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Carles Puigdemont's Surprising Trajectory and Spain's Uncertain Future after the July 23 General Election



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Sometimes important politicians become the most relevant precisely when they seem to be disappearing from the stage of history. It recently happened to the Brazilian President Lula da Silva, whose name many had already forgotten before he made an extraordinary come back on the Brazilian political scene last year. Something similar might occur in the coming weeks to Carles Puigdemont, the Catalan independence leader and former President of Catalonia, as a consequence of the unexpected results of the latest Spanish general election, held on 23 July 2023.

The election was surprising in many ways. Last May, Pedro Sanchez, the incumbent Prime Minister and leader of the *Partido Socialista Obrero Español* (Spanish Socialist Workers' Party, PSOE), took a gamble. After a loss at a round of local and regional elections and facing a potentially protracted bleeding of support in the months to come, he decided to anticipate to July the general election officially due at the end of the year.

Sanchez's wager paid out, at least in part, and he managed to stem the tide in favour of the Spanish Right. On 23 July, the Conservative *Partido Popular* (People's Party) did obtain most of the votes and seats, as foreseen in most pre-electoral polls, but not enough to form a government, not even in conjunction with its closest partner, the populist and radical right *Vox*. As the leader of the party with the highest number of seats, at the end of September, Alberto Núñez Feijóo, chairman of the PP, received from the King the task of forming a majority in Parliament, but managed to gather only 172 seats, four short of the 176 required to rule. As of the publication of this paper, at the beginning of October, Sanchez seemed better positioned to form a coalition that could pass the threshold needed to be sworn in, even if his party ranked second in the poll, with 31.7% of the overall vote and 121 seats. Yet the prospective coalition will be very broad and fragile, including parties at loggerheads on several important matters, and it will have a wafer-thin majority. Above all, the coalition will require the support of the 7 MPs of *Junts per Catalunya* (Together for Catalonia), the party led from abroad by Carles Puigdemont.

All of a sudden Puigdemont went from being an increasingly irrelevant political leader in exile (or on the run for those who do not sympathise with his cause) to kingmaker. If *Junts per Catalunya* play their cards well, Puigdemont might come back to Spain without facing the criminal charges for which he is currently indicted and hold the balance of power not only in the process of government formation, but also within the Spanish Parliament. Yet in the medium-term the repetition of a general election remains the most likely scenario in the Spanish polarised political context. Even if Sanchez and Puigdemont strike a deal, Spain's underlying political conflicts are unlikely to disappear and will resurface in full swing at a later date. Many voters and external observers, tired of constant electioneering, will gladly avoid the sixth general election in eight years, but the political future of the country remains as uncertain as ever.



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Puigdemont against all oddsi

Ironically, Puigdemont's stride into high politics occurred at a moment of deadlock similar to the current impasse. In September 2015, in the midst of a row between the Catalan and the Spanish governments that had begun in 2012 over the former's calls for the organisation of a referendum on Catalonia's self-determination, Catalan nationalist parties won an absolute majority of seats in the regional parliament. Artur Mas, then Catalonia's President and leader of the party Convergencia Democratica de Catalunya (Democratic Convergence of Catalunya, CDC), seemed poised to renew his mandate. However, his bid for power clashed against the opposition of the smallest partner in the nationalist coalition, Candidatura d'Unitat Popular (Popular Unity Candidature). This small, anti-capitalist, extreme-left formation found itself in the position of kingmaker despite having obtained only 10 seats against the 62 of the other coalition partner, Junts pel sí, an alliance between Mas' CDC and Esquerra Republicana de Catalunya (the Republican Left of Catalonia, ERC), the other major Catalan nationalist party. The CUP's red line in the government negotiations was Mas' renunciation to become once again President of the region. After more than three months of talks, Carles Puigdemont's name came out as the 11th hour solution to the deadlock around the formation of the Catalan executive. Until then, the 53 years old Puigdemont had held positions as journalist in a local newspaper, MP for CDC in the Catalan Parliament and mayor of the city of Girona (population 100,000). His appointment as Mas' replacement in 2016 'was a shock', as the Financial Times wrote." Many believed he would act as a puppet, easily controlled by Artur Mas. Some noticed that he embodied a more radical strand within CDC and might harden the party line on independence. Nobody expected him to grow into a major political figure in European, Spanish or even Catalan politics.

In the following two years, Puigdemont presided over the preparation of an independence road-map that led to some of the most unfathomable events in recent western European history: a unilateral referendum on independence featuring polling station staff sleeping in schools for several nights before the vote to prevent law enforcement authorities from closing them off; ballot boxes being hidden in churches to avoid their requisition; police firing rubber bullets at peaceful voters and smashing windows to break into voting sites; Catalan politicians being imprisoned or running abroad to avoid prosecution.

To go in order, on 1 October 2017, the Catalan Government led by Puigdemont organised an independence referendum that the Spanish government did not recognise, the Constitutional Court declared illegal and police repressed. Still, 2.3 million people took part in the vote and more than 90% supported independence. Yet the yes represented only 43.3% of registered voters in the region. On 10 October, at a meeting of the Catalan Parliament, Puigdemont proclaimed the establishment of the Catalan Republic, but immediately suspended its implementation pending negotiations with the Spanish executive led by PP's leader Mariano Rajoy. On 27 October, for the first time in the history of post-dictatorship Spain, the Spanish Senate approved the application of article 155 of the Spanish Constitution, which allowed the central government to suspend regional autonomy and directly control Catalonia from Madrid.

Even before the adoption of article 155, the Spanish justice system had already begun prosecuting the leaders of Catalan civil society organisations that had taken part in the preparation of the referendum and obstructed police investigations. To avoid prosecution, Puigdemont and five other members of his government fled to Brussels, set up quarters in the nearby Waterloo and vowed to defend the Catalan cause from there. A few days later, the members of the Catalan government that had stayed in Barcelona were indicted for crimes of rebellion, sedition and embezzlement. Most of them were put in preventive detention for the following two years. An international warrant for similar crimes was issued against Puigdemont and other Catalan proindependence leaders abroad.

Since then, Puigdemont has lived outside Spain, giving talks in different European countries and pulling the strings of his party from Waterloo. He managed to increase *Junts'* seats in Parliament at the 2017 Catalan election and radicalised the party's stance, turning it into the most hard-line separatist party among the major players in the region. He was also arrested and risked extraditions a few times (in Belgium, Germany and Italy), but was eventually always released. For a while, he even enjoyed immunity as a Member of the European Parliament, after his election to that position in May 2019. In the meantime, in October 2019, the trial against the most important Catalan leaders behind the attempted secession ended with sentences between 9 and 13 years of detention for sedition and misuse of public funds, triggering days of clashes and street protest in Catalonia – nine of



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them eventually spent about three and a half years in prison overall. That moment probably represented the heyday of separatism in Catalonia, and of Puigdemont's relevance with it.

Divisions over strategy between the two biggest pro-independence parties, *Junts* and ERC, a more accommodating stance on the part of the new Spanish government of Pedro Sanchez from early 2020, the covid-19 pandemic, as well as a growing perception that the price for direct confrontation with the Spanish state had probably been too high contributed to lessening support for independence. Above all, independence became a less salient issue for Catalan voters.^{iv} Paradoxically, at the following Catalan election in February 2021, pro-independence parties won an absolute majority of seats and votes for the first time since the beginning of the independence row in 2012.^v However, behind the façade of victory, the results hid plummeting levels of popular interest in and mobilisation for the Catalan cause. The overall turnout decreased from 79.1% to 53.5%. In absolute terms, pro-independence parties lost more than 600,000 votes out of a total, in 2017, of 2 million. Puigdemont's party bled most than others proportionally, going from the roughly 950,000 ballots in 2017, to 570,000 in 2021.^{vi} Increasingly isolated in its pursuit of an independence-nothing-less strategy entailing direct confrontation with the Spanish state and sustaining the fiction of a government in exile, the *Consell de la Republica* (the Council of the Catalan Republic), legitimated by the vote of 1 October 2017, Puigdemont seemed to grow progressively irrelevant to Spanish politics.

The last general election, on 23 July 2023, was anything but a success. *Junts* lost a fourth of the votes obtained in November 2019 (135,000 out of 530,000) and one seat. Yet, the balance of forces in the Spanish Parliament put Puigdemont in the enviable position to dictate conditions to a Socialist Party keen on renewing its mandate.

Amnesty and beyond

That Puigdemont does not negotiate from a position of strength is suggested also by the nature of his conditions to support Pedro Sanchez as Prime Minister. The organisation of a legally recognised independence referendum, that had been the cornerstone of the party's programme until then, has appeared in the discussions only at the end of September, i.e. after more than two months of post-electoral negotiations. On 28 September, a few days before the anniversary of the referendum of 1 October 2017, *Junts* and ERC issued a joint declaration in the Catalan Parliament asserting that they would not support a government led by Sanchez unless he worked *'towards* implementing *the conditions* for the celebration of a referendum' (my emphasis). The declaration was formulated in convoluted terms and seemed to originate more in competitive dynamics between the two main Catalan nationalist parties (ERC and *Junts*) rather than in *Junts'* genuine resolve to put the subject on the table. Furthermore, in the following days ERC's and *Junts'* representatives in the Spanish Parliament were eager to downplay the impact of the declaration on the ongoing negotiations. VIII Catalonia's funding, another long-standing issue that played a key role in fuelling popular mobilisation during the economic crisis, at least until the events of October 2017, has not featured prominently, or at all, in the public debate around the government's formation.

Puigdemont formulated his conditions for the negotiation in a televised speech in Brussels on 5 September 2023. He declared that his party would not renounce to unilateral action as a legitimate resort to defend the rights of the Catalan people, but he did not insist further on that point. He rather set out four milder and somewhat vaguer conditions to begin negotiations with the PSOE: the recognition of democratic legitimacy of Catalan separatism, the abandonment of any judicial means of repression of Catalan pro-independence leaders including an amnesty that would target all people prosecuted for crimes linked to the Catalan independence row from 2014 onwards, the creation of a mechanism that could ensure the realisation of the agreement, and the guarantee that international human rights treaties, not the Spanish Constitution, will set the legal framework for the negotiations.* Puigdemont announced these four items as preliminary conditions to begin talks with the PSOE and anticipated that others, relating to the funding system and Catalonia's right to self-determination, will follow. Yet, since then, the political debate has revolved around a law of amnesty as the core of a deal that would allow Sanchez to be sworn in with *Junts'* support. Most political commentators believe that if the PSOE concedes amnesty, Puigdemont will put any other major requests on hold for the moment. Sanchez's government has already made gestures towards Catalan separatists, for instance, by approving a law on the use of Catalan, Basque and Galician in the Spanish Parliament during the summer and pushing for the recognition of these languages as



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co-official ones within the EU. Last week Sanchez also hinted at his willingness to work towards a solution on amnesty. In recent days, ERC declared that the substance of the deal had already been approved and only the details have to be hammered out.^{xi}

Although the way to a new government led by Pedro Sanchez and the probable return of Puigdemont to Catalonia seems paved, many hurdles still lie ahead. *Junts per Catalunya* and ERC might decide to up the ante and insist on a referendum on self-determination as a condition for their support to the government. This could also result from dynamics of internal competition between these two parties, which within Catalonia vie for hegemony over the Catalan nationalist electorate, especially in coincidence of the anniversary of the events of October 2017. xii Another risk comes from opposition to amnesty. Unsurprisingly, the talks between the PSOE and *Junts* over this measure have triggered a backlash within the Spanish Right. On Sunday 24 September, the PP organised an act in Madrid against amnesty attended by 40,000 people. Current leaders of the PP and *Vox*, as well as heavyweights such as former Prime Minister José Maria Aznar took part in the event. More troublesome for Sanchez is that the government's overtures to a potential law of amnesty have generated criticism on the Socialist side as well: from old leaders like former Prime Minister Felipe Gonzales and intellectuals close to the party, to current rank-and-file members. xiii

Amnesty is also a complex legal issue and jurists have expressed different opinions about its accordance with the Spanish Constitution. Broadly speaking two legal positions have confronted each other until now. Some have stressed that the Constitution does not formally forbid an amnesty. Hence this would be in accordance with the founding text of Spanish democracy, as well as with the existing jurisprudence. Others remark that the Constitution does forbid general pardons. According to this line of reasoning, amnesty is much more than a general pardon, because it entails the wiping out of the criminal charge in addition to the elimination of punishment. Therefore, arguing that the Constitution accepts amnesty because it does not mention it and forbids only general pardons would be tantamount to saying that the Constitution allows genocide because it 'only' forbids homicide.xiv The incumbent government might decide to ignore this discussion and go on with the negotiations, but the problem risks turning into a time bomb ready to explode a few years from now, when the legal appeals before the Constitutional Tribunal that parties of the Right will certainly file might lead to rulings that would invalidate any law of amnesty that Parliament might pass. In this regard, it is not trivial to remind that the Catalan independence row of the 2010s began precisely with a ruling of the Constitutional Tribunal in July 2010 that stroke down some articles of the Catalan Statute of Autonomy four years after that this had been passed by the Catalan Parliament and approved by the population in a regional referendum.

Amnesty is not a complete novelty in Spain. In October 1977, the political forces that then negotiated the transition from dictatorship to democracy agreed on a law of general amnesty for all those indicted for political crimes, but also immunity for those who had prosecuted them. xv Yet the 1977 amnesty cannot act as a precedent or a model for the bill that might come out of the current negotiations between Junts and the PSOE. First, the 1977 law was adopted before the Constitution's approval in 1978. Thus, it cannot be used as evidence of the compatibility of general amnesties with the constitutional text. Second, support for the measure was much broader in 1977 than it is today. At the time, amnesty was one of the first measures adopted by the new Spanish Parliament formed after the elections of June 1977, the first free elections held in the country since 1936. The bill went through with 296 votes in favour, 2 against, 18 abstentions and 1 invalid vote. xvi It reflected the willingness of both victims and perpetrators of the dictatorship's repression to forget the past and prioritise a peaceful transition towards democracy. There is no similar consensus in the current parliament, as the political Right which accounts for 48% of seats is unflinchingly opposed to amnesty. There is no such consensus in the country as a whole either. Different opinion polls have suggested that between 53% and 70% of the Spanish population oppose the law of amnesty at the core of the negotiations for the formation of the government, although it is not clear how strongly the electorate feels about this issue.xvii Even some of Puigdemont's pundits recognise that a substantial part of the Spanish population is not willing to accept that Catalan independence leaders, Puigdemont in particular, might come back to Spain without standing trial. Even less that he might be politically active within the country again. 'If Puigdemont comes back and runs at an election, Spain explodes', a member of Junts declared to El País at the beginning of October. 'Spain is not ready for this' he added.xviii

Some commentators have suggested that individual pardons would be a more practical solution. The current government has already issued some in 2021 to put an end to the detention of the most important Catalan leaders punished with prison sentences of between 9 and 13 years in the 2019 ruling. These pardons have also recently been upheld by the Constitutional Tribunal against appeals filed by the PP and *Vox*. Yet, they will not be easily accepted by Puigdemont and his party as a condition to support a new



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Socialist government, especially if they do not include a complete erasure of the punishment and the crime, which would allow Puigdemont and other leaders to carry out freely their political activities. Indeed, the 2021 pardons wiped away the punishment of detention, but kept the disqualification of the sentenced Catalan leaders from holding public offices for a number of years equivalent to their original prison terms. As a consequence, heavyweights such as Oriol Junqueras, President of ERC and former Vice-President of the Catalan government, are still barred from public office. Amnesty would probably benefit them as well. xix

Spain might get a government, so what?

One might dismiss the entire debate as irrelevant and ask: what is the point of forming a government with a majority of one or two seats and hinging on the seven seats of *Junts per Catalunya*, a party that has sought direct confrontation with the Spanish institutions for the last 6 years? The current concern of Pedro Sanchez seems to be to get sworn in first and address the problem of government stability later. He might believe that, as he already did in the past, he can get by even with a minority government for a few months before facing new elections, hoping that by then the electoral balance would have changed to his advantage. Whatever it may be, in the medium-term new elections remain the most likely scenario.

Furthermore, Sanchez has certainly contributed to easing tensions by opening up new channels of communication with the pro-independence camp, for instance through the so-called Mesa de diálogo. However, Sanchez has no big plan for Catalonia. The idea of a pluri-national Spain, which he promoted during the primaries for the leadership of the Socialist party in 2017 – but then downplayed once in power - rings hollow to Catalan pro-independence hears. Indeed, Sanchez's conception of pluri-nationality does not entail support for a referendum on Catalonia's independence, which is the ultimate goal of Catalan nationalist parties. Furthermore, even if he had a big plan, it is not clear that this would make much of a difference. What has been going on in Catalonia since 2012 is the clash of two nationalisms: the Catalan one, more visible because of its explicit demands for selfdetermination; and the Spanish one, more banal because of its defence of the status quo.xx Unfortunately, there is no 'architectonic illusion', xxi no institutional device that can guarantee that this conflict will be completely appeased. The conflict is a clash of two incommensurable understandings of which is the community that holds sovereign and self-determination rights over the Catalan territory and population: for Catalan pro-independence voters (and some others who are not in favour of independence, but do think that Catalonia should have a right to decide about her future) Catalonia is such community; for most Spanish parties and the majority of the Spanish population, that unit is Spain as a whole. Although support for independence and the salience of this issue has decreased in the last couple of years, about 40% of Catalonia's population still supports independence, a percentage that would send shock waves through the centres of power of any other European country. xxii Whether there will be another cycle of mobilisation in the near future is impossible to know, but there is certainly a powerful basis ready to be activated.

The institutional deadline to form a new government is 27 November 2023. By then, Sanchez and the PSOE might get their parliamentary majority and Puigdemont the amnesty which will allow him to return to Catalonia and begin to play again a key role in Catalan and Spanish politics. Both might also manage to keep the Right, in particular the radical right represented by *Vox*, out of government. Yet, the Catalan independence row is unlikely to disappear from the political horizon anytime soon.

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¹ Given the very recent nature of these events there are few academic studies that address them. For this reason, in the following paragraphs I will mostly cite articles from newspapers and magazines. However, for three recent academic books that cover at least in part these events from different perspectives and offering varying interpretations see: Ucely-Da Cal, E. (2018) *Breve historia del separatism catalán* (Barcelona: Editorial B); Rubiralta, F. (2020) *Historia del independentismo politico catalan: De Estat catalán al 1 de octubre* (Txalaparta); Jimenez Torres, D. (2021) *2017, la crisis que cambió España* (Barcelona: Deusto).

[&]quot;Stothard, M. (2017) 'Catalonia's « accidental » president savours independence fight', 3 October, https://www.ft.com/content/419c5b02-2775-11e7-ab55-27219df83c97

ⁱⁱⁱ Court of Justice of the European Union, The action brought by Mr Carles Puigdemont i Casamajó, Mr Antoni Comín i Oliveres and Ms Clara Ponsatí i Obiols against the decisions of the European Parliament to waive their immunity is dismissed, Press release n. 114/23, https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-07/cp230114en.pdf

iv Garcia, L. (2020) 'El 75,3% de los electores votó en el 10-N sin tener en cuenta el conflicto catalán', *La Vanguardia*, 16 January, https://www.lavanguardia.com/politica/20200116/472921540890/cis-encuesta-influencia-conflicto-catalan-voto-10n.html; Beizsley, D. (2021) 'Young Catalans wanted a country. They'll settle for a steady paycheck', *Politico*, 18 June, https://www.politico.eu/article/spain-catalonia-independence-movement-youth-unemployment-identity-nationalism/

^v Until then they had only won an absolute majority of seats, but not votes.

vi 'Catalonia's separatists score another victory, but a hollow one', *The Economist*, 15 February, https://www.economist.com/europe/2021/02/15/catalonias-separatists-score-another-victory-but-a-hollow-one

vii Barquero, C., Marcos, J., Cué, C. (2023) 'Los socialistas lanzan un aviso claro antes las exigencias de ERC y Junts: no hay espacio para un referendum', El País, 28 September.

viii Cué, C., Baquero, C. (2023) 'El Gobierno y los independentistas tratan de rebajar la tensión', El País, 30 September, p. 18.

ix On the economic argument for independence see Dalle Mulle, E. (2017) *The Nationalism of the Rich: Discourses and Strategies of Separatist Parties in Catalonia, Flanders, Northern Italy and Scotland* (London: Routledge); Dalle Mulle, E., Serrano, I. (2019) 'Between a Principled and a Consequentialist Logic: Theory and Practice of Secession in Catalonia and Scotland', *Nations and Nationalism*, 25(2), 630-651.

^x Baquero, C. (2023) 'Puigdemont exige una ley de amnistia antes de comenzar a negociar la investidura de Sanchez', *El País*, 6 September, p. 14.

xi Cué, C. (2023) 'El president en funciones abre paso a la medida de gracia', El Pais, 21 September, p. 14; Baquero, C., Piñol, A. (2023) 'Junqueras reitera que la amnistia ya está pactada con el PSOE: "Es evidente"', El País, 21 September, p. 14; Rovira, M., Piñol, A. (2023) 'ERC asegura que va ha intercambiado con el Gobierno documentos sobre la amnistía'. El País, 26 September, p. 17.

xii Such competitive dynamic is clear from ERC's more active role in the government negotiations. While ERC's support for a new PSOE executive was taken almost for granted before the election, since *Junts* has acquired such a central role, ERC has attempted to 'steal' the position of kingmaker from Puigdemont's party and called for a unified Catalan nationalist negotiation with the PSOE. See 'ERC reclama por carta a Puigdemont un frente común por la independencia', *El Debate*, 31 July 2023, https://www.eldebate.com/espana/20230731/erc-pide-carta-puigdemont-frente-comun-independencia 131523.html

xiii Junquera, N. (2023) 'Feijóo alerta contra la aministía y pasa por alto su investidura', *El País*, 25 September, p. 14; Cercas, J. (2023) 'No habré aministia', *El País*, 13 September, p. 11; Hermida, X. (2023) 'Guerra llama "disisdent y desleas" a Sánchez arropado por Gonzales', *El País*, 21 September, p. 16; Sánchez, D. (2023) 'El PSOE expulsa a Nicolás Redondo por su "reiterado menoscprecio" al partido', *El País*, 15 September, p. 19.

xiv Brunet, J.M. (2023) 'Una amnistía de complicado encaje constitucional', *El País*, 18 August, p. 17; Caballero, A. (2023) 'Los juristias divididos por la ley de amnistía que reclama el independenteismo: ¿es o no constitional?', *RTVE*, 10 September, https://www.rtve.es/noticias/20230910/jursitas-divididos-ley-amnistia/2455309.shtml; Martín Pallín, J.A. (2023) 'Motivación y alcances de las leyes de amnistía', *El País*, 26 September, p. 11.

^{xv} On the 1977 amnesty see Juliá, Santos. *Transición: Historia de Una Política Española (1937-2017)*. Galaxia Gutenberg, 2017, electronic version, chapter 9; Aguilar Fernández, Paloma. *Memoria y olvido de la guerra civil española*. Madrid: Alianza Editorial, 1996.

xvi Juliá, Santos. *Transición*, p. 885.



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xvii See for instance 'José Juan Toharia (Metroscopia): "El 59% de los votantes socialistas está en contra de la ley de amnistía", *Onda Cero*, 14 September 2023, https://www.ondacero.es/programas/mas-de-uno/audios-podcast/entrevistas/jose-juan-toharia-metroscopia-59-votantes-socialistas-estan-ley-amnistia_202309146502b7e24fd7bf000197cab5.html and 'Un 53% de los encuestados, en contra de una posible ley de amnistía', *La Sexta*, 17 September 2023, https://www.lasexta.com/elecciones/generales/barometro-lasexta-53-encuestados-posible-ley-amnistia_202309176506ec544fd7bf00019f75c8.html

xviii Quoted in Rovira, M. (2023) 'Junts y ERC exigen que sus líderes puedan volver a ocupar cargos públicos con la amnistía', El País, 1 October, p. 20.

^{xix} Ibidem.

xx For this view of the conflict see Dalle Mulle, E., Serrano, I. (2023) 'Universalism within: The Tension between Universalism and Community in Progressive Ideology', *Nations and Nationalism*, 29(2), 449-466.

xxi On the idea of architectonic illusion see Brubaker, R. (1998) 'Myths and Misconceptions in the Study in the Study of Nationalism'. In *The State of the Nation: Ernest Gellner and the Theory of Nationalism*, edited by John A Hall, pp. 272-306 (Cambridge: Cambridge University Press).

xxii Centre d'Estudis d'Opinió (2023) *Baròmetre d'Opinió Política*, n. 2, https://govern.cat/govern/docs/2023/07/05/09/27/a6c1ca58-a27f-4b12-856e-31df7a52f964.pdf