



Are Bans on Political Parties Bound to Turn Out Badly? A Comparative Investigation of Three ‘Intolerant’ Democracies: Turkey, Spain, and Belgium

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The banning of particular political parties in democratic states is commonly opposed not just on philosophical grounds but also with the practical argument that bans will prove pointless, counterproductive or endanger hard-won achievements. This paper questions that common wisdom — summed up in Hirschman’s *perversity*, *futility* and *jeopardy* theses. It conducts a comparative empirical investigation of the consequences of recent bans on ‘extremist’ parties in three self-styled European democracies — Turkey, Spain and Belgium. It finds that those consequences were not as dire as predicted. This suggests that banning such parties, while by no means always the only or the right thing to do, is not necessarily a mistake, at least on practical rather than normative grounds.

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Introduction

Article 11 of the European Convention on Human Rights, states that ‘Everyone has the right to freedom of peaceful assembly and to freedom of association with others....’ But it goes on to declare that those rights can be restricted as long as such restrictions

are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

In so doing, the Convention acknowledges an apparently widespread view — at least among signatory governments — of two things. First, that tolerance and freedom should not be stretched so far as to allow the overthrow of those institutions that guarantee it. And, second, that there exists an unalterable,



substantive core of liberal-democratic values (often laid out in a constitution or basic law) which, if threatened, may require the invocation of procedures that might, paradoxically, require them to be overridden (see Fox and Nolte, 2000, 402–405). Accordingly, many European (and non-European) democracies — particularly those which have emerged from either Fascist or Communist dictatorships — permit restrictions on parties that are judged to be risks to democracy (for a list and legal details, see Fox and Nolte, 2000, 418–420).

Provisions for the banning of political parties, then, are not uncommon in Europe's recently democratized states, although one of the EU's candidate countries, Turkey, is unusual even among these so-called 'intolerant democracies' (Fox and Nolte, 2000) in the frequency with which such provisions are actually invoked. By way of contrast, and notwithstanding the experience of the interwar period (see Loewenstein, 1937; Capoccia, 2001, 2005), the continent's more liberal democracies have traditionally fought shy of such bans — at least until recently. In March 2003, the extreme right *Nationaldemokratische Partei Deutschlands* (NPD) in Germany only escaped a ban under Article 21.2 of that country's Basic Law (which outlaws parties that, 'by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic') because it was so infiltrated by informers that the case against it proved impossible to rule on.¹ In the very same month, however, the Court's Spanish equivalent upheld a ban on *Batasuna*, widely regarded as the political wing of the militant Basque separatist organization ETA. More recently, in November 2004, the Belgian Court of Cassation upheld a decision of a lower court that effectively (if not technically) banned the far-right *Vlaams Blok*, a significant party in Dutch-speaking Flanders.

In general, the media reaction to such moves on the part of political commentators tends to be sniffy, sceptical and sometimes downright hostile. Bans are opposed on philosophical grounds, with arguments focusing on freedom of speech and assembly, and on tolerance and non-interference. But they are also routinely opposed on practical grounds: intolerance and interference will prove at best pointless and at worst counterproductive, and may undo a lot of good work that has gone on before. It is these pragmatic arguments — as opposed to the philosophical and normative debate — that constitute the focus of this paper, the main purpose of which is to question the assertion that bans do not work, make things worse and/or throw away previous progress.

The paper begins by systematizing the pragmatic criticisms of bans on political parties using categories developed by Hirschman (1991). It then turns to case studies covering the three European countries where such bans have been implemented. The variation in their political and economic development enables the pursuit of a 'most different systems' comparative research design



(Przeworski and Teune, 1970, 34–39). The three countries cover a unitary non-liberal democracy (Turkey) with a history of banning parties, a country that has endorsed a ban for the first time since becoming a liberal democracy relatively recently (Spain) and a more ‘mature’ (and fully federal) liberal democracy (Belgium) that has done so for the first time.

Just as importantly, given that ‘[f]or such a comparison to be fruitful, each country must be representative of a type, a class, a conceptual category’ (Dogan and Pelassy, 1990, 144), they can be related to the ideal types of democracy delineated by Ami Pedahzur in his ground-breaking analysis of how polities deal with perceived internal threats (Pedahzur, 2001; see also Pedahzur, 2002). Pedahzur identifies three ideal types of democratic regimes or ‘routes’ according to the way they deal with extremist threats: *militant democracy* (under attack from violent challengers, without a strong liberal tradition and ‘characterized by an uncompromising struggle against the challengers, even at the cost of harming basic democratic and liberal rights’); *defending democracy* (liberal democracies which, on utilitarian grounds, ‘might consider flexing the boundaries of the rule of law to enable a proper response to the challenges’) and *immunized democracy* (strongly liberal democracies where the presumption is heavily against judicial measures and when the latter are used — in cases where ‘a clear and present danger’ exists ‘beyond reasonable doubt’ — there are checks and balances which ensure they are no stronger and last no longer than is strictly necessary).

Using Pedahzur’s classification, our cases include one state (Turkey) that is attempting to turn itself from a militant to a defending democracy, one (Spain) whose critics would claim has on occasion risked moving in the opposite direction (see Human Rights Watch, 2005), and one (Belgium) which seems to be moving towards defending from immunized. Put bluntly, if we can show that bans do not produce the predicted negative consequences in three relatively different democracies, then we can be more confident (though not, of course, absolutely sure) that they are not necessarily a bad idea.

The aim, then, of the paper is essentially empirical rather than normative, and in some ways more negative than positive. It seeks to question whether the common practical criticisms of bans are borne out in reality. But the argument, it must be stressed from the outset, is not that banning parties which appear to threaten democracy is the right thing to do in all circumstances: there are, after all, instances (such as the Italian MSI’s eventual transformation into the *Alleanza Nazionale*) where bans have not been imposed and the parties in question have moderated, or in some cases even disappeared. Nor is it to imply that measures short of an outright ban, such as the limits on electoral registration imposed on some extremist parties in Israel (see Pedahzur, 2001, 2002; also Mudde, 2004, 197) or even the broadcasting ban on Sinn Féin in Northern Ireland, are totally ineffective.² Indeed, we should acknowledge that,



just as there is more than one way of skinning the proverbial cat, the means of prohibition are bound to vary between countries: one could, for example, argue that the action against Vlaams Blok (which, as we shall see, worked by threatening to shut off state funding) fell short of an outright ban, *sensu stricto*, even if it did (or would have done) the job. In short, this paper is not intended as a positive argument for a uniform style of ban on each and every political formation that appears to present a serious threat to the democratic polity, howsoever that threat is construed. Rather it seeks to suggest that the practical consequences of banning — or effectively banning — them may be less disastrous than we are generally given to understand.

Perversity, futility and jeopardy

The case against banning parties has always relied as much on pragmatism as on philosophy. For anyone seeking to defend such bans, however, the pragmatic part of the case against them, while it may be superficially persuasive, has the distinct advantage of being open to empirical investigation. It can also be helpfully rendered more amenable to comparative analysis by codifying it according to a threefold schema proposed by Albert O. Hirschman, who first used it to capture (characteristically but not exclusively) conservative arguments against changes to the *status quo*.

Few political scientists can have failed to have heard of Hirschman's writing on 'exit, voice and loyalty' (Hirschman, 1970). But his more recent work on what he labels 'the rhetoric of reaction' is perhaps less familiar. According to Hirschman, almost any political step away from prevailing practice will be subject to three characteristic criticisms. According to the *perversity* thesis (Hirschman, 1991, 11–12), any action to improve some feature of the political, social or economic order is alleged to result in the opposite of what the supposedly naive do-gooders who proposed it intended: revolution, for example, will lead to tyranny, democracy to bad government and welfare provision to dependency. The *futility* thesis (Hirschman, 1991, 42–43) holds that an action will make no difference: for instance, inequality will survive revolution, oligarchic elites the coming of democracy, and poverty the advent of the welfare state; plus ça change, plus c'est la même chose. The *jeopardy* thesis, on the other hand, argues that action will endanger previous hard-won accomplishments: revolution will turn back the clock on incremental gains in civil and political rights; democracy will ride roughshod over liberty; welfare spending will conflict with capital accumulation; one step forward, two steps back (Hirschman, 1991, 122–123).

The three theses, Hirschman (1991, 134) notes, can be rehearsed singly and in any order, but are frequently employed one after the other. Often, the first to be evoked is jeopardy ('don't risk everything we've worked for'), then



perversity ('if you do, you'll only make things worse'), and finally futility ('it won't make any difference'). Yet, notwithstanding any logical contradictions, the theses are often employed simultaneously: as Hirschman (1991, 58) notes, those who cry futility frequently 'look to the perverse effect for reinforcement, adornment and closure'; meanwhile those who warn against jeopardy derive an additional *frisson* from the possibility that what they are attacking will not only undermine a precious achievement but, in seeking to forestall something bad, may cause or at least hasten its occurrence (Hirschman, 1991, 125). Invading Iraq, for instance, has apparently not only dissipated the sympathy for the US engendered by 9/11, but provided an even more fertile breeding ground for those who make the Middle East such a source of instability and threaten American lives and interests.

This paper, however, is concerned with national rather than global politics. Its aim is to see whether action against parties does indeed have the consequences that purveyors of Hirschman's three theses predict. It does this by examining three hypotheses derived directly from the theses. First, does banning allegedly dangerous parties make things worse: does it cause them to accentuate the perceived threat to secular liberal democracy that led to action in the first place, whether it be religious, violent or racist? Second, do bans make no difference: do parties simply carry on as before, posing just the same perceived threat? Third, do bans endanger widely recognized positive democratic development and achievements that took place prior to them coming into force? The emphasis, then, is very much on uncovering arguments and evidence that run counter to the assumption that bans will be counter-productive, useless and risk undermining existing achievements. The task is not so much to provide an overview of pros and cons in each case, but to treat perversity, futility and jeopardy as hypotheses and to attempt to falsify them. Inasmuch as the attempt is successful, it should not be taken — just to re-emphasize the point — as an argument that bans are always necessary, but simply that they do not necessarily turn out badly.

Turkey

Turkey's marked fondness, even in modern times, for the banning of political parties is just one of the things that has made it such an easy target for critics: the country's Constitutional Court has dissolved parties on 18 occasions since 1980 (Kogacioglu, 2004, 435).³ As recently as November 2003, judges in Strasbourg found that Turkey had violated Article 11 of the European Convention when it dissolved the Socialist Party of Turkey back in November 1998. Not all judgements have gone against the country, however. In February 2003, for instance, the ECHR confirmed its judgement of July 2001, according to which the closure of the Welfare Party (*Refah*), which was the biggest single



party in parliament before its dissolution in 1998, was not in violation of the Convention — primarily on the grounds that democracies are indeed entitled under Article 11 (2) to protect themselves against organizations which (by for example instituting *Shari'a* law once in power) would supposedly exploit democracy in order eventually to strangle it.

In January 2003, however, a revised Law on Political Parties made it harder to ban a political party. A three-fifths majority in the Constitutional Court would now be required, while a case for dissolving a party could only be based on a putative breach of the Constitution; appeals against the rulings of lower courts were facilitated, as was the withdrawal of state assistance as an alternative to an outright ban (European Commission, 1993, 33). Anyone hoping for this 'liberalisation' to make an immediate difference, however, would have been disappointed. For one thing, the withdrawal of state assistance was an unlikely alternative sanction, since only parties getting over 10% of the votes in a general election qualified for such assistance in the first place. More obviously, the law change has not prevented further dissolutions of parties, particularly those seeking to represent the southeastern Kurdish minority that constitutes some 20% of Turkey's population of 69 million. Historically, half of the 18 parties banned since 1980 have been Kurdish. In March 2003, the Constitutional Court unanimously ruled to permanently dissolve the (Kurdish) People's Democratic Party (HADEP), while closure cases relating to the Turkish Communist Party (TKP), the Rights and Freedoms Party (HAK-PAR) and the Democratic People's Party (DEHAP), successor to HADEP, are still pending before the Constitutional Court.

It is certainly possible to see Turkey's banning of political parties conforming to the futility thesis: no sooner is one organization banned than another springs up to replace it — indeed some parties are quite consciously set up as 'spares' to provide lifeboats into which members of a party declared illegal can swiftly jump. The line of succession for Kurdish parties is very direct (Kogacioglu, 2004, 440), but is no less clear when it comes to religious parties. Hence, many of those involved in the Welfare party, banned in January 1998, turned to *Fazilet* (Virtue) and, after that party was banned in June 2001, transferred their loyalty to the AKP, *Adalet ve Kalkinma Partisi* (Justice and Development) — including the vast majority of Virtue's MPs who, it should be noted, were allowed to keep their seats as independents after it was banned.

To dismiss the banning of one incarnation of a party after another as futility, however, assumes that no change occurred during this process. In fact, with each successive metamorphosis came moderation (see Kogacioglu, 2004, 459) — moderation sufficient to convince both Turkey's military-dominated National Security Council (NSC) and financial markets to give the AKP (still being harassed by zealous state prosecutors on the eve of its election victory) the benefit of the doubt from 2002 onwards. In the case of the Kurdish



DEHAP, the possibility of a ban, combined with a more conciliatory stance by the AKP government in the wake of a renewed upsurge in violence by Kurdish separatist PKK guerrillas in the summer of 2005, appears to have prompted many of its key personnel into a new (similarly more conciliatory) party based on the Democratic Society Movement (DTH) led by the 1995 Sakharov prize-winner, Leyla Zana, all of which led in August 2005 to a ceasefire (albeit a temporary one) by the PKK.

These developments would also appear to counter the perversity thesis, namely that banning parties will not only make no difference but make things worse by provoking militancy. So great was the mistrust of AKP leader Recep Tayyip Erdogan that it required a constitutional amendment for him to become Turkish Prime Minister. This was because Erdogan had been banned from standing for parliament after a speech in 1998 that was interpreted by the authorities as a religious call to arms. Even before that his name was frequently mentioned as one of the hotheads into whose hands political Islam might fall if the state carried on down the supposedly counterproductive path of banning its parties and its leaders, most notably Necmettin Erbakan who was forced to stand down by the military after just 11 months as prime minister in 1997. Yet by 2004, Erdogan, who even before the election was claiming that his party was no more religiously obsessed than a western Christian Democratic party and notwithstanding a suggestion (hurriedly withdrawn) that adultery be made illegal, was being feted as a safe pair of hands in the western media (see the *Economist*, 2004; *Time Magazine*, 2004).⁴

The other perversity prediction — that the bans would reinforce rather than calm EU fears about Turkey's status as a stable European democracy — have proved equally false. The relationship between the Union and Turkey is complex (see Rubin, 2003) and the latter's eventual admission is far from assured, particularly given the willingness of politicians in France and Germany to question the wisdom of such a course in the face of widespread voter antipathy. But there is little to suggest — especially after the ECHR's favourable judgement and in the pressing need to secure Turkish cooperation after 9/11 — that Turkey's restrictions on political parties, even where they occasioned comment by the EU presidency at the time, materially delayed the country's acceptance as a candidate country (see Rumford, 2002). And, since they clearly failed to undermine all the hard work carried out to secure that acceptance, the bans can hardly be said to conform to the dire warnings of the jeopardy thesis.

Spain

Turkey is not the only European country to have attracted criticism for party bans that are said to be perverse, futile and throw into jeopardy whatever the



state has achieved in defusing its internal conflicts. The same has been said of a country whose credentials as a European democracy have been cast-iron since the failure of a military coup in 1981 was followed some five years afterwards by entry into the EU. Spain's democratization, however, has not been enough to satisfy all of those who live in Euskadi or El País Vasco — the Basque Country. The pursuit of separatist aims via armed struggle by ETA terrorists has provoked governments in Madrid (like those in Ankara) into illegal counter measures that have rightly attracted concern and even condemnation from international human rights monitors. This international criticism has been made much of by the party known in its most recent incarnation as *Batasuna*, widely acknowledged as ETA's political wing.

The Spanish Supreme Court finally banned *Batasuna* in March 2003 under Spain's relatively recent Law on Political Parties following the failure of the party (already facing suspension under the criminal law) to condemn a car bomb attack in August 2002 that killed a middle-aged music teacher and a six-year old girl. The June 2002 Law, expressly intended to 'catch' ETA and passed with overwhelming support among the public (opinion polls showed two-thirds in favour) and in both houses of the Spanish *Cortes*, allows the government (in the event backed by a 295-10 vote majority in the lower house) to petition the Court for a ban on any party. Legitimate grounds for such a ban include, among other things, 'giving express or tacit political support, legitimizing terrorist actions or excusing and minimizing their significance', providing institutional or economic support to those who carry out such actions, and helping to create a 'culture of confrontation' that infringes the fundamental rights of those who take a contrary view (see Turano, 2003, 733–734 for a clear and concise guide to the law in English). As a result of the ban, which (under article 3 of the Law) also applies to parties set up by adherents of the banned organization, *Batasuna* and over 200 electoral lists set up to get around its dissolution were prevented from contesting municipal elections in May 2003 — a huge blow, given that the 60-plus councils controlled by the party were a major source of income and patronage.

As soon as the ban was mooted, proponents of the perversity thesis — including other regionalist parties and media pundits in Spain and all around Europe — came out in force against it. All declared that the ban of a party capable of garnering just under 150,000 votes would be bound to lead to an intensification and polarization of the conflict as 'left-nationalists', made 'democratic martyrs' by a ban, would turn increasingly to violence. Alternatively (and sometimes additionally), it was argued that a ban on *Batasuna* was futile: it would do nothing to solve the Basque problem while, notwithstanding clauses designed to prevent the founding of Turkish-style 'spare' and successor parties, *Batasuna* (its funds spirited away to France in anticipation of asset seizures) would simply return in another guise. As for



jeopardy, the refusal of José María Aznar's *Partido Popular* government to budge an inch on the question of granting further autonomy to the Basque parliament and government made it hard to talk about the ban undermining previous progress, even if, looked at in longer-term perspective, relations between Madrid and Vitória had been totally transformed during democratization. On the other hand, there were many who argued that the proscription of a political party meant turning back the clock to the time of Franco, undermining the whole process that had been in train since his death.

Few would treat this last, extreme version of the jeopardy thesis as anything more than hyperbole: only those nationalists who routinely refer to Spain's democratically elected government as fascist and totalitarian could seriously argue that the country today bears even a passing resemblance to the country under Franco. Clearly, however, fears about undermining fundamental rights (such as freedom of expression and association) put in place since the end of the dictatorship were less far-fetched. Yet, in as much as the ECHR can be said to provide a definitive answer to the question, it is likely (given Batasuna's persistent failure to clarify its opposition to violence inflicted on both ordinary citizens and their democratically elected representatives) to rule that any qualification of such rights is reasonable under Articles 10 and 11 (see Ayres, 2004).

As for futility, one should note that the ban, by helping (as was intended) to trigger the proscription of Batasuna by international authorities — notably the US and the EU in May and June of 2003 — almost certainly helped, directly and indirectly, to deprive Basque terrorists of much needed legitimacy and support, both moral and financial. For instance, Irish Republican Party *Sinn Féin* condemned the ban, but after it the Batasuna delegate at the party's annual conference enjoyed a noticeably lower-profile welcome. On the domestic front, the ban, as well as the actions of 'super-judge' Baltasar Garzón, denied militant Basque separatists not just millions of euros worth of public subventions but also their ability to raise funds (as well as recruits) through Batasuna's hitherto thriving network of *herriko tabernas* and other commercial activities.

An apparently more persuasive case for the futility of the ban, however, could be made in the wake of regional elections in the spring of 2005. Having failed in its efforts to persuade the Constitutional Court that the slate of candidates calling itself *Aukera Guztiak* ('All Options') was not, as prosecutors alleged, in effect an illegal successor party, Batasuna suddenly threw its support behind a minor Marxist party, EHAK (*Euskal Herrialdeetako Alderdi Komunista* or Communist Party of the Basque Lands) which, during the course of the campaign, declared itself in agreement with the separatists' goal of independence. On a reduced turnout, EHAK took over 12% of the vote



(slightly more than Batasuna's predecessor in 2001) and nine seats. Some two months later, it went on to allow the formation of a regional government by the traditionally more moderate nationalist party, the incumbent EAJ-PNV. Yet, while on the surface this chain of events provides plenty of ammunition for the futility thesis, the reality is more complex. For one thing, those with a Machiavellian cast of mind argued that the new Socialist government had not tried as hard as it might have done to get EHAK banned before polling day, calculating (rightly as it turned out) that it might bleed support from an EAJ-PNV bent on gaining a majority that would lend electoral legitimacy for its plan for an independent state 'freely associated' with Spain. Rather more directly, subsequent legal moves (extending as far as questioning under arrest in September 2005) failed to unearth incontrovertible links between EHAK and ETA and even Batasuna; it is also noticeable that the latter did not simply disband and urge its members to join the other party.

There is of course a more fundamental charge levelled by purveyors of the futility thesis, namely that it will do nothing to solve the Basque problem. This is surely correct — but only insofar as it goes. Only the wildest optimist or deluded Spanish nationalist, and certainly only a tiny minority, if any, of the politicians involved, have ever suggested that banning a single party would lead direct to the discovery of that particular holy grail. Nor did supporters of the ban believe — even if some of them may have hoped — that it would end demands for independence. Their main intention was primarily to decouple those demands from violence. Suggesting, then, as some commentators do, that the radicalization of the more moderate nationalist party EAJ-PNV — still apparently hoping to put its plan for a Basque state 'freely associated' with Spain to a Basque referendum — means that the ban has somehow 'backfired' is therefore misplaced. Whether it would be possible to carry out such a referendum without widespread intimidation of those intending to vote no is a thorny question. But, if were to be held, it is surely better that the case for autonomy and even independence be made by politicians committed to peace, even if their advocacy risks being more persuasive than that of the men of violence.

When it comes to perversity, the reality on the ground since the spring of 2003 also gives the lie to both the tenor and substance of the predictions made at the time. First and foremost, although the ban has clearly not lived up to former prime minister Aznar's hope that it would 'squash the serpent once and for all', the period since it came into force has been one of the least violent on record, with only three people (all police officers) killed and only a few mercifully minor explosions. Clearly much of this is down to the continuing success of the security forces against ETA in both France and Spain; but one might have expected such success to have been cancelled out by the widely predicted swelling of the organization's ranks following the ban. Secondly,



notwithstanding Batasuna's instructions to its erstwhile supporters at the 2003 municipal elections to use its home-made 'ballot papers' rather than the official version, turnout at those elections actually went up from around 50 to 55% — hardly an impressive figure, but not one that can be used to support the allegation that people would be driven away from democracy.

Perhaps the strongest argument against the prediction that a ban would prove counterproductive, however, is what has happened to the representatives of militant Basque nationalism since it came into force. By the spring of 2004 Batasuna's leader, Arnaldo Otegi, was hinting at an ETA ceasefire. In November of the same year, following the leak of a letter to the current ETA leadership by imprisoned veterans urging it to abandon an armed struggle that was going nowhere, Otegi was calling (in what became known as his Anoeta proposal) for all sides to take the fight off the streets and onto the negotiating table. By January 2005, he was writing a conciliatory open letter to the Prime Minister — the first time the holder of the post had ever been addressed as such by Batasuna. True, Otegi neither condemned past attacks nor promised an end to violence, and any move away from the latter has of course to be seen in the context of the 11 March attacks on Madrid which served to further undermine whatever residual support for terrorism that remains in Spain. But his letter did stress he was 'not proposing independence as the solution to the conflict' but rather looking for 'an agreement between nationalist and non-nationalists about democratic rules to bring forth a new scenario' — a message approved by ETA in its own subsequent communiqués.

None of this, of course, makes peace a certainty, but it does appear to be at least a possibility. In May 2005, the socialist government — in a move which outraged the opposition PP and victims' groups but had the backing of most other parties and (if opinion polls were correct) almost two-thirds of the public — obtained parliamentary backing to open official talks with ETA (ostensibly about jailed members and regional autonomy) should the latter renounce violence. The ban on Batasuna, however, remained: although its spokesmen were able to appear in the media and meetings almost certainly occurred between them and representatives of other parties, the party was prevented by the Basque regional government from holding a rally — at least in its original form — in San Sebastian in August 2005. In February 2006, Spain's High Court prevented the party holding what amounted to a national assembly (which would have elected a new executive) in Barakaldo, near Bilbao. Although the party's supporters were allowed to attend a demonstration protesting the decision, the court also extended the ban on its 'public, private and institutional' activities for a further two years. Such actions did not necessarily precipitate ETA's announcement, just a month or so later, of an apparently 'permanent' ceasefire: we cannot be certain, for instance, that the fact that Batasuna desperately wanted to contest municipal elections in 2007



made as much difference as some Spanish commentators suggested. But the ban and its extension did not at least prevent what is widely regarded as a genuine opportunity for peace.

Belgium

By the time of its dissolution in November 2004, *Vlaams Blok* could claim to be the biggest single party in Flanders. But this position did not guarantee it a share of power: other parties continued to maintain their *cordon sanitaire* around an organization so rooted in racism that it had supported the *apartheid* regime in South Africa and the forcible repatriation of non-European minorities. Nor did it confer upon the party immunity from prosecution. Initially, judges in Flanders refused to rule on what they regarded as a political case brought by two state-subsidized groups (the Centre for Equal Opportunities and the Prevention of Racism and the Human Rights League) against three non-profit organizations on which the Blok relied for funding. In April 2004, however, the Court of Appeal in Ghent found them guilty of infractions against anti-racism legislation, thereby threatening to deprive Vlaams Blok of donations and direct state funding worth €250,000 a year, as well as access to the media, public buildings and even the postal service.

Vlaams Blok appealed but the ruling was upheld in November 2004 by the Court of Cassation, which declared it had practised illegal and ‘permanent incitement to segregation and racism’. This legal decision was followed up in January 2005 when the Belgian parliament passed the so-called ‘Dry-up’ (*droogleggingswet*) law designed to facilitate practical implementation of an existing piece of legislation (dating from 1999) intended to deny state funding to parties advocating racism. The hurdle, however, is high, requiring a two-thirds majority in a special parliamentary committee to send the complaint for full investigation to the *Raad van State*. If such an investigation concludes that a party can be said to be acting in contravention of the European Convention on Human Rights, state subventions can then be withdrawn — a serious matter in a country which only permits private donations of no more than €125.

Between the two legal judgements in the lower and higher courts, Vlaams Blok performed impressively regional elections in Flanders held in June 2004: it improved eight points on its 1999 total to 23.4%, pipping its nearest rival to the post and for the first time ever garnering over one million votes — all of which was meat and drink to those who had warned that banning a party that already played on its victimization and exclusion would prove counterproductive. Pundits (sometimes the same ones) also argued that any ban would be pointless and took grim satisfaction from the fact that, just a few days after it was confirmed by the Court of Cassation, the party — which naturally made much of the fact that it was once again being victimized by the ‘monster coalition of



establishment parties' (Erk, 2005, 497) — relaunched itself, as everyone had known for months that it would, as *Vlaams Belang*.

Again, however, the perversity and futility theses are some way from being proven. For a start, the party's electoral performance was doubtless influenced not just by the impending ban, but also the row over the granting of municipal voting rights to migrants that badly damaged the sometimes divided mainstream parties, especially the governing Flemish Liberals (VLD). It was also no more than a continuation of the party's long-term upward trend. Moreover, there is no evidence yet to counter the suggestion — made by some academic commentators in the media at the time — that the ban would do more to shore up the party's core vote than attract additional sympathizers. On the other hand, since *Vlaams Belang* did well at the municipal elections of 2006, pundits are sure to point to the legal action against it, and its predecessors, as an explanation. Leaving aside the fact that the reasons for a party's electoral performance are always multi-layered, the impressive result for *Vlaams Belang* does not, however, prove perversity. To call such a result counterproductive rests on the assumption that the desired outcome of any ban is the electoral downfall of the party. No doubt some advocates of legal action would like to see that. However, the aim of judicial decisions and ensuing legislation is not to achieve this but rather to prevent the party — indeed any party — from enacting or inciting discrimination and/or segregation based on the generally illegal grounds of race.

Arguably, the latter does seem to have been, if not achieved, then at least facilitated by the ban. In a manner that recalls the pattern followed by political Islam in Turkey and indeed by the *Alleanza Nazionale* in Italy, the *Vlaams Blok*'s successor party may share its initials, but it has used a name change to institutionalize a project that was already underway, namely dumping some of its ideological baggage — something which, by the same token, proponents of the futility thesis might do well to note. As far as the party programme is concerned, out has gone the commitment to a corporatist-style state, replaced by a new emphasis on enterprise as well as labour freedoms. More importantly perhaps, the stress on forcible expulsion and racial segregation and discrimination has transmuted into an assimilationist acceptance that different ethnic groups are here to stay — as long, of course, as they don't dare (in the words of the new programme) to 'reject, deny or fight against culture and European values like the separation of church and state, freedom of expression and equality between men and women.'

Of course, we should not take things too literally or too far. True, recent academic analysis that suggests that programmatic change thus signalled is long-term, ongoing and more than merely cosmetic (Erk, 2005; Coffé, 2005). However, the VB has for some time skilfully exploited its *triumviraat* leadership to say different things to different people, even when it means departing from



the ‘official line’, and will no doubt continue to do so. Moreover, any change was not so much caused as enabled by the legal decision that prompted the Blok to become the Belang — a decision, incidentally, which it has decided not to contest at the ECHR. The point, in other words, is not that the action has done some kind of good, just that it does not appear to have done any harm nor meant that things have stood still.

But if perversity and futility cannot be proven, what about jeopardy? For example, one could argue, albeit in indirect fashion, that action taken against Vlaams Blok, by helping it to modify its stance, will contribute to the scrapping of the *cordon sanitaire* which some see as a major achievement for the forces of liberal democracy against an organization that would taint and undermine it were it given access to power. However, even if we leave aside the implication that the ban somehow caused rather than helped along any modification, this argument is highly problematic. On the one hand, the *cordon sanitaire* has not yet been lifted and, notwithstanding calls from some renegades, no mainstream party suggested that it would or should be in the wake of the Blok giving way to the Belang. On the other, many observers argue that the *cordon* has long been under pressure in the face of mounting frustration with it among the public and (for the most part in private) politicians themselves. If it is lifted, however, it will not be because the legal action against Vlaams Blok caused it to modify its position. Rather it will be because its successor’s performance in municipal elections is such that mainstream parties on the centre-right — fed up with being forced to work with their centre-left opponents, especially at local level — may be tempted to into co-operation if not coalition agreements (De Lange, 2005, 6). True, such a move might be facilitated by the programmatic makeover that occurred in the transition from Blok to Belang. But, to say therefore that the legal process that drove that transition was a bad idea is to assume that the *cordon sanitaire* is a good one — an assumption which, given the distorting effects that continuing to treat some parties as ‘pariahs’ can have on good governance and system legitimacy, is at least debateable.

Conclusion

Banning parties that might be said to cause harm is not so much an obligation as a calculation — and one which inevitably mixes principle with more cynical considerations of party advantage (see Mudde, 2004, 199). Some (maybe even most) states (and mainstream parties) will decide that the game is not worth the candle. But their decision, and the fact that they are in the majority in making it, does not in itself mean that the minority of their counterparts who do things differently, whether they are labelled by scholars as militant or intolerant democracies, are mistaken. Comparative empirical investigation of three



high-profile cases where bans were implemented, covering all three types of democracies as defined by Pehazur, suggests that the pragmatic predictions they routinely occasion — that they will make no difference, that they will make things worse or that they will put existing achievements at risk — are not borne out in reality, not at least in the cases considered. Firstly, bans saw no accentuation of threat apparently posed to secular liberal democracy by the parties affected, whether it be religious, violent or racist. Secondly, those parties did not simply carry on as before. Thirdly, bans did not seem to undermine positive democratic development and achievements that took place prior to them coming into force.

To make the argument that perversity, futility and jeopardy do not necessarily apply to bans is not, of course, to say that they might, at least in some measure. By banning extremist parties, for example, a state shuts off a signal of grievances that might only get worse if ignored — a good argument perhaps for even the most militant democracy to maintain a flexible armoury running from, say, the prevention of a party standing at a particular election (as in Israel), through the denial of state funding (as in Belgium), through complete dissolution (as in Turkey and Spain). Conversely, conceding that those pursuing bans might, on occasion, be doing the right thing is not to buy wholesale into their arguments for pursuing them. Ironically, many of these correspond to what Hirschman (1991, 167) notes are the twins of the theses he focuses on, namely that *not* to act will be disastrous, that history is on their side, and that what they do, far from undermining previous achievements, will in fact secure them. The consequences of our actions, as Hirschman himself seeks to stress, are rarely so predictable.

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Notes

- 1 More detail on the German case can be found in an earlier version of this paper presented at the ECPR joint sessions in Granada (Bale, 2005, <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/granada/ws1/Bale.pdf>) — a paper which also features a normative discussion of the topic. While fascinating, not least because it might allow us to further explore the contention that there may be an inverse correlation between electoral success and/or participation and racist incidents (see Koopmans, 1996), the German case does not feature at length here because the recent attempt to impose a ban was unsuccessful, meaning that the case is not directly comparable.



- 2 Sinn Féin (then in its 'Provisional' incarnation) was only legalized in 1974 and, despite the fact that it began to regularly contest elections at all levels from the 1980s, continued to face a variety of other restrictions. Perhaps the best known was a government ban on broadcast access originating in October 1988. Although seen as laughable by many on 'the mainland', it may not have been quite as pointless as some suggest (see 'Sinn Féin concedes impact of TV ban', *The Independent*, 19 October 1990).
- 3 This record means that it would be artificial to restrict discussion to just one ban in Turkey in order to preserve strict comparability with the Belgian and Spanish cases. Almost inevitably, then, we are comparing something of a tradition in one case with two instances in the others.
- 4 It is only fair to note that the same media has cooled a little in its enthusiasm since then even if the evidence of any backsliding is, for now anyway, arguably more apparent than real (see Economist, 2006).

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