Terrorism and Party Politics: The illegalization of Sinn Féin and Batasuna

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Abstract
In the paper I address the empirical puzzle arising from different responses by political authorities in Spain and the UK to the existence of political parties integrated in the terrorist groups Euskadi Ta Askatasuna (ETA, Basque Homeland and Freedom) and the Irish Republican Army. More specifically I address the question of why the political parties, Herri Batasuna (and successors) were banned, while Sinn Féin and the Republican Clubs both enjoyed periods of legality and illegality during periods in which they were involved in (separate) violent campaigns against established authorities. I adopt a ‘discursive institutionalist’ approach and argue that decisions to ban the political parties linked to the IRA and ETA can be explained at least in part by the dominance of a ‘discourse of intolerance’ in which proscription is seen predominantly as a problem of law and order; the banned party is deemed ‘abnormal’ and thus unworthy of usual privileges and entitlements; and where proscription is seen to positively contribute to ending violent conflict. In contrast, parties were legalized when a ‘discourse of tolerance’ predominated in which the role of parties for realization of free speech rights and representation is also emphasized, and where proscription is seen as inimical to resolution of conflict underpinning violence. In the context of party competition, a winning coalition is required for one discourse to predominate. However, I also argued that both ideas and institutions matter; varying institutional structures and norms empower different actors in the two countries with the result that unlike the UK, the judiciary are veto players in Spain and are able to overturn preferences of political parties on matters of proscription if they have not been in agreement.
Introduction

Following the death of General Francisco Franco in 1975, the Spanish state legalized all political parties and took a permissive stance on the legality of anti-system parties, such as the radical Basque nationalist party *Herri Batasuna* (HB). However, in 2003, the Spanish Supreme Court banned *Herri Batasuna* and its successors *Euskal Herritarrok* (EH) and *Batasuna* for integration in a terrorist network led by *Euskadi Ta Askatasuna* (ETA, Basque Homeland and Freedom). Between 2003 and 2012, efforts to revive *Batasuna* under a different guise were blocked by the government and ultimately the courts (See Table 1). For its part, *Sinn Féin* has moved in and out of legality over its long history and its status has varied according to territorial jurisdiction (See Table 2). Of particular relevance is the fact that *Sinn Féin* was banned in Northern Ireland in 1956 as one of a series of measures in response to the inauguration of the Irish Republican Army’s (IRA) Border Campaign 1956-1962. Reformed under the name of the Republican Clubs, *Sinn Fein* was again banned in Northern Ireland in 1967. Nevertheless, in a striking contrast to the case of *Batasuna* in Spain, the Republican Clubs and *Sinn Féin* were legalized in 1937 and 1974 respectively, following British military intervention in Northern Ireland and the resumption of direct rule from Westminster. In short, all of these parties enjoyed periods of legality and illegality, despite their implication in violent campaigns against established authorities conducted by either of the paramilitary groups ETA or the IRA.

This is the empirical principal puzzle I address in the paper: *why do parties implicated in similar strategies of violent confrontation with established authorities in the pursuit of anti-system goals receive different treatment a) at different times and b) in different states?*

However, this research question also sheds light on the principal question posed in a broader comparative research project examining rationales for the proscription of various types of political parties, including far right, communist, minority nationalist, separatist and Islamist parties in democratic, democratizing and semi-democratic regimes (Bourne 2011a, Bourne 2011b, Bourne 2012). The broader research project examines the validity of hypotheses generated from existing, mostly descriptive studies of individual party bans. One of the hypotheses is that democracies ban anti-system parties that do not unambiguously reject violence.
Comparative research on the grounds for proscription show violent behaviour is almost always sufficient cause for illegalisation (Finn, 2000: 60-1). Obvious examples of parties banned because of their involvement in acts of violence, or perceived links to those who commit (or previously committed) acts of political violence, include former fascist parties banned in Germany, Austria and Italy after the end of World War Two. The National Democratic Party (Austria) was banned for reactivating national socialist ideas, but also conducted a terrorist campaign pursuing the return of the predominantly German-speaking region of South Tirol to Austria (Degenhardt, 1983: 402, 455). The Communist Party of the Soviet Union/Russia was (partially) banned for being an accomplice in the 1991 August coup attempt against Soviet President Mikhail Gorbachev (Feofanov, 1993: 637). The Communist Party of Latvia was also banned for supporting the August 1991 coup against Gorbachev and involvement in an unsuccessful coup attempt against the pro-independence Latvian government and legislature. In 2003, Turkey’s Constitutional Court banned the only legal Kurdish party, the People’s Democracy Party claiming it had links with the militant separatist Kurdistan Workers Party (Güney and Başkan, 2008: 275).

Something less than direct or indirect implication in violent acts has been grounds for proscription in other cases, including advocacy of certain kinds of anti-democratic ideology (Finn, 2000: 60-1). The Socialist Reich Party and the Communist Party of Germany were banned in the Federal Republic of Germany in, respectively, 1952 and 1956, even though they did not pose a clear and present danger to the democratic system (ibid, Kirchheimer, 1961: 151). However, the German parties, and others banned for anti-democratic ideas, have espoused ideologies linked with preferences for revolutionary struggle, terrorism, militarism and the glorification of violence, which may sometimes amount to support for, or at best ambiguity over, the appropriateness of violent political struggle.

As it should already be clear, however, the hypothesis that democracies ban anti-system parties that do not unambiguously reject violence is problematic in the two cases I examine here: both Batasuna (or its successors) and Sinn Féin enjoyed periods of legality despite their implication in strategies of violent confrontation with established authorities in the pursuit of anti-system goals. The second objective of this paper, then, is to explore why these latter two cases differ from the more general

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1 Ždanoka v. Latvia, 58278/00, European Court of Human Rights, 2006.
pattern by which democracies ban political parties that do not clearly reject violence to achieve political ends.

The research question posed - why do parties implicated in similar strategies of violent confrontation with established authorities in the pursuit of anti-system goals receive different treatment a) at different times and b) in the different states - lends itself to a ‘most similar system’ comparative research design (Landman, 2007, 72). In this approach, case selection is guided by the need to ‘compare political systems that share a host of common features in an effort to neutralise some differences while highlighting others’ (ibid). Regarding the two countries examined in this paper, relevant similarities include, first and foremost, the existence of ‘nationalist terrorist’ organisations, namely ETA and the IRA, which pursue independence or greater autonomy for some territory (Sánchez Cuenca, 2007, 284). Strategically, both organisations employed a long-term, low-intensity ‘war of attrition’ with their respective states in which violence was used to reach the ‘resistance threshold of the state, [that is] the point beyond which the state is better off making concessions rather than resisting’ (ibid, 294). Furthermore, both organisations were embedded within broader social movements and developed what became a politically salient, if sometimes abstentionist, ‘political wing’, in the case of ETA, HB and Batasuna (among others) and in the case of the IRA, Sinn Fein. In other words, these parties were instances of a ‘political front’, which ‘emerge from the terrorist group’, are ‘usually subordinate to the terrorist organisation’ and are ‘umbellically linked to the terrorist group…[through the] cross or dual membership that exists between them’ (Richards 2001, 73).

Nevertheless, some important differences between the cases remain. Sánchez succinctly summarises some crucial differences as follows:

…the IRA’s campaign took place in the context of an ethnic conflict between two communities divided by religion. The IRA fought against Britain, but also against loyalist paramilitary organisations. Many killings of protestant civilians and paramilitaries were the result of retaliation and sectarian warfare. In the Basque Country, ETA has tried to avoid sectarian killings and the conflict has not involved a clash of communities between nationalists and non-nationalists, despite the fact that the Basque Country received 468,000 immigrants from the rest of Spain…Generally speaking, terrorists have mainly acted against a single enemy, the Spanish state (2007, 292-3).
In the paper, I begin with a presentation of cases of party bans in the two countries and the legal framework through which these acts of proscription took place. I then turn to discuss the institutional framework in which proscription takes place, which I argue is important for understanding differences of approach in the UK and Spain. In the final section I discuss the ‘proscription dilemma’ posed by the existence of anti-system parties in democratic states and describe two contrasting constructions of the ‘appropriate response’ to this dilemma observed in the political speech of party spokespersons in Spain and the UK.

I argue that decisions to ban the political parties linked to the IRA and ETA can be explained at least in part by the predominance of a ‘discourse of intolerance’ in which proscription is seen predominantly as a problem of law and order; the banned party is deemed ‘abnormal’ and thus unworthy of the usual privileges and entitlements of parties; and where proscription is seen to positively contribute to ending violent conflict. In contrast, parties were legalized when a ‘discourse of tolerance’ predominated in which the role of parties for realization of free speech and representation is also emphasized, and where proscription is seen as inimical to resolution of conflict underpinning violence. I also argue that in the context of party competition, a winning coalition is required for one discourse to predominate. However, I also argued that both ideas and institutions matter. Adopting an ‘discursive institutionalist’ approach (Schmidt, 2008), I argued that varying institutional structures and norms empower different actors in the two countries with the result that in Spain the judiciary have been veto players able to overturn preferences of political parties on matters of proscription if they have not been in agreement.

**Party bans in the United Kingdom**

The relevant legal framework governing the legal status of republican parties and associations is more complex, in part due to the movement’s longer history of struggle (against a democratic rather than authoritarian regime in the Spanish case), and the changing legal status of the territorial framework in which that struggle occurred. In July 1918, when Ireland formed part of the United Kingdom of Great Britain and Ireland, Sinn Fein Organisation and Sinn Fein Clubs, along with a number of other republican organisations, were declared ‘dangerous’ associations in accordance with the Criminal Law and Procedure (Ireland) Act 1887.\(^2\) They were so characterised because authorities were ‘satisfied’ that ‘said associations in part of Ireland encourage and aid persons to

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\(^2\) ‘Sinn Fein Proclaimed’, *The Times*, 4 July 1918, p. 7
commit crime and promote and incite to acts of violence and intimidation and interfere with the administration of law and disturb the maintenance of law and order’. Moreover, they were deemed a ‘grave menace designed to terrorize peaceful and law abiding subjects’. In November 1919, following the start of the Irish war of independence (1919-21) and the December 1918 Westminster election, when Sinn Fein it won 73 out of 105 seats and after which Sinn Fein formed the successionist Dáil Éireann, these organisations were ‘prohibited and suppressed’ in accordance with the same legislation.\(^3\)

Following enactment of the Government of Ireland Act (1920), which permitted establishment of the Northern Ireland state, political parties and other organisations could be proscribed in Northern Ireland under the Civil Authorities (Special Powers Act) of 1922 (henceforth Special Powers Act). The Special Powers Act gave northern Irish authorities extensive powers for ‘preserving the peace and maintaining order’ in Northern Ireland. Regulation 24A made it an offence for any person to become or remain a member of an unlawful association, or to act with a view to promoting the objects of an unlawful association or seditious conspiracy. It was also an offence to be in possession of documents relating to the affairs of an unlawful association unless it could be proved that someone found to be in possession of such documents had no association with the unlawful organisation. The Irish Free State, where the IRA was banned in 1936 by Éamon de Valera’s Fianna Fáil government (Patterson, 2006, 20) and other republican groups faced restrictions, Sinn Féin was not banned (Hanley 2002, 94).

In addition to various organisations, five parties were banned under the Special Powers Act between 1922 and 1972. When the Act came into force, authorities soon banned (on 22 May 1922) five republican organisations - The Irish Republican Brotherhood, the IRA, the Irish Volunteers, the republican women’s organisation Cumann Na m’Ban and the youth organisation Fianna Na h’Eireann.\(^4\) The parties were banned in the midst of ‘a brief but bloody challenge to Unionist supremacy’ by republicans (Fitzpatrick, 1998, 117, Patterson, 2006, 3). From its foundation the

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\(^3\) ‘Sinn Fein. Suppression all over Ireland. New Proclamation’, \textit{The Times}, 27 November 1919, p. 14. However, as Campbell notes by the summer of 1920, ‘doubts were being voiced about the wisdom of having prohibited and suppressed Sinn Fein, largely because the ban was proving unworkable. In fact the party’s standing was considerably enhanced by results of the local elections of January and June 1920, while the activities of the IRA continued to grow’ (1994, 25) Of the 127 corporations and town councils, Sinn Fein controlled 72 completely and a further 26 in collaboration with other nationalists. The party dominated 28 out of 33 County Councils, 182 out of 206 Rural District Councils, and 128 of the 154 poor Law Boards (Campbell, 1994, 25).

Northern Ireland state faced acute problems of sectarianism, political violence, rioting, arson and disorder. Some 550 were murdered in the province during the two years ending in July 1922, including 80 members of the Crown Forces, 300 Catholic Civilians and rebels and 170 protestants (Fitzpatrick, 1998, 119). May 1922 was a highpoint, with around 80 people killed (ibid). In this ‘sectarian civil war’ the IRA was a key player. From September 1921, it ‘disregarded the truce and became involved in attacks on the police and in the ‘defence’ of northern Catholics (Fitzpatrick, 1998, 118). From 17 May 1922, just five days from publication of the order proscribing the associations, ‘the IRA initiated a military campaign against the six counties with the clandestine but explicit connivance of the [Republican] national army’ (ibid,122).

In 1931 Saor Éire, a socialist party launched by the IRA leadership in place of Sinn Féin, was proscribed (Hanley, 2002, 179-80). In 1936, republican efforts to form a new political party under the name of Cumann Poblacta na h‘Eireann (Donoghue 1998, 1112) were quickly thwarted when it was also added to the list of proscribed organisations.

Sinn Fein probably escaped proscription during the first decades of the Northern Irish state because despite its electoral victory in the 1918 Westminster election and inauguration of the Dáil Éireann by elected Sinn Fein representatives, ‘most of the subsequent period [until the 1980s]...had been marked by isolation and irrelevance’ (Tonge, 2006, 102). By the 1940s, Sinn Fein was ‘all but extinct’ but it came under direct IRA orders in 1948, which gave it ‘a role as a “political ancillary” to armed republicans’ (Tonge, 2006, 103).

Sinn Fein was not formally added to the list of unlawful associations under Northern Ireland’s Special Act until 1956. The Northern Ireland government’s decision to ban Sinn Fein was preceded by a short lived revival in the party’s fortunes, when it won two seats and 23.6% of the vote in the 1955 Westminster election, and more importantly, the onset of the IRA’s 1956-62 Border Campaign (Operation Harvest). Based on guerrilla tactics, the campaign employed flying columns of volunteers from the Republic of Ireland to attack military installations, communications and public property in the north with a view to ‘paralysing the place’ and establishing ‘liberated areas’ (English, 2003, 73; Coogan, 2000, 298-329). It was preceded by a series of arms raids in Northern Ireland and England and from August 1956 training for IRA volunteers (English, 2003, 72-73; Coogan, 2000, 302). Sinn Fein was banned just nine days after the Campaign began with attacks

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5 Belfast Gazette, 30 October 1931, p. 1092, no. 540, p 1092.
6 Belfast Gazette, 17 April 1936, p 137-8, no. 773.
7 Standing Rules and Orders (SRO) 1956/199, 12 & 13, 1956, Geo. V. c. 5 (N.I).
including an explosion in Derry and an armed raid on Gough Barracks in Armagh (12 December 1956) (English, 2003, 73; Coogan, 2000, 305). The campaign ended in 1962, at a cost of 17 lives and millions in property damage and increased security costs (Coogan, 2000, 303) without obtaining its objectives or support of Irish nationalists north or south (English, 2003, 75; Coogan, 2003, 329).

At the same time as they banned Sinn Fein, the Northern Ireland government banned *Fianna Uladh*. This organisation was the political wing of the paramilitary group *Saor Uladh* led by Liam Kelly and set up after a split with the IRA (English, 2003, 72; Coogan, 2000, 283). In contrast to the IRA it accepted the legitimacy of the Dublin parliament and focused exclusively on the occupied north (English, 2000, 72, Coogan, 284). In November 1955 Kelly’s group attacked the Roslea RUC station in County Fermanagh and it was later involved in arson attacks on border posts (ibid). Liam Kelly was elected on an abstentionist platform to Stormont in 1953 as an Irish Anti partition League candidate representing Mid-Tyrone.

The Republican Clubs, which were banned in 1967, were initially a successor party to Sinn Fein but eventually became the political wing of the Official IRA. 8 Unlike the proscriptions of the 1920s, and the 1956 proscription of *Sinn Féin* and *Fianna Uladh*, Republican Clubs were not banned during a period of serious civil disorder, although the party ban coincided with a ban ‘to preserve the peace’ 9 on Republican commemoration of Fenian risings in 1867. The ban decision was made on the basis of a Royal Ulster Constabulary Report which the government refused to disclose to parliamentarians. 10

Other organisations subsequently banned under the Special Powers Act were the republican IRA offshoot *Saor Uladh* (1955) (English, 2003, 72), 11 the fascist National Guard (1933) and the Ulster Volunteer Force (1966). 12

From the late 1960s, sectarian violence in Northern Ireland escalated and was eventually met with reintroduction of direct rule and suspension of the Stormont parliament on 24 March 1972. The Northern Ireland (Emergency Provisions) Act 1973, passed by the Westminster parliament,  

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8 *Belfast Gazette*, 10 March 1967, p. 92, no. 2408. McAllister and Nelson (1979) argued that proscription had little practical effect and that Republican clubs never ceased to operate openly.  
11 *Belfast Gazette*, 30 October 1931, p. 1092, no. 540 and *Belfast Gazette*, 2 December 1955, p. 352, no. 1797  
permitted proscription of organisations (which would be listed in its Schedule 2). In April 1973, before the Emergency Powers Act entered into force and after the party had decided to contest elections (McAllister and Nelson, 1979, 308), the government decided that Republican Clubs should no longer be unlawful.\textsuperscript{13} Initially, Sinn Fein was listed as a proscribed organisation but, along with the Ulster Volunteer Force was legalised in 1974.\textsuperscript{14}

Once it assumed direct rule, hoping it would be a temporary measure until new political institutions enjoying the consent of both communities could be devised (Cunningham, 2001, 12). The Heath Conservative government legalized the Republican Clubs, by then the political wing of the Official IRA, with the intention of permitting the party to participate in the June 1973 Northern Ireland Assembly elections.\textsuperscript{15} The June 1973 elections were the first step in the government’s earliest attempt to create a cross-community ‘powersharing’ executive, but it foundered (28 May 1974) over proposals for closer cooperation between authorities north and south in a Council of Ireland (Cunningham, 2001, 13-14). The decision to legalise Sinn Fein was announced (4 April 1974) after those elections had taken place, but after the 1974 UK general election which brought the Wilson Labour government to power and the election of 11 out of 12 anti-Sunningdale MPs for Northern Ireland. Legalization of Sinn Fein (and the UVF) was formally authorized (15 May 1974) the day after the Ulster Workers’ Council Strike (14 May 1974) precipitated the end of the Assembly.

Various other attempts to devise new institutional arrangements enjoying cross-community consent in the 1970s and 1980s met a similar fate and it was not until the 1998 Good Friday Agreement that such consent was obtained.

During this period, both the Officials and the Provisionals showed some inclination to reconsider the use of violence. The Official IRA had announced a ceasefire (May 29 1972) a few days after the British government assumed direct rule (J Bowyer Bell, 1979, 388). From June 1972, the Provisional IRA and the British government positioned themselves for negotiations culminating in a brief truce (26 June to 9 July 1972) but inconclusive talks in London (7 July 1972) (Bowyer Bell, 1979, 389-90). Soon after Sinn Féin was legalized, the IRA announced a truce (9 February 1975 to 23 January 1976) and talks were conducted between IRA and the British government (Bew et al, 2009, 53)

\textsuperscript{13} HL Deb 17 April 1973, \textit{Hansard}, vol 855 cc275-392
\textsuperscript{15} HC Deb 17 April 1973, vol 855 cc 275-392, second reading of Northern Ireland (Emergency Provisions) Bill
Table 2: Irish Political Parties Banned in the United Kingdom

<table>
<thead>
<tr>
<th>Party</th>
<th>Year of Ban</th>
<th>Legislation</th>
<th>Legalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sinn Fein</td>
<td>1919</td>
<td>Criminal Law and Procedure (Ireland) Act 1887</td>
<td></td>
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<tr>
<td></td>
<td>1920</td>
<td>Restoration of Order in Northern Ireland Act 1920, Regulation 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1956</td>
<td>Special Powers Act 1922</td>
<td></td>
</tr>
<tr>
<td>Saor Eire</td>
<td>1931</td>
<td>Special Powers Act 1922</td>
<td></td>
</tr>
<tr>
<td>Cumann Poblacta na h’Eireann</td>
<td>1936</td>
<td>Special Powers Act 1922</td>
<td></td>
</tr>
<tr>
<td>Fianna Uladh</td>
<td>1956</td>
<td>Special Powers Act 1922</td>
<td></td>
</tr>
<tr>
<td>Republican Clubs</td>
<td>1967</td>
<td>Special Powers Act 1922</td>
<td>17 April 1973</td>
</tr>
</tbody>
</table>

Party bans in Spain

The 1978 Spanish Constitution does not explicitly provide for party bans, but it does not rule them out. Article 6 of the Constitution states that while parties can be freely created, they must ‘respect the Constitution and the law’ and be ‘democratic in their internal structure and functioning’. As ‘associations’, political parties are subject to article 22 prohibitions on secret and paramilitary associations and the declaration that ‘associations which pursue ends or use means classified as crimes are illegal’. Illicit associations, defined in article 515 of the Spanish Penal Code, includes terrorists, other violent groups and those promoting or inciting hate, violence or discrimination against others (Esparza, 2004: 117-20).

Law 54/1978, the first law on political parties in democratic Spain, permitted proscription of political parties proven to be ‘illicit associations’ or which were not democratic in their internal
structure and functioning. In the 1980s, however, the judiciary overruled government attempts to exclude HB from the political arena by denying it registration as a political party (Esparza, 2004: 145). The 2003 ban on HB, EH and Batasuna was, therefore, the first in democratic Spain.

Proscription of HB, EH and Batasuna followed enactment of a new Organic Law on Political Parties in June 2002 (henceforth 2002 Party Law) which added an additional justification for proscription; namely, conduct threatening to undermine the liberal democratic system. This provision - soon used to ban HB, EH and Batasuna - permitted the courts to dissolve parties which ‘violated democratic principles in a repeated and grave form, or aimed to undermine or destroy the regime of liberties, or injure or eliminate the democratic system’ (article 9.2). Conduct deemed to violate democratic principles was:

- promoting, justifying or excusing attacks on peoples’ life or integrity, or exclusion or persecution of people because of their ideology, religion or beliefs, nationality, race, sex or sexual orientation
- Encouraging, promoting or legitimizing violence as a means to achieve political goals, or destroying conditions necessary for democracy, pluralism and political liberties
- Complementing or supporting politically, the activities of terrorist organizations which aim to subvert the constitutional order, gravely alter public peace, create a climate of fear, or enhance the effects of fear and intimidation generated by terrorist violence.

In 2003, the Supreme Court accepted the government and Public Prosecutor’s arguments that HB, EH and Batasuna were subject to the strategy and mandates of ETA (Tajadura and Vírgala, 2008: 66-74). The Court ruled that the parties, or their leading members, had explicitly or tacitly supported, excused or minimized the significance of terrorist actions; tried to neutralize and isolate opponents of terrorism; used terrorist symbols; collaborated with organizations supporting terrorism; and promoted or participated in acts of homage to terrorists. This ruling was later endorsed by both the Spanish Constitutional Court and the European Court of Human Rights.

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16 Ley 5471978 de 4 de diciembre, de Partidos Políticos, Boletín Oficial del Estado, núm 293 de 8 de diciembre de 1978, p 27781 a 27782.

17 Ley Orgánica 672002, de 27 junio, de Partidos Políticos, Boletín Oficial del Estado, núm. 154 de 28 de junio de 2002, páginas 23600 a 23607

18 Sentencia Tribunal Supremo (Sala de lo Sala especial del art. 61 de la LOPJ), de 27 marzo 2003.
To block successor parties, the Supreme Court subsequently denied registration to two parties (*Abertzale Sozialisten Batasuna* and *Sortu*); dissolved two parties (*Eusko Abertzale Ekintza* (EAE) and *Euskal Herrialdeetako Alderdi Komunista*); and disqualified two party lists for particular elections (EAE and *Askatasuna*). Some five hundred lists of candidates presented by electoral groupings have been disqualified for local, provincial, autonomous community and European Parliament elections (including *Autodeterminaziorako Bilgunea, Herritarren Zerrenda, Aukera Guztiaik, Abertzale Sozialistak, Demokrazia Hiru Milioi*). In 2009 and 2011 respectively, the Constitutional Court rejected Supreme Court rulings that *Iniciativa Internacionalista-La Solidaridad Entre los Pueblos* and *Bildu* were instruments of ETA, but had previously endorsed all other rulings against the mentioned successor parties, coalitions and electoral groupings. Following ETA’s announced ‘definitive cessation of terrorist activity’ on 20 October 2012, the Constitutional Court legalized Sortu.

The immediate political context for proscription was the end of a 14 month ceasefire during 1998-9, during which of meetings between ETA and government representatives leading to the ‘Zurich conversations’ were held (Bew *et al*, 2009: 206-237; Domínguez, 2006). The 1998-9 ceasefire was followed by an escalation of violent attacks leading to some 23 deaths in 2000 and 15 deaths in 2001 (Domínguez, 2012, 66-7). It was also a period which witnessed important changes in ETA’s tactics and Basque civil society. These included the intensification of street violence by radical Basque nationalist youths linked to ETA and an expansion of the range of ETA targets to include mainstream party politicians, journalists, and judges. The kidnapping and assassination of Popular Party councilor, Miguel Ángel Blanco, provided a context in which millions in the Basque Country and beyond mobilised against ETA in street demonstrations. Among other things, these developments helped bolster a Basque peace movement and prompted closer cooperation between mainstream parties on internal security policy (Muro, 2008: 155-7). With the support of the then opposition *Partido Socialista Obrero Español* (PSOE, Spanish Socialist Workers Party), the *Partido Popular* (PP, Popular Party) government of José María Aznar took a tougher line on ETA and its supporters, culminating in the 2000 Agreement for Liberties and Against Terrorism, and ultimately the 2002 Party Law. Furthermore, the emergence of a short-lived Basque ‘nationalist front’ involving both radicals and moderates following the 1998 Lizarra Agreement (see below) produced a temporary ETA ceasefire but deepened political polarization between Basque nationalists and those in favour of maintaining the constitutional status quo (Domínguez, 2006: 410-11; Mees, 2003: 107-128). According to Blanco, the Lizarra process convinced the Spanish
political elite that it was no longer realistic to hope for integration of extremists through the electoral process (2004: 48).

Proscription of HB, EH and Batasuna also coincided with the closure of the radical Basque nationalist daily newspaper *Egin* and radio station *Egin Irratia* in 1998, and illegalization of the youth groups, *Jarrai/Haika and Segi*, for integration in ETA in 2005. The coordinating body, *Koordinadora Abertzale Sozialista* (KAS, Patriotic Socialist Coordinator) and its successor, EKIN, were banned, in 1998 and 2001 respectively, for forming part of a terrorist group, as were the international affairs association *Xaki*, and the ETA prisoners’ lobby, *Gestoras Pro Amnistía*. Prior to proscription in accordance with the LOPP, the *Audiencia Nacional* had already suspended Batasuna’s political activity for three years (later extended to five) as a precautionary measure during investigations into its involvement in ETA.\(^\text{19}\) September 11 2001 attacks in the United States also helped harden attitudes on terrorism (Esparza, 2004: 19).

**Table 1: Parties banned in Spain**

<table>
<thead>
<tr>
<th>Party</th>
<th>Year of ban</th>
<th>Type of ban procedure</th>
<th>Grounds for ban</th>
</tr>
</thead>
<tbody>
<tr>
<td>Herri Batasuna</td>
<td>1984</td>
<td>Non-registration (overruled)</td>
<td>Formal defects</td>
</tr>
<tr>
<td>Herri Batasuna</td>
<td>1986</td>
<td>Non-registration (overruled)</td>
<td>Illicit association</td>
</tr>
<tr>
<td>Herri Batasuna, Euskal Herritarrok, Batasuna</td>
<td>2003</td>
<td>Parties declared illegal and dissolved.</td>
<td>Complement to and support for a terrorist organisation.</td>
</tr>
<tr>
<td>Autodeterminaziorako Bilgunea and others</td>
<td>2003</td>
<td>Disqualification of electoral grouping lists</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Herritarren Zerenda</td>
<td>2004</td>
<td>Disqualification of electoral grouping list</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Aukera Guztiak</td>
<td>2005</td>
<td>Disqualification of electoral grouping lists</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Abertzale Sozialisten Batasuna</td>
<td>2007</td>
<td>Party denied registration</td>
<td>Batasuna successor</td>
</tr>
</tbody>
</table>

\(^\text{19}\) In 1997, the entire leadership of HB was sentenced to seven years prison for collaborating with an armed group, although the sentence was later annulled. HB had tried to broadcast a video elaborated by ETA during the 1996 election campaign (Esparza 2004: 146).
<table>
<thead>
<tr>
<th>Party Name</th>
<th>Year</th>
<th>Event Description</th>
<th>Successor Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eusko Abertzale Ekintza</td>
<td>2007</td>
<td>Disqualification of party lists</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Abertzale Sozialistak</td>
<td>2007</td>
<td>Disqualification of electoral grouping lists</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Eusko Abertzale Ekintza</td>
<td>2008</td>
<td>Party declared illegal and dissolved</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Euskal Herrialdeetako Alderi Komunista</td>
<td>2008</td>
<td>Party declared illegal and dissolved</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Askatasuna</td>
<td>2009</td>
<td>Disqualification of party lists</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Demokrazia Hiru Milioi</td>
<td>2009</td>
<td>Disqualification of electoral grouping lists</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Iniziatiba Internazionalista - Herrien Elkartasuna</td>
<td>2009</td>
<td>Disqualification of electoral coalition lists (overruled by Constitutional Court)</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Sortu</td>
<td>2011</td>
<td>Non-registration (overruled by Constitutional Court in 2012)</td>
<td>Batasuna successor</td>
</tr>
<tr>
<td>Bildu</td>
<td>2011</td>
<td>Disqualification of electoral coalition lists (overruled by Constitutional Court)</td>
<td>Batasuna successor</td>
</tr>
</tbody>
</table>

**Institutions and veto players**

As I explain below, the institutional framework in which decisions about proscription takes place constitute an important variable for understanding the outcome of state decisions on proscription. In Spain, decisions about banning parties have been, and still are, in the hand of a) the legislature and executive – and thus effectively political parties – and b) the judiciary. The first party law, law 54/1978, and the second party law, law 6/2002, gave the interior ministry responsibility for administering a Register of Political Parties and for alerting the judiciary (via Ministerio Fiscal, or Public Prosecutor) if it thought a party seeking registration may be an organisation defined as criminal in the Penal Code.\(^\text{20}\) If the Ministerio Fiscal agreed there was a reasonable case against the party, the competent judicial authority will be asked to make a ruling on whether registration could take place. The second party law also required the judiciary to judge whether a party seeking

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registration was a successor to a banned party.\textsuperscript{21} Decisions to ban or suspend a party once registered is also a decision which can ‘only be taken by the competent judicial authorities’.\textsuperscript{22}

The 2002 party law spelt out more detailed procedures for the suspension and dissolution of parties. Criminal courts would make decisions where there were indications of criminality, while a special chamber of the Supreme Court would rule on matters relating to proscription for non-democratic internal structure and organisation and for acts violating democratic principles and which sought to damage the ‘regime of liberties’ or the democratic system.\textsuperscript{23} Furthermore, both the government and Ministerio Fiscal are entitled to initiate court proceedings for dissolution of a party and the government is obliged to initiate a case if one of the two house of parliament, the Congress of Deputies or Senate, call for it.\textsuperscript{24} Appeals can be made to the Constitutional Court.

In contrast, the Special Powers Act made the executive the primary actor in decisions to ban political parties in Northern Ireland between 1922-1972. The Act gives the ‘civil authority’, namely the Minister for Home Affairs for Northern Ireland, ‘power in respect of persons, matters and things within the jurisdiction of the Government of Northern Ireland, to take all such steps and issue all such orders as may be necessary for preserving the peace and maintaining order’.\textsuperscript{25} This includes the power to ‘make regulations’ (such as Regulation 24A on unlawful associations) ‘for making further provision for the preservation of peace and maintenance of order’ and ‘for varying or revoking any provisions of the regulations’. The House of Commons and Senate of Northern Ireland enacted this law and all regulations under the SPA had to be laid before both houses of parliament. Either house could call on the Crown’s representative in Northern Ireland to annul regulations. In a parliament dominated by a strong Unionist majority, this check on executive power was more theoretical than real. The SPA did provide for persons alleged to be guilty of an ‘offence against the regulations’ to be tried by a court.\textsuperscript{26} However, decisions about which organisations were declared unlawful associations were made by the Minister of Home affairs in the form of an amendment to the Regulations listed in the Act’s Schedule (specifically Regulation 24A).\textsuperscript{27}

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\textsuperscript{21} Article 5 and 12, in Ley 6/2002 on Political Parties
\textsuperscript{22} Article 5 in Ley 54/1978 on Political Parties and Article 10 in Ley 6/2002 on Political Parties.
\textsuperscript{23} Article 10 in Law 6/2002 on Political Parties.
\textsuperscript{24} Article 11 in Law 6/2002 on Political Parties.
\textsuperscript{25} Section 1, Civil Authorities (Special Powers) Act (Northern Ireland) 1922.
\textsuperscript{26} Section 3, Civil Authorities (Special Powers) Act (Northern Ireland) 1922.
Republican Clubs were legalised under the authority of the Northern Ireland (Temporary Provisions) Act 1972, which prorogued the Northern Ireland Parliament, permitted its legislative powers to be taken over by the British government by Order in Council and gave executive responsibility for Northern Irish affairs to the Secretary of State for Northern Ireland. However, provisions in the Schedule to this act established the rule that ‘The Secretary of State shall not make any regulations under Section 1(3) of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 unless either a draft of the regulations has been approved by a resolution of each House of Parliament or the regulations declare that it appears to the Secretary of State that by reason of urgency the regulations require to be made without a draft having been so approved’. If a draft was not approved by parliament within 40 days, however, the Order would cease to have effect.

Like the Special Powers Act, the Northern Ireland (Emergency Provisions) Act 1973 also makes the executive the primary actor in proscription decisions. More specifically, the Act authorises the Secretary of State to add ‘by order’ to Schedule 2 of the Act (which lists proscribed organisations) ‘any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it’. Section 19 of the Act which deals with proscription does not include any formal requirement that parliament endorse the Secretary of State’s decisions on proscription. The Secretary of State may also remove ‘by order’ a proscribed organisation from Schedule 2. Both the Northern Ireland (Temporary Provisions) Act and the Northern Ireland (Emergency provisions Act) were approved by both Houses of Parliament.

The ‘proscription dilemma’, ‘tolerant’ and ‘intolerant’ democracies

The proscription of political parties presents a dilemma for democracies and as such, it is a grave act. Banning a political party is a grave act for a democracy. It may contradict fundamental commitments to freedom of expression and association, pluralism and tolerance. It distorts the

28 Section 1 in Northern Ireland (Temporary Provisions) Act 1972
29 Section 1 (3) in Schedule of Northern Ireland (Temporary Provisions) Act 1972
30 Section 1(2) in Schedule of Northern Ireland (Temporary Provisions) Act 1972
31 Section 19 of Northern Ireland (Emergency Provisions) Act 1973,
32 According to Finer, Bogdanor and Rudden (1995, 66), the Statutory Instruments Act 1946, which deals with subordinate legislation made by ministers, does not require that all Statutory instruments shall be laid before Parliament and whether this is required or not is decided by the parent Act in question.
posited level playing field of democratic competition and prevents the unhindered articulation and representation of citizen preferences. The party ban is the harshest of myriad penalties, strategies and manoeuvres that may be employed to marginalise subversive political projects. It is often the mark of tyranny. And yet, at some point in the 20th century many democratic states in Europe and North America – long the bastions of democratic politics - have banned a political party. The party ban has been invoked as much to protect democracy as to preserve the state. With very few exceptions, proscribed parties have been communists, the far right, religious fundamentalist and ethnic minorities. The typical party ban punishes those charged with promoting authoritarian political forms and violent regime change, exhibiting racist behaviour, serving the interests of a foreign power, undermining the territorial integrity of the state, or some combination of these. Oftentimes, the ban addresses the fear - instantiated by the paradigmatic errors of Weimar Germany and the Nazi’s rise to power through constitutional means – that democracy may be abused by enemies of the status quo. Democracy, as Loewenstein put it in his 1937 appeal against fascism, may become the ‘Trojan horse by which the enemy enters the city’ (Loewenstein 1937, 424).

Existing studies often distinguish between various types of response to this dilemma. Fox and Nolte (2000) distinguishes between ‘tolerant’ and ‘intolerant’ democracies, Pedahzur (2004) distinguishes between ‘militant’ and ‘immunized’ democracies (Pedahzur, 2004), while the distinction between ‘militant’ or ‘procedural’ democracies’ is often made in the legal literature on proscription (for example, Vidal, 2009, Thiel, 2009). Pedahzur (2004), for instance, identifies two ideal type responses to political extremism.33 On the one hand, a less-belligerent, ‘immunized’, approach will deal with subversive acts against the government or state in a more comprehensive and liberal manner (2004, 115-11). It will focus on treating both causes and symptoms of extremism, provide opportunities for civil society initiatives against extremism and will try to inculcate democratic values through programmes of civic education. State responses will be within normal legal and constitutional limits and renounce extensive use of measures like restrictions on freedom of movement or infiltration of extremist groups.

In contrast, a ‘militant’ route focuses on the symptoms of extremism, such as incitement and violence, and employs measures which may undermine democratic standards, such as illegal police monitoring or party bans which circumvent standard legal and judicial processes. Such a response

33 While Pedahzur develops this framework primarily with reference to right wing extremists, it can easily be applied to other types of political extremism.
will make frequently use special police and security services and continually expand the legal framework to confront extremists. It will show little interest in treating causes of extremism though promoting democratic socialisation through the education system or promote civil society initiatives.

Fox and Nolte (2000), develop a two dimensional typology of democratic responses to extremism. On the one hand, they distinguish between contrasting ‘procedural’ and ‘substantive’ conceptions of democracy. On the other, they distinguishes between states which actively (or militantly) employ measures against such actors and those which do not (passive or tolerant), even when their legal system may permit them to do so.

A ‘procedural model’ draws on Schumpeter’s (1947) conception of democracy as an institutional arrangement for choosing leaders and determining the political preferences of majorities. The views of all citizens are given equal consideration and the primacy of majority rule as a basis for legitimacy limits state authority to select among competing views. An individual’s capacity for reason, a continual process of self-examination and knowledge of alternatives strengthen public commitment to democracy, but cannot ensure it will always prevail. Tolerance is a transcendent norm. This ‘rough approximation of actual state practice’ (Fox and Nolte, 2000, 406) takes more concrete form in specific constitutional features, including the absence of substantive limits on Acts of Parliament, or the absence of restrictions on the scope of constitutional change (ibid, 406-8).

In a ‘substantive democracy’, by contrast, democratic procedure is conceived as a means for creating a society where citizens enjoy core rights and liberties. It draws on Mill, Rawls and others in its insistence that rights cannot be used to abolish other rights, and that a democracy need not tolerate the intolerant when its core values are at stake. An unalterable democratic core deserves special protection against possible incursions. The most important characteristic of a substantive democracy’s legal system are specific prohibitions on amendment of core constitutional commitments to democracy (or other core principles such as territorial integrity or secularism).

The problem with these approaches is that they do not provide a reliable guide to predicting why some democracies ban parties but others do not. In Pedahzur’s analysis, the expectation that states taking the ‘militant’ route would be more likely to ban a party because of a preference for high intensity and narrowly focused measures, is not confirmed in case studies: Ban proceedings in Germany and Israel were conducted in accordance with strong commitments to liberal values, and
for that reason, were characteristic of an ‘immunized’ response to extremism (ibid: 119-20). Fox and Nolte’s model contains logical flaws which make it unsuitable for the generation of hypotheses on proscription: While their definition of procedural democracies as ‘open to debate and electoral competition among all ideological factions’ (Fox and Nolte, 2000: 389) generates the expectation that procedural democracies are less likely to ban political parties, the model itself acknowledges the empirical reality that procedural democracies do in fact ban political parties.

The perspective I adopt here, however, moves beyond this literature’s focus on the constitutional foundations of democratic states and formal contours of government policy. Instead it employs a discursive institutionalist approach (Schmidt, 2008; Hay 2002) to account for varying responses to the ‘proscription dilemma’ outlined above. In the first part of my argument, I claim that in cases involving the political wing of a terrorist group, contrasting discursive constructions of the nature, appropriateness and possible consequences of proscription become the focus of political debate (see Table 3). As analysis of parliamentary speeches in both Spain and the UK (detailed below) will show, those favouring proscription in both countries adopt a ‘discourse of tolerance’ in which the problem of proscription is seen through a ‘law and order’ lens and the party ban an instrument for bringing violent conflict to an end. In contrast, those against proscription embrace a ‘discourse of tolerance’ in which the problem of proscription is more firmly embedded in a discourse of rights protections and where proscription is seen as inimical to the resolution of conflict underpinning violence. As it is used here, tolerance involves ‘putting up with what you oppose’ when another person’s life choices or actions may shock, enrage, frighten or disgust (McKinnon, 2006, 4).  

In the context of party competition, a ‘winning coalition’ is required for one discourse to predominate. However, I argue that both ‘ideas’ and ‘institutions’ matter. As the following section identifying key actors empowered by respective legal arrangements for proscription in Spain and the UK show, veto players are an important variable for understanding differences in the substance of state policy on party bans.
<table>
<thead>
<tr>
<th>Discourse of ‘tolerance’</th>
<th>Nature of problem</th>
<th>Impact on conflict resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Discourse of ‘tolerance’</strong></td>
<td>Political rights</td>
<td>Negative consequences</td>
</tr>
<tr>
<td>Acknowledge role of party in conduct of campaigns of violence against the state, but inclined to consider other factors too.</td>
<td>Proscription will prevent parties from articulating grievances in democratic for a and thus intensify violence</td>
<td></td>
</tr>
<tr>
<td>Emphasis on importance of parties for realisation of rights to free speech.</td>
<td>Proscription may deepen social tensions.</td>
<td></td>
</tr>
<tr>
<td>Emphasis on importance of parties for representation of citizens in democratic competition</td>
<td>Proscription will strengthen the military wing by fostering ‘victimism’ and creating new martyrs</td>
<td></td>
</tr>
<tr>
<td>Opt for sanctioning individuals for criminal activities rather than treating party itself as a criminal organisation</td>
<td>Proscription will reduce chance that political wing may lead military wing out of violence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proscription may not be effective</td>
<td></td>
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<td></td>
<td>Proscription is only appropriate for ‘emergency’ situations.</td>
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<table>
<thead>
<tr>
<th>Discourse of ‘intolerance’</th>
<th>Law and order</th>
<th>Positive consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary emphasis on the role of party in conduct of</td>
<td>Political wing not likely to lead</td>
<td></td>
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</tbody>
</table>
campaigns of violence against the state
Political wing of terrorist group is a threat to democratic life
There should be no distinctions between political and military components of terrorist organisations.
Political parties linked to terrorist groups are not ‘normal’ political parties entitled to liberties and privileges of parties in democratic state

military wing out of violence
Ban will contribute to end of violence by denying paramilitary wing political resources to support its campaign

Discourses of tolerance and intolerance in Spain and the UK

The two contrasting paradigmatic constructions of appropriate responses to the ‘proscription dilemma’ can be observed in parliamentary speeches on proscription by members of governing and opposition parties in the UK and Spain. Parliamentary speeches analysed coincided with four ‘critical junctures’ in state policy on proscription in each case. In the Spanish case these are: 1) 1978 debates on article 6 (on political parties) of the draft constitution laying the foundations of the democratic state\(^{35}\); 2) 1978 debates on the Law 54/1978, first party law;\(^ {36}\) 3) 1988 debates on motions calling for the government to ban *Herri Batasuna*;\(^ {37}\) and 4) debate on the new 2002 Party


\(^{36}\) *Diario de Sesiones del Congreso de los Diputados*, núm 94, 21 June 1978, p. 3537-3544.

Law that precipitated the proscription of HB, EH and Batasuna in 2003.\(^{38}\) In the UK case parliamentary debates analysed are: 1) 1956 debates in the Northern Ireland Stormont Parliament on measures which soon came to including proscription, taken against republican organisations in the aftermath the IRA’s Border Campaign\(^{39}\); 2) 1967 debates in the Northern Ireland Stormont Parliament on the proscription of Republican Clubs\(^{40}\); 3) 1973 debates on the legalisation of Republican Clubs\(^{41}\) and 4) 1974 debates on the legalisation of Sinn Féin.\(^{42}\) Where available, I also refer other official statements on proscription, such as the March 1973 Northern Ireland Constitutional Proposals.\(^{43}\)

**Discourse of intolerance and party bans in the United Kingdom and Spain**

*Sinn Féin* was banned in 1956 by the NI home affairs minister, Walter Topping, and Republican Clubs was banned in 1967 by the NI home affairs minister, William Craig. Like all Home Affairs ministers between 1922 and 1972, both were members of Ulster Unionist party governments with secure parliamentary majorities that supported proscription decisions. In both cases, proscription was seen through a law and order lens. Or more specifically, justifications for proscription placed primary importance on the contribution of the banned parties on the conduct of violent campaigns against the state. Furthermore, the NI Home Affairs Ministers of 1956 and 1967 argued that Sinn Fein and Republican clubs were not ‘normal’ democratic actors, which by implication disqualified them from enjoying the liberties and entitlements of political parties in democratic states. The ministers did not discuss the contribution of conscription to conflict resolution; rather proscription was seen as a measure which would help bring an end to violence (as Craig put it take the gun out of politics).\(^{44}\)

In response to the IRA’s 1956-62 Border Campaign, the Northern Ireland Home Affairs minister (Walter Topping) announced ‘emergency Regulations providing for the arrest, detention, and, if we consider it necessary, internment of suspected persons.\(^{45}\) He noted that further precautions would be necessary and these would soon include proscription of Sinn Fein and *Fianna Uladh*. Emergency

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\(^{38}\) *Diario de Sesiones del Congreso de los Diputados*, núm 164, 23 May 2002, p. 2899-8327

\(^{39}\) *Official Report*, vol 40 (1956-1957), 18 December 1956, c. 3183-3121


\(^{41}\) HC Debate 14 May 1973, vol 856, c 1147-71


\(^{43}\) *Northern Ireland Constitutional Proposals*, 1973, Cmnd 5259.


measures were made in a context where armed attacks ‘were on a very large scale’ and where ‘the I.R.A and Sinn Fein organisations have openly and publicly admitted responsibility for them’. Moreover, they were deemed necessary because ‘these are not mere civil disturbances with which the police may normally be expected to cope: they are essentially military operations, carried out from bases in another country’. A later minister for home affairs, William Craig, spelt out in greater detail why the government banned Sinn Fein:

When the I.R.A commenced attacks on Northern Ireland in December 1956, Sinn Fein issued a supporting statement… Hon. Members may call [Sinn Fein] a political party but it is an organisation that is much more concerned with the bullet than it is with the ballot box. The statement says… “Irish men have again risen in armed revolt against British aggression in Ireland. The Sinn Fein organisation states to the Irish people that they are proud of the risen nation and appeal to the people of Ireland to assist in every way they can the soldiers of the Irish Republican Army… Constitutional methods alone against armed occupation, civil injustice and victimisation could not possibly be made effective.”

In March 1967 the Home Affairs minister banned the Republican Clubs on the grounds that it was a successor to Sinn Fein. He had not ‘the slightest doubt’ that 'the Republican Club movement is the Sinn Fein Organisation in another guise…[and that they] were established…in 1964 for the sole purpose of circumventing the Northern Ireland Government ban on Sinn Fein’. Unlike the proscriptions of the 1920s and the 1956 proscription of Sinn Fein, Republican clubs were not banned during a period of civil disorder, although the party ban coincided with a ban ‘to preserve the peace’ on Republican commemoration of Fenian risings in 1867. The ban decision was made on the basis of a Royal Ulster Constabulary Report which the government refused to disclose to parliamentarians. Justifying the ban, the Home Affairs Minister William Craig stated:

…I am satisfied…that the Republican clubs are really the illegal Sinn Fein organisation under another name. It is true that they are a political party. But they are more than just a normal political party. They are an organisation pledged to sustain a movement of violence.

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They are in support of the I.R.A and I know that all hon. Members opposite agree with me that the gun should be taken out of politics…there is an active organisation of the Republican Clubs and…they are being used as recruiting grounds… for the I.R.A and for propaganda in support of I.R.A aims…They sit on the management committee of the Sinn Fein organisation.53

In Spain, debate on the new 2002 Party Law elaborating procedures for the proscription of HB, EH and *Batasuna* centred on both technical legal issues about the constitutionality of banning parties, but also the appropriateness of banning these parties for democratic politics and its longer term implications for conflict in the Basque Country.54 Agreement between the two largest Spanish parties, the governing *Partido Popular* (PP, Popular Party), and the main opposition party, *Partido Socialista Obrero Español* (PSOE, Spanish Socialist Workers Party) ensured passage of the new legislation. Like the Ulster Unionist parties, the PP justice minister placed primary emphasis on the contribution of the banned parties to the conduct of violent campaigns against the state. In contrast to the Ulster Unionist ministers, however, both PP and PSOE spokespersons also emphasised the threat of HB, EH and *Batasuna* not just to internal security, but to the very fabric of democratic life in Spain.55 The PP was also dismissive of arguments that proscription might strengthen ETA, arguing that it would remove important political resources channelled through the activities of the banned political parties.

A key argument underpinning the position of the PP Justice Minister, Sr. Acebes Paniagua, was that there ought to be no distinctions between ‘terrorism and politics’ and that in the name of ‘the fight against terror as well as the defence of democracy’, parliamentarians ought to ‘increasingly close the spaces of impunity, to finish with aggression and to expel terrorism from politics and to prevent terrorism from using politics to obtain its ends’.56 This argument is further expressed in the

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53 *Official Report*, vol. 65 (1967), c. 1810, 8 March 1967
54 *Diario de Sesiones del Congreso de los Diputados*, núm 164, 23 May 2002, p. 2899-8327
55 In a 1922, speech, however, the prime minister, James Craig, argued that ‘drastic action’ should be employed against republican organisations ‘as they had shown that they were ready to resort to every form of outrage, and had openly challenged the authority of the Government…. I might almost put it higher and say against the overthrow of this very Parliament’. *Official Report*, vol 2 (1922), c. 598-9, 23 May 1922
56 *Diario de Sesiones del Congreso de los Diputados*, núm 164, 23 May 2002, p. 8300; a similar thesis was developed in the *Audiencia Nacional*, a tribunal empowered to try important cases including terrorism, by Judge Baltazar Garzón who developed the idea that ETA was a ‘complex structure’ integrating both terrorist commandos and supporting organizations and networks (Tajadura and Vírgala, 2008: 53; Esparza, 2004: 19; Tajadura and Vírgala, 2004: 53-5).
statement equating those who commit acts of terror and those who support them. The minister asks rhetorically:

Who can criticise that it should not be legal in a democracy to regularly include in its directing organs or in its electoral lists people condemned for terrorism and who have not publically rejected the ends and means of terrorists, or maintain a significant number of their affiliates with double membership in an organisation or entities linked to a terrorist group, or promote and participate in activities that have as an objective the compensation, homage and distinction of terrorist actions or those who commit or collaborate in them.\(^{57}\)

Acebes also argued that ‘illegalization [of political parties] should be a response to the extreme case where the very democracy and the State of Law are at risk’.\(^ {58}\) At the same time as emphasing the ‘abnormality’ of the banned parties, Acebes sought to negate what he called the ‘false belief that we live in a democracy without threats’.\(^ {59}\) The minister stated that it was an impermissible ‘perversion of democracy’ to allow political parties, ‘as it occurred in Spain’:

…to be deposits of arms, nurseries or refugees for assassins, schools for violence or centres for logistical support for terrorists;…an apparatus for the financing, management or propaganda of violent groups;…[which] use institutions to generalise fear, to sew a mesh of terror and exclusion in every village….use public subsidies to develop networks of mafialike financing, that begin with kidnapping, robbery and threats…and occupy parliamentary seats or councils to better obtain information.\(^ {60}\)

Spanish democracy was, as a result, also a ‘precarious democracy’ in which ‘a group of people lives their daily life in panic’\(^ {61}\). And as such it was the government’s obligation to ‘articulate all means – all – to safeguard and promote democracy in the face of its enemies, and to provide defence to the defenceless and for the enjoyment of basic liberties by those deprived of them’.\(^ {62}\)

While repeatedly insisting that all political ideas, including those against the constitution, could be legally articulated, Acebes argued that ‘the principle of liberty that governs the life of political
parties does not exclude in any way the existence of limits and controls of variable intensity and nature’. The PSOE spokesman, Sr. Caldera Sánchez-Capitán, employed similar arguments in favour of proscribing Batasuna, as the following extract illustrates:

…the Batasuna that we know today is incompatible with democracy and this law is necessary because there is repeated and organised conduct against democracy. What is demanded of Batasuna is not that it abandons its ideas but that it uses democratic channels, as it demanded of everyone else.  

In response to claims from parties banning Batasuna because of its supposedly negative consequences for the conflict resolution in the Basque Country, the PP spokesperson, Sr. Arenas Bacanegra argued that new party law was ‘very bad news for ETA, its political party and those who are violent’ because it would deny benefits derived from having a political party to support it, namely ‘supply of spokespersons, propaganda, public funds…help for terrorism to organise itself’. Rather, it is ‘the hope of a political negotiation forced from violence’ that can ‘give wings to a violent party’.

Discourse of tolerance and the legalisation of parties in the United Kingdom

When direct rule was introduced in Northern Ireland in March 1972 one of the British government’s main objectives was to establish more equitable political institutions in Northern Ireland (Cunningham, 2001, 12). In this context it faced the question of whether or not to maintain the ban on Republican Clubs and Sinn Féin and it opted to first legalise Republican Clubs in 1973 and then Sinn Féin in 1974. In both cases, proscription was seen as an issue with security implications, given the, at best, ambiguous relationship between the parties and terrorist activities, however, both Conservative and Labour parties, while in government or opposition, were willing to opt for sanctioning individuals for criminal activities rather than treating the party itself as a criminal organisation. Moreover, they were willing to consider factors other than security issues too. Justification for legalization emphasised the importance of parties for the realisation of rights to free speech and their importance as channels for the representation of citizens in the process of

63 Diario de Sesiones del Congreso de los Diputados, núm 164, 23 May 2002, p. 8299.
64 Diario de Sesiones del Congreso de los Diputados, núm 164, 23 May 2002, p. 8322.
65 Diario de Sesiones del Congreso de los Diputados, núm 164, 23 May 2002, p. 8325.
democratic competition. Other justifications for legalising the parties emphasised positive consequences for conflict resolution in Northern Ireland, including permitting grievances to be aired through means other than violence and providing opportunities for the Republican movement’s political wing to lead its military wing out of violence.

The March 1973 White Paper, *Northern Ireland Constitutional Proposals*, which provided a blueprint for the short-lived powersharing assembly set up in Northern Ireland between July 1973 and May 1974 was one of the first policy documents produced by the British government after assuming direct rule in 1972. It initially adopted an ambiguous position regarding proscription. After noting that ‘the essence of the new constitutional and other arrangements is fairness; equality of treatment and of opportunity; the absence of bias of any sort’, the White paper stated:

> Any person in Northern Ireland, whatever his political beliefs, may advance them peacefully without fear. But no person or organisation can expect to be allowed to be acting politically at one moment and then, given what appears a favourable opportunity, to turn to violence and subversion.

This statement was been referred to frequently in debates on the legalisation of the Republican Clubs and Sinn Fein.

In contrast to authorities in Northern Ireland prior to direct rule, in the White Paper the British government constructs proscription as a human rights issue rather than one of law and order issue. The above statement was made in the White Paper’s fourth part, titled ‘A Charter of Human Rights’ and was preceded by the statements that ‘basic standards’ of ‘authority and law’ included ‘freedom to advance any political or constitutional cause by non-violent means’ and the ‘freedom to advance one’s own ideas involves a comparable freedom for others to advance theirs, and an acceptance that a minority has no right to force its views upon a majority, as distinct from seeking to convince them’.

In the White Paper, the government also locates past practices of limiting free expression as a contributing factor in the conflict. It states:

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68 *Northern Ireland Constitutional Proposals*, 1973, Cmnd 5259. Para. 94
69 *Northern Ireland Constitutional Proposals*, 1973, Cmnd 5259. Para. 91
70 *Northern Ireland Constitutional Proposals*, 1973, Cmnd 5259. Para. 92
A fundamental problem since the earliest years of Northern Ireland’s existence has been disagreement not just about how Northern Ireland should be governed, but as to whether it should continue to exist at all. Those in Northern Ireland who have supported its continued membership of the United Kingdom have seen themselves faced by an unremitting campaign to discredit and dismantle the constitutional system. Their opponents, on the other hand, have claimed that valid political opposition has been treated as subversion, and used as a pretext to preclude them from any real share of political power or influence in Northern Ireland’s affairs.\footnote{Northern Ireland Constitutional Proposals, 1973, Cmnd 5259. Para. 93}

Announcing the decision to legalise Republican Clubs, the Conservative Minister of State for Northern Ireland, David Howell, argued that while it was ‘necessary during the period of emergency to make membership of certain organizations unlawful’ there was now a case for relaxing proscription of Republican Clubs linked to the proposed Assembly Elections.\footnote{HC Debate 14 May 1973, vol 856, c 1147-71.} The Secretary of State’s decision to legalise Republican Clubs was based on the judgment that: ‘there are members of Republican Clubs who seek to promote views to do with the 32 counties by non-violent means and who in fact condemn violent means’.\footnote{HC Debate 14 May 1973, vol 856, 1174.} In response to questions about the organizations continued link with the Official IRA, the minister argued that it was ‘wholly acceptable’ for the Republican Clubs to put forward candidates ‘advancing views to do with their beliefs in the 32 counties’ but that criminal activities by members of Republican Clubs could be addressed by the police and the courts.\footnote{HC Debate 14 May 1973, vol. 856, c 1149-50 and 1174.} ‘It has always’, he stated, been the policy of Her Majesty’s government to encourage the free expression of political views – and I emphasise political views – in Northern Ireland’.\footnote{HC Debate 14 May 1973, vol 856, c. 1148} However, Howell also said the government had not yet made up its mind on Sinn Fein and that there were important differences between Sinn Fein and Republican Clubs:

…Sinn Fein, as an organisation, advocates violence as a means of achieving its ends and does not simply advocate ends with which people disagree. That cannot be precisely said to be so in the case of the Republican Clubs. It cannot be generally said that Republican Clubs, as an organisation, advocate violence. Many of its members do not advocate it…. the

\footnote{Northern Ireland Constitutional Proposals, 1973, Cmnd 5259. Para. 93}
Republican Clubs form an organisation which wishes to put forward political views and, on the whole, does not pursue them by violent ends.’ 76

The Wilson Labour government’s decision to legalise Sinn Féin and (and the UVF) was announced by secretary of state for Northern Ireland, Merlyn Rees, in the House of Commons on 4 April 1974. 77 Rees justified legalization in the following terms:

In my view, there are signs that on both extreme wings, there are people who, although at one time committed to violence, would now like to find a way back into political activity. It is right to encourage this as much as possible. It is the counterpart of our action against those who use violence…There is a balance to strike between the political and military action…Now is the time to try to make further political progress. 78

Presenting the Amendment to the Northern Ireland (Emergency Provisions) Act 1973 (Amendment) Order 1974, by which Sinn Fein and the Ulster Volunteer Force would be legalized, to the Lords, the Parliamentary Undersecretary of State, Northern Ireland Office, Lord Donaldson of Knightsbridge, also stated:

The government hope is that, by enabling the UVF and Sinn Fein to operate openly, people who share the political opinions of those organizations will express them peacefully and within the law. The previous administration acted on similar motives when it de-proscribed the Republican Clubs. In the past, it has not been possible, for example, for members of Sinn Fein to put forward their views about the future of Northern Ireland without fear of prosecution for belonging to a proscribed organization. 79

In addition to its possible contribution to ending violence, MPs from government and opposition parties made a number of other arguments supporting legalization. Doubts were raised by Rees and Lord Donaldson about the effectiveness of proscription. While Rees expressed ‘doubts about the effectiveness of the concept of proscription’, 80 Donaldson stated that ‘powers of proscription are emergency powers…that should be used only when absolutely necessary and should never be

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76 HC Debates, 14 May 1973, vol 856, 1174
77 HC Debate 4 April 1974, vol. 871, cc 1417-1589
78 HC Debate 4 April 1974, vol. 871, cc 1476
79 HL Debate 15 May 1974, vol 351 cc 1092-5
80 HC Debate 4 April 1974, vol. 871, cc 1475.
allowed to stifle the free and lawful expression of opinion’. Moreover, Donaldson commented that that ‘the value of proscription as an instrument of law is almost entirely nil. I do not think anybody at the moment is confined, either under detention or in prison, for the single reason that they belong to a proscribed organisation’.

Lord Donaldson was at pains to emphasise that legalization did not weaken ‘the determination of the government through the security forces to deal effectively with people engaged in violence…Nor should it be thought that this order gives members of the UVF or Sinn Fein any kind of license to engage in violence’. So was Rees, who sought to make it clear that ‘membership of a de-proscribed organization is no protection for men of violence…no person can expect to be allowed to claim to be acting politically at one moment and then given what appears a favourable opportunity to turn to violence and subversion’.81

**Veto players and legalization of Herri Batasuna**

When the dictator Francisco Franco died in 1975, reformers from with the regime and leaders of the Francoist opposition led negotiators to establish a democratic system of rule in Spain. The issue of proscription arose during debates on a new constitution and the new party Law 54/1978. However, in a context in which multiparty politics was still a novelty, parliamentarians were reluctant to endorse measures which they thought might threaten their new rights of association, such as the adoption of a German style militant democracy.82 In the debate on the new party law all parliamentarians emphasized the importance of liberties of association, limiting state intervention in the creation of parties and the need to limit the grounds for dissolution of parties.83 However, these debates did not take cognizance of the political parties emerging from radical Basque nationalist circles associated with ETA.

By the early 1980s, the issue of banning *Herri Batasuna* was on the political agenda. The PSOE government sought unsuccessfully to deny it formal registration as a political party and the opposition Coalición Popular (Popular Coalition, CP, predecessor of PP), sought to keep the issue on the political agenda by piloting an unsuccessful motion through parliament pressuring the

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government to keep pursuing proscription of HB. The arguments employed were similar to those employed in later in debates on the 2002 party law, which emphasized the role of the party in the conduct of violence against the state, that the political wing of the terrorist group was a threat to democracy, that there should be no distinctions between political and military components of terrorist organisations, and that Herri Batasuna was not a ‘normal’ party.

The Coalición Popular had repeatedly sought to establish that: ‘Herri Batasuna is ETA or ETA is Herri Batasuna’. It deduced the interrelation of HB with the terrorist group ETA on the following grounds: ‘The organisation of acts of support, interpenetration of personnel between Herri Batasuna and ETA, the demonstrated financial relation between both organisations and finally, the public declarations of members of Herri Batasuna’. The importance of proscription was highlighted by CP Spokesperson, Medrano y Blasco, who told parliament his party wanted to proscribe Herri Batasuna in application of the law because, he argued, ‘in complying with the law we eliminate terrorism’.

The Coalición Popular argued that Herri Batasuna was ‘defrauding the constitution and democratic order’ by using them ‘for their protection and benefit, despite its repeated acts of disloyalty to them’, including ‘reservations in pledges of compliance with the constitution, systematic absence from institutions… presenting candidates belonging to a terrorist organisation.

The governing PSOE party did not endorse the motion, but agreed with the premise of banning HB. The Minister of Justice, Sr. Ledesma Bartret responded to the CP’s parliamentary motion with the argument that the PSOE government had done all it could to try to prevent HB to constitute itself as a party by denying it registration and pursuing the matter through the courts. Sr Ledesma explicitly stated that ‘the legalisation of Herri Batasuna as a political party has not been agreed by

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85 Diario de Sesiones del Congreso de los Diputados, núm 219, 17 February 1988, p 7989.
87 Diario de Sesiones del Congreso de los Diputados, núm 219, 17 February 1988, p 7987.
89 Diario de Sesiones del Congreso de los Diputados, núm 94, 16 March 1988, p. 5934.
the government’, but was ‘produced in compliance with a judicial mandate which it would obviously respect, but after taking all legal actions to ‘avoid this ruling’.

It is at this point that the role of the judiciary as a veto player becomes important. Even though the party of government and the largest major opposition party wanted to exclude Herri Batasuna from the political arena, the courts rule this out. In the early 1980s, the government unsuccessfully sought to deny registration to Herri Batasuna because its party statutes did not require party members to be Spanish nationals or expressly state the party’s ‘respect’ for the constitution (Esparza, 2004, 145).

The Supreme Court overturned the decision, arguing, among other things, that parties were not required to explicitly declare respect for the constitution. Soon afterwards, the Supreme Court rejected the government’s request to declare HB an illicit association because there was no evidence in the documentation provided by Herri Batasuna’s for registration, that the party was a criminal association (ibid, 144-5). HB was formally registered as a political party in 1986.

As mentioned above, however, after the introduction of the new party law the judiciary supported the proscription of HB, EH and Batasuna and a host of other parties. To block successor parties, the Supreme Court subsequently denied registration to two parties (Abertzale Sozialisten Batasuna and Sortu); dissolved two parties (Eusko Abertzale Ekintza (EAE) and Euskal Herrialdeetako Alderdi Komunista); and disqualified two party lists for particular elections (EAE and Askatasuna). Some five hundred lists of candidates presented by electoral groupings have been disqualified for local, provincial, autonomous community and European Parliament elections (including Autodeterminaziorako Bilgunea, Herritarren Zerrenda, Aukera Guztiak, Abertzale Sozialistak, Demokrazia Hiru Miliot).

By the late 2000s, however, the Court began to take a more permissive states. In 2009 and 2011 respectively, the Constitutional Court rejected Supreme Court rulings that the parties, Iniciativa Internacionalista-La Solidaridad Entre los Pueblos and Bildu were instruments of ETA, but had previously endorsed all other rulings against the mentioned successor parties, coalitions and electoral groupings. And most recently, the Constitutional Court legalized Sortu, soon after ETA’s announced ‘definitive cessation of terrorist activity’ on 20 October 2012.

The empirical findings described above are summarized in table 4.

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90 Diario de Sesiones del Congreso de los Diputados, núm 94, 16 March 1988, p. 5935.
Table 4: Dominant discourse on party bans and veto players in Spain and the UK

<table>
<thead>
<tr>
<th>Herri Batasuna, Batasuna, Sortu etc</th>
<th>Sinn Féin, Republican Clubs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal 1975 and 2003</td>
<td>Illegal between 1956 and 1973-4</td>
</tr>
<tr>
<td>Initially paradigm of tolerance predominates, but later replaced by paradigm of intolerance in relation to <em>Herri Batasuna</em></td>
<td>Paradigm of intolerance predominates</td>
</tr>
<tr>
<td>Illegal 2003-2012</td>
<td>Legal between 1973-4 onwards</td>
</tr>
<tr>
<td>Paradigm of intolerance predominates</td>
<td>Paradigm of tolerance</td>
</tr>
</tbody>
</table>

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