quantitative assessment “of the extent to which countries adhere to the rule of law ... in practice.” Id. at 2. The WJP examines “48 rule of law indicators organized around nine conceptual dimensions: limited government powers; absence of corruption; order and security; fundamental rights; open government; regulatory enforcement; civil justice; criminal justice; and informal justice.” Id. at 1. Project administrators compile data by administering pointed questions to a representative sample of the general public and local experts and by analyzing and crosschecking the results with a rigorous triangulation methodology. See id. at 12.} This result represents a slight improvement over Spain's marks for corruption in the previous WJP Index, when it ranked eleventh among the twelve European peers evaluated.\footnote{MARK DAVID ARGAST ET AL., THE WORLD JUSTICE PROJECT RULE OF LAW INDEX, at 95 (2011), available at http://worldjusticeproject.org/sites/def
has assessed that the Spanish government is still lacking in the prevention of corruption in the Legislative Branch, as well as in its civil justice system.\textsuperscript{143}

2. Transparency International

In a similar vein, Transparency International’s (TI) most recent evaluation of the Spanish political system suggests that conditions are ripe for corruption in all three major branches of government, as well as the areas of campaign financing and lobbying.\textsuperscript{144} Throughout the report, TI refers to the dominating influence of the two major political parties in Spain\textsuperscript{145}—the liberal Partido Socialista Obrero Español (PSOE) and the conservative Partido Popular (PP).\textsuperscript{146} The report points out that in Spain’s legislative branch, because the PSOE and PP leaders—rather than the Spanish citizenry—effectively decide if members of Parliament (MPs) stay on the party list of acceptable candidates, the MPs’ greater loyalty is “to their party leaders than to their constituency.”\textsuperscript{147} This emphasis on party loyalty effectively limits an MP’s independent vote and discourages
whistleblowing. In TI’s view, a system of closed and blocked voting lists further exacerbated the situation, which reduces public accountability for the MPs, while increasing the party leaders’ ability to “maintain strong control over the representative bodies on the national, regional and local level.”

As for the Executive Branch, TI asserts that the major political parties also possess excessive influence over key administrative bodies. The Spanish Court of Audit (Tribunal de Cuentas), for example, holds the ultimate responsibility for regulating and examining government accounting and financial management, as well as campaign financing and electoral processes. Though the Tribunal de Cuentas was established as an independent legal institution, TI maintains that the two major political parties exercise an unhealthy measure of control over the Court’s decisions because of their power within the political sphere. The report concluded that there now exists a significant backlog of the Tribunal de Cuentas’ supervisory capacity, because the Tribunal de Cuentas is currently overwhelmed with allegations of corruption and mishandling of funds.

The TI report also expresses concern for Spain’s current system of political and campaign financing. Although public funds provide 90% of the political parties’ funding, the PSOE and the PP have become increasingly reliant on bank loans in recent years in order to take on additional expenses. TI contends that this “excessive reliance on the financial sector” led to the politicization of the Cajas de Ahorros, and ultimately contributed to the recent failure of the banking system.

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148 Id.
149 Id.
150 See id.
152 See Corruption by Country/Territory: Spain, supra note 144.
153 See d.
154 See id.
155 Id.
156 See id.
Finally, TI calls attention to the complete lack of lobbying laws in Spain. Though legislation was submitted to Parliament in March 2012 that would have required Parliament to "register and control lobby activities," it was ultimately rejected. Currently, Parliament is reconsidering legislation to regulate lobbying activities.

3. The Organization of Economic Cooperation and Development

From a global economic standpoint, the Organization for Economic Cooperation and Development (OECD) recently expressed concern for the absence of foreign bribery convictions in Spain. Though Spain ostensibly fulfilled its commitment under the OECD Anti-Bribery Convention by amending its penal code to make bribery of a public official a crime in January 2000, a December 2012 report by the OECD Working Group on Bribery expressed

157 Id.
158 Id.
160 In the present day, the OECD works with member nations from its headquarters in Paris to “promote policies that will improve the economic and social well-being” of their citizens. About the OECD, ORG. FOR ECONOMIC CO-OPERATION & DEV., http://www.oecd.org/about/ (last visited June 1, 2014).
163 The Working Group on Bribery consists of the thirty-four OECD member nations “plus Argentina, Brazil, Bulgaria, Colombia, Russia, and South Africa.” OECD Seriously Concerned by Absence of Foreign Bribery Convictions in Spain, supra note 161. The report was based on an on-site visit by a Working Group evaluation team including lead experts from Brazil and Chile and members of the OECD Secretariat. OECD, PHASE 3 REPORT
"serious concerns that, almost 13 years after the entry into force" of Spain's anti-foreign bribery law, only seven investigations had been opened, and thus far no individual or company was ever prosecuted or sanctioned for the offense.\textsuperscript{164}

Turning its attention to the current state of Spain's anti-bribery laws, the Working Group recognized that Spain had addressed the deficiencies pointed out in the OECD's \textit{Phase 2} review through a 2010 amendment that increased the penalties for foreign bribery to anywhere from two to six years imprisonment, raised fines, and extended the statute of limitations period to ten years.\textsuperscript{165} On the other hand, the Working Group voiced concerns that a separate law, which prohibited the bribery of European officials, reflected the same insufficiencies as the original foreign bribery law; the Working Group recommended that Spain consolidate the general foreign-public official and European official anti-bribery laws to remove inconsistencies.\textsuperscript{166}

Finally, the OECD Report recommended that Spain make another amendment to its 2010 anti-foreign bribery regime to remove the statute's exclusion of "State owned enterprises" from such liability.\textsuperscript{167}

\textbf{C. CORRUPTION AND THE SPANISH CITIZENS}

In the years since the global economic crisis began, concerns for the Spanish government's vulnerability to corruption\textsuperscript{168} have come to fruition right before the citizenry's eyes.\textsuperscript{169} The Friedrich Naumann Foundation reported that an estimated 730 elected Spanish politicians

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\textsuperscript{164} Id. at 5.
\textsuperscript{165} Id.
\textsuperscript{166} See id.
\textsuperscript{167} OECD, PHASE 3 REPORT, \textit{supra} note 163, at 5.
\textsuperscript{168} See supra Part II.B.1–3.
\end{flushleft}
were facing prosecution in corruption cases as of June 2013.\textsuperscript{170} Suffering under severe austerity measures and unemployment rates that have resulted in part from fiscal irresponsibility and corruption by their politicians and national leaders, Spanish citizens have regularly taken to the streets to demonstrate their anger and frustration.\textsuperscript{171}

The most infamous example of national party corruption surfaced in January 2013, when the Madrid-based newspaper, \textit{El Mundo}, alleged that former Popular Party Treasurer, Luis Barcenas, had distributed thousands of euros to party officials.\textsuperscript{172} "Construction firms, insurance companies and anonymous donors" allegedly provided illicit kickbacks and Barcenas then hid the money in Swiss bank accounts.\textsuperscript{173} At the municipal level, judgments were handed down in October 2013 in Spain's largest-ever corruption trial, which involved "widespread real estate fraud and bribery," and which implicated three former mayors, former government officials, business representatives, and attorneys in Marbella.\textsuperscript{174}

Even the Spanish royal family has been implicated in this "culture of corruption." Princess Cristina's husband, Inaki Urdangarin, appeared in court in 2012 to answer allegations of embezzling public funds paid by regional governments through a charitable organization he chaired in Mallorca from 2004 to 2006.\textsuperscript{175} In January 2014, a magistrate judge named the Princess as an official suspect based on the suspicion that she knew about her husband's

\textsuperscript{170} The Spanish Slump – Political Crisis and the Need for Institutional Reform, FÜR DIE FREIHEIT (June 17, 2013), http://fnf-europe.org/2013/06/17/the-spanish-slump-political-crisis-and-the-need-for-institutional-reform/.

\textsuperscript{171} See id.; Corruption by Country/Territory: Spain, supra note 144.

\textsuperscript{172} Anger Mounts over Corruption in Recession-Hit Spain, supra note 170.

\textsuperscript{173} Id.


\textsuperscript{175} Tom Burridge, Why Spain's Princess Christina is in Court, BBC NEWS (Feb. 5, 2014), http://www.bbc.co.uk/news/world-europe-26047722; see Anger Mounts over Corruption in Recession-Hit Spain, supra note 169.
alleged wrongdoing; she may have even spent some of the proceeds on personal expenses.\footnote{Burridge, supra note 175; Spain’s Princess Christina in Court over Corruption Case, BBC NEWS (Feb. 8, 2014), http://www.bbc.co.uk/news/world-europe-26094035.}

While Catalan separatists might hope to exploit widespread outrage with the national government to their advantage, the Nationalist Party of Catalonia suffered its own major corruption scandal at the height of the public outcry.\footnote{See Tom Clarke, El Mundo’s Corruption Allegations – A November Surprise, THEBADRASH.COM (Nov. 21, 2012), http://www.thebadrash.com/2012/11/21/el-mundos-corruption-allegations-a-november-surprise/; Prominent Catalan Politician Charged in Spain Corruption Case, REGIONAL ANTI-CORRUPTION INITIATIVE (Mar. 19, 2013), http://www.rai-see.org/news/world/3611-prominent-catalan-politician-charged-in-spain-corruption-case.html [hereinafter Corruption Case].} In November 2012, allegations surfaced that Oriol Pujol, the Secretary General of the leading Catalan Nationalist Party, and son of the former President of the Generalitat, had abused his political influence over “vehicle inspection center contracts for personal gain” in the millions of euros.\footnote{Corruption Case, supra note 177.} Clearly aware of the potential for damage to the public trust in his government, Catalan President, Arturo Mas, called a summit of regional government leaders in February 2013 through which he officially recognized the recent evidence of corruption as a major concern for Catalan citizens and vowed to find solutions that would “clean up” the problem.\footnote{See Gaspar Pericay Coll, High-Level Meeting in Catalonia to Improve the Fight Against Corruption After the Latest Scandals, CATALAN NEWS AGENCY (Feb. 6, 2013), http://www.catalannewsagency.com/politics/item/high-level-meeting-in-catalonia-to-improve-the-fight-against-corruption-after-the-latest-scandals.} After a second meeting, the participants published a document proposing fifty-one specific measures to address the issues of corruption in Catalonia, including greater transparency in the salaries of public officials, internal audits by political parties, and greater resources for the courts investigating...
corruption scandals. Further, Mas appeared before a Catalan Parliament committee in July 2013 to disavow any knowledge of a connection between his party and the illicit funds from the Pujol scandal, though many observers concluded that considerable damage to the Catalan people’s trust in their government was already done.

III. CORRUPTION AND AN INDEPENDENT CATALONIA

While the realization of an independent Catalonia is far from certain in such a volatile political and socioeconomic environment, the question remains whether corruption would “undermine state capacity and legitimacy” in a newly independent Catalonia and effectively “derail” the “political and economic transition.” Although the political consequences of corruption can be “difficult to quantify,” the general consensus is that “growing perceptions of corruption diminish trust in public institutions.”

In a similar vein, while uncovering corruption is essential to rooting out the problem, exposing corrupt political institutions and actors can cause further political destabilization, which is only intensified by “excessive expectations on the part of both voters and international actors.”

Recent reports confirm that the Spanish population has developed a profound mistrust in its politicians and political parties

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182 See, e.g., 51 Measures, supra note 180; Corruption Case, supra note 177.

183 O'Donnell, supra note 68, at 225.

184 Id. at 230.

185 Id. at 231.
in recent years. The OECD’s *How’s Life? 2013 Measuring Well-Being* report, published in November 2013, confirmed that since the global financial crisis began in 2007, the number of Spanish citizens who trust their government has fallen from 48% to 34%. Furthermore, the *EU Anti-Corruption Report* released by the European Commission in February 2014 revealed that 95% of Spanish citizens believe that corruption is widespread in Spain. The Commission also found that among all EU-member nations, the people of Spain were most likely to respond that corruption personally affected them, and that their political parties were not sufficiently transparent and supervised.

While these reports suggest a general lack of trust among Spaniards in their political figures and institutions, the more relevant inquiry is how well Catalans trust the Catalan political system and how it could affect their future as an independent nation. As critic Maureen O’Donnell asserts, in a nation at a “critical juncture,” such as a post-separation transition, “perceptions of corruption” can determine “whether, in the eyes of much of society, the state is the solution or the problem.” Though the Catalans’ trust in their own government, politicians, and separatist party leaders is not easily measurable, it is likely that a general mistrust in the central Spanish government may be transferred to the Catalan government and its actors if they are perceived to be similarly corrupt.

In November 2013, a poll of Catalan citizens taken by the Madrid newspaper *El País* suggested that Catalans are “profoundly discontented” with Spain’s obstinacy toward their plea for independence, as well as the leadership of Catalan President, Arturo

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188 *EU Anti-Corruption Report*, supra note 119, at 6.
189 Id., at 7. Greece and Spain tied with 63% of citizens polled responding that they believe they are personally affected by corruption. *Id.* Eighty-seven percent of Spanish citizens respondents said that their political parties are not sufficiently transparent and supervised. *Id.*
Mas.\textsuperscript{191} Regional news sources, like the Barcelona-based \textit{Catalan News Agency}, also acknowledge that the recent reports of corruption among Catalan political leaders have resulted in massive "outrage and concern" among citizens, in addition to an increasing "detachment toward politics and democratic institutions."\textsuperscript{192}

For its part, The Catalan Project, a London-based office of the Catalan National Assembly working to advance the dialogue on independence, openly recognizes essential flaws in the current system of government, including the politicization of the administrative appointments and a lack of protection for whistleblowers, which have caused Spain to lag behind other European nations in preventing corruption.\textsuperscript{193} Taking an optimistic viewpoint, The Catalan Project maintains that if Catalonia were able to start from scratch as an independent nation, it could enact laws that would allow it to reach the levels of integrity in the governments of the northern European nations.\textsuperscript{194}

According to O'Donnell, the "objective" of anti-corruption efforts should not always be viewed "in terms of eliminating corruption," but "in terms of ensuring that the state is seen to be making a credible effort to address it."\textsuperscript{195} From this perspective, it is significant that Mas's administration has publicly acknowledged the gravity of the current problem and is making considerable efforts to improve the situation.\textsuperscript{196} Though they face an uphill battle, Catalan leaders must continue to take steps to improve the public confidence in their leadership and in the integrity of Catalonia's political system. If the Catalan people ultimately succeed in gaining their independence, the perception that the government is moving away from corruption and toward political integrity may very well allow them to make a successful transition.


\textsuperscript{192} \textit{51 Measures}, supra note 180.


\textsuperscript{194} See id.

\textsuperscript{195} O'Donnell, supra note 68, at 227.

\textsuperscript{196} See, e.g., \textit{51 Measures}, supra note 180.
CONCLUSION

In the final analysis, it is likely that the Catalan people’s lack of trust in their politicians and government institutions would represent a critical issue for a newly independent Catalonia. On the positive side, Catalonia has long been a part of one of the world’s most developed nations, and has functioned as an autonomous government to varying degrees throughout the centuries. It is also fortunate that Catalonia’s regional government already has a substantial framework of anti-corruption laws and institutions in place, including the Anti-Fraud Office, which has been the leading body for anti-corruption efforts in Spain since 2008.\footnote{See Anti-Fraud Office Annual Report, supra note 112, at 13.} While corruption would certainly be a significant obstacle for a newly independent Catalonia, it would not be an insurmountable one if Catalan leaders were able to convince the public that they are moving toward the eradication of corruption from their government institutions and the renewal of political integrity.