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Abstract

The objective of this paper is to draw attention to the constitutional erosion that has taken place in Spain in the last years. One of the main erosions that has occurred is connected to the Catalan pro-independence bid, with illiberal traits like the disdain for the law and the Courts. The illiberal approach to democracy will be highlighted. The national government is also to be blamed for some reforms affecting the General Council for the Judiciary and for the attempts to undermine and capture counter-majoritarian institutions, designed to control and counterbalance political power.

Keywords: Constitutional Erosion, Democratic Decay, Illiberal Democracy, Catalan Pro-Independence Bid, General Council of the Judiciary, Spain

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Liberal democracy in crisis: the Spanish case[1]

Núria González Campañá[2]

Introduction: the fall of liberal, constitutional democracy

In the last decade of the 20th century, liberal or constitutional democracy seemed to have triumphed everywhere (Fukuyama, 1992). However, the number of democracies around the world has been declining since 2006, and the quality of democratic governance within individual countries has fallen, as well (Freedom House, 2022). This is the reason why it has been well said that we were entering a period of democratic recession (Larry Diamond, 2015).

Although, this might seem to be a contradiction, the idea of democracy simply understood as the will of the people is still globally ascendant in people's values and aspirations:

> "The government believes that democracy is one of Europe's core values, and the European Union is also based on the foundations of democracy. This means that we may not adopt decisions – those that significantly change people's lives and also determine the lives of future generations – over the heads of the people, and against the will of the European people" (Viktor Orbán, 2016).

The reader might be surprised to know that the author of this speech given in February 2016 is the Hungarian Prime Minister Viktor Orbán, justifying the call for a referendum on the EU refugee policy. So to say, the broader notion of democracy (i.e. the will of the people) is not so much the one which is losing track, but rather the one that we call liberal or constitutional democracy. What is meant by that?

A liberal democracy is not only about voting. This approach advances a shallow conception, whereby democracy becomes simply a majoritarian principle prevailing over any other consideration. Liberal democracy amounts to much more than the mere aggregation of the preferences of the majority (Closa, 2020). It shall mean that people would decide on public debates, but doing so according to pre-fixed rules. Constitutions can be changed, but only by following the foreseeable amendment procedures that usually require large and qualified majorities, in order to make sure that circumstantial majorities do not change the rules of the game at their will. Liberal democracy shall also guarantee transparency, checks and balances, independence of the judiciary, pluralism, fundamental rights and particularly rights of

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minorities, what has been understood as the Rule of Law. In fact, the Rule of Law cannot be in conflict with liberal democracy.

In effect, Rule of Law has been described as the "backbone of any modern constitutional democracy" (European Commission, 2014). The Rule of Law "makes sure that all public powers act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. […] This means that respect for the Rule of Law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the Rule of Law and vice versa" (European Commission, 2014). Thus, "the law represents both the strength and the weakness of the idea of popular sovereignty. The law gives form to, articulates and implements popular will. But at the same time, it would seek to control it by limiting the manner and scope of its exercise" (Haljan, 2014).

Contrary to this approach, under the populist narrative, that promotes a simpler approach to democracy, the wishes of the majority always take prevalence over the principle of legality, and as such, the popular will is conceived as the main and only source of legitimate power. Whereas constitutional (or liberal) democrats believe that there must be a balance between the majoritarian will and the principle of legality, the populist or illiberal approach (raw or radical democracy) argues that the people's voice (i.e. majoritarian principle) should have no limits, no restraints.

This is precisely the narrative of any illiberal project: they claim that the movement or the party is the only legitimate representative of the people which protects them from the corrupt elite. The nation has to speak out with a sole voice, there is no need for public debates. Populism's key feature is the hostility towards pluralism, because "populists claim that they and they alone represent the people… The claim to exclusive representation is not an empirical one, it is always distinctly moral" (Werner-Müller, 2016). This is why it has been argued that illiberal democracy is an instrument of exclusion, not of inclusion (Krastev, 2017). While liberal democracy pursues consensus and concession, without claiming a full and final victory of one side, the illiberal regime seeks decisive victory to its supporters. The institutions and safeguards having been offered by liberal democracy, not the majority rule itself, are set aside when an illiberal or populist narrative triumphs. Europe is not unfamiliar with this risk. In fact, some European countries are in the middle of a tribalization process (Wind, 2020).

Liberal democracies may fall in the hands of armed people, but they could also die slowly in the hands of elected politicians when there is a gradual erosion of political norms and institutions (i.e. constitutional erosion). When independent judges are pictured as enemies of the people or when pluralism is seen as a risk, rather than a strength, the liberal constitutional democracy is at stake (Ginsburg, Huq, 2018).

1. The Spanish case

Although Spain is not among the most worrisome European cases, liberal constitutionalism has experienced some setbacks in the last years. Such trends are mainly to be found in the approach of pro-independence Catalan governments. The intensity of the illiberal narrative of

the Catalan government is the major threat to the Spanish liberal, constitutional democracy. This is noteworthy, because usually, when referring to illiberal threats, one tends to think that only a national government can follow a populist and illiberal narrative. But in decentralized states, there might also be cases of sub-national populism or illiberal democracy.

Beyond this, there are also other illiberal traits in the Spanish legal order: namely, the attempts of the Spanish government to capture the judiciary and more broadly, to "colonize" counter-majoritarian institutions designed to control and counterbalance political power (De la Nuez, 2021).

2. The Catalan pro-independence crisis

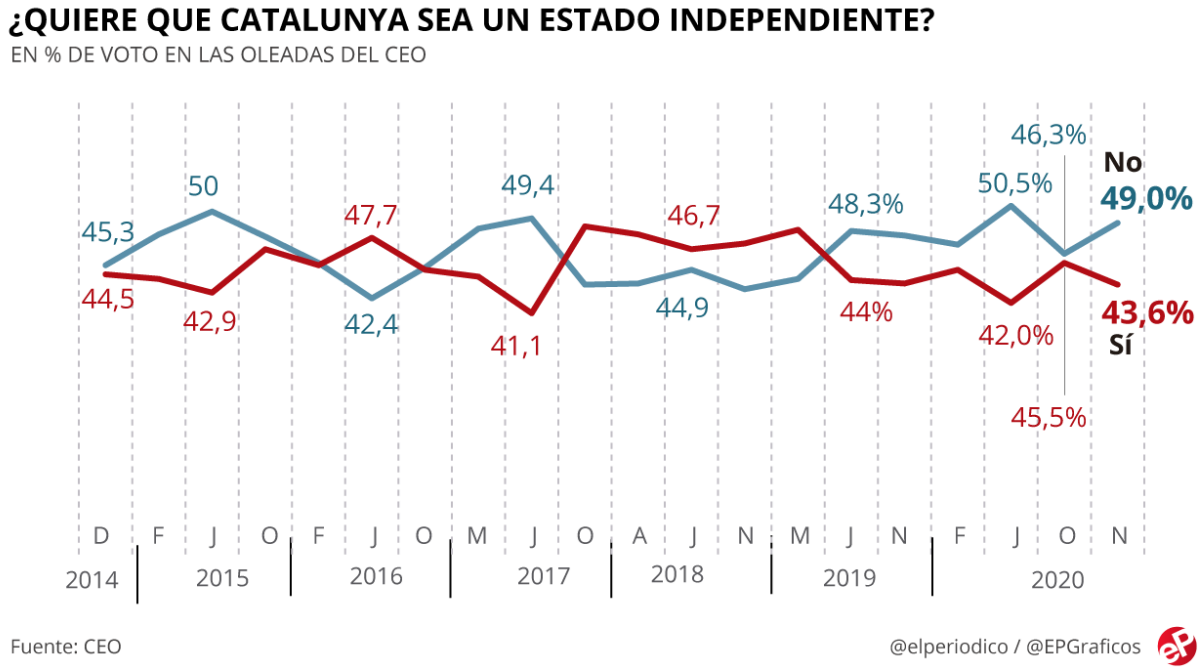
Focusing only on how poorly has the Spanish Government handled the Catalan crisis prevents the analysis of what is less known and barely explained: the populist or illiberal character of the Catalan pro-independence movement, led by the Catalan authorities in the last years. This section will be devoted to highlight those illiberal traits, after having reviewed the main events surrounding this crisis.

When discussing about the Catalan pro-independence bid, international audiences tend to remind the violent clashes of 1st October 2017, when the Catalan government organized an illegal referendum on independence. Although there were no fatalities, many voters were injured when the police, following Court orders, tried to prevent the process. It is also well known that several Catalan leaders, including the former Catalan President Carles Puigdemont, left Spain following October 2017 and have not returned, afraid of facing legal consequences, even criminal charges. The then Spanish government (led by the centre-right Popular Party) refused to negotiate any political solution and in October 2019 the Spanish Supreme Court rendered long jail sentences to some Catalan politicians.

Although the current Spanish government (a coalition between the Socialist Party and the far left of *Unidas Podemos*) started negotiations with the Catalan government from the very beginning (Ubasart, 2021), and despite the fact that all those who had been convicted for the 2017 events were pardoned and released from jail in June 2021, mainly the 1st October clashes and the long jail sentences have been attracting the attention of international media and have eroded the image of Spain as a full liberal democracy: "why the inhabitants of Quebec in 1980 and 1995 or the Scots in 2014 were allowed to vote in independence referendums and the Catalans have been denied this chance?" is the usual question that is being asked by foreigners when inquiring about the Catalan crisis.

Of course, one could argue that the former Spain's government did not facilitate any political solution but opted for obstruction through silence and through constant appeals before the Constitutional Court. The reaction of Spanish authorities' can be considered as a grave political error since the response to this populist crisis should also come from politics, not only from Courts. However, this poor handling of the situation by the Spanish government falls short of being a violation of human rights or a threat to liberal democracy or Rule of Law.

Since 2012, the government of Catalonia has attempted to organize a referendum or consultation on independence. One has to note first that although polls suggested that a majority of Catalans were in favour of being asked about independence, they also showed that Catalonia is split in two halves when the question comes to secession, and as such, there is no clear majority (let alone a clear majority) in favour of independence.



According to the polls –conducted by the official polling agency of the Catalan government, CEO– the percentage of Catalans in favour of independence has never reached 50% throughout the last years, as shown on the graphic, elaborated by CEO. These polls have been reaffirmed by the electoral results in regional Catalan elections in 2015, 2017 and 2021.

Such a lack of clear majority favouring independence has not prevented the Catalan government and pro-independence supporters to demand the organization of a referendum. However, the legal problem is that the current Spanish constitutional order does not permit the inhabitants of an Autonomous Community to decide by themselves about the secession from the country. This prohibition is not exceptional in comparative law terms (González Campañá, 2019).

Despite the clarity and severity of several Constitutional Court's decisions, in September 2017 the pro-independence majority in the Catalan Parliament passed two laws: the 19/2017, on a referendum on self-determination, and the 20/2017, on the foundation of the Republic. Both Catalan laws proclaimed that they prevailed over the Spanish Constitution and the Catalan Statute of Autonomy. Needless to say, an ordinary Catalan law cannot amend the Spanish Constitution or the Catalan Statute of Autonomy. Besides, the extraordinary parliamentary procedure that had been triggered to adopt the mentioned laws reduced the discussion period to less than a day for each bill, leaving no time for the opposition to study the proposals. Passing these laws –establishing a new legal order in Catalonia departing (unlawfully) from Spain– violated the principle of legal certainty and as such, the process was considered, even by people sympathetic to pro-independence arguments, as an act of institutional violence (Amat, 2021).

Both laws were immediately challenged before the Spanish Constitutional Court, which suspended their application. However, the referendum took place on 1st October 2017, without any procedural guarantees. The voting led to harsh protests and even to violent clashes with police. In the end, according to the Catalan government, only 43% of the population voted in favour of independence.

During the 2017 crisis, the Catalan government showed an enormous disdain for the law and the judiciary because of the unrestricted approach to the popular will. However, this attitude was not new. The Catalan government had shown the same disdain in the preceding years. For instance, in 2012 the Catalan Parliament passed Resolution 5/X claiming that the democratic efforts of Catalan political and social forces to transform the Catalan legal framework only encountered with difficulties and refusals on the part of the Spanish State. According to the Resolution, the 2010 Judgment of the Spanish Constitutional Court which found some provisions of the 2006 Catalan Statute of Autonomy unconstitutional, represented "a radical rejection of the democratic evolution of the collective wills of the Catalan people within the Spanish State" (2012 Catalan Parliament Resolution 5/X). Following this view, the fact that the Constitutional Court outlawed some provisions of the Catalan Statute had frustrated Catalonia's aspirations for greater autonomy and a unique position (Pérez Royo, 2011). Thus, for pro-independence supporters, the Constitutional Court, by reviewing the Catalan Statute that had been adopted by two representative institutions, the Catalan Parliament and the Spanish Parliament, and ratified in a referendum, disregarded the democratic principle. This was the start of the constitutional crisis and for pro-independence supporters, such a decision had a triggering effect.

Others, on the contrary, believe that the real turning point for the pro-independence movement was the deep economic crisis of 2008 which hit Spain in 2010–2012 (Subirats, 2021). In my view, this is a key factor. In October 2010, months after the Constitutional Court decision, pro-independence support barely reached 25% of the population. However, it rose to 44% within two years, after the Catalan government introduced some of the harshest budget cuts in Spain. Those cuts affected public healthcare, public education and other social services, leading to violent protests in Catalonia. In June 2011, protesters tried to blockade the Catalan Parliament with the goal to prevent MPs from debating new austerity measures. The Catalan President of the time, Artur Mas, had to escape by a helicopter because protesters blocked the Parliament entrance. After this period of time, the campaign "Spain is robbing us!" (meaning that the rest of Spain was to be blamed for the cuts) was launched by entities being close to the Catalan government (Castellà, González Campañá, 2021). Instead of anger towards regional budget cuts, many people began to feel furious for what was portrayed by the pro-independence politicians as an unfair wealth distribution among Spaniards. The only way out seemed to be gaining independence: if Catalans did not share their tax incomes with other Spanish regions, they would not be suffering from budget cuts. In order to become independent and escape from budget cuts, a referendum was necessary.

In constitutional terms, illiberal democracy (or populism) refers to the unrestricted popular sovereignty. People can't be wrong and therefore, leaders and parliaments should find out the way to carry out people's aspirations, regardless of the law and Court's decisions. This is exactly what has occurred in Catalonia in the last years. The referendum became a moral goal,

the only way to express the people's will, "to the detriment of political representation and other kind of consociational arrangements" (Barrio et al, 2018). Oriol Junqueras, former Vice-President of the Catalan government, had insisted several times that "voting is a right that prevails over any law" and that "we [Catalan government] will disobey the Spanish laws, but we will obey the mandate that we have in the Catalan Parliament" (Junqueras, 2014). The disregard of the discrepancies between legitimacy (that comes from the Catalan people, even if there was no clear majority and society was deeply divided about the question of secession) and legality implies an illiberal conception of democracy. The idea of the 'government of the people' was taken literally and checks and balances on the popular will (coming, for instance, from Courts) were rejected (Kriesi, 2014). But in a constitutional / liberal democracy, the pure majoritarian conception of democracy is controversial. Not all the preferences, despite their popular support, merit attention. Majority preferences should be subjected to institutional safeguards, such as to judicial review. Majorities are not the last word. Take for instance the 1962 elections in Alabama, when George Wallace obtained 96% of the votes rallying in favour of disobeying the 1956 US Supreme Court decision that allowed black students to attend university (Ovejero, 2021).

The disdain for the law is also to be found in the way of how the illegal referendum was implemented. Here, the standards established by the Venice Commission are noteworthy. The 2017 referendum failed to comply with many of the Venice Commission requirements (Castellà, 2020). The Venice Commission had been approached by the Catalan government in their search for international legitimacy. In his letter of 2 June 2017, Mr Buquicchio, President of the Venice Commission, underlined that the Venice Commission "the official name of which is European Commission for Democracy through the Law, has consistently emphasized the need for any referendum to be carried out in full compliance with the Constitution and the applicable legislation" (Buquicchio, 2017). However, Catalan authorities decided to ignore the suggestions of the President of the Venice Commission and the Judgments of the Spanish Constitutional Court. This can only be explained by an illiberal interpretation of the popular will.

In sum, in the last years, a simplistic and demagogic narrative has been used implying that anything can be the subject of vote, even depriving others from their rights. Because, in the end, secession is also about deciding to deprive some of the current fellow citizens, those who live in the rest of the country, of the possibility of keeping their citizenship rights in the seceding territory (Dion, 2021).

3. The (attempted) judiciary reforms in Spain

Besides the Catalan government disdain for the law, there are other illiberal trends in Spain. One of these concerns the judiciary. Without independent judicial constraints, a political system cannot properly be called a liberal democracy. If Courts are not independent and impartial, how can we be sure that they will enforce the Rule of Law for all rather than pursue a particular governing majority's interests? (Wind, 2020).

In the 2020 Rule of Law Report on Spain, the European Commission warned about the fact that the General Council for the Judiciary (GCJ) had been exercising its functions as an interim

body since December 2018 (European Commission, 2020). Such long (and unprecedented) temporariness was a source of concern. But it is in the 2021 and 2022 Rule of Law Reports on Spain that the Commission is deeply worried about the path taken by the judicial reforms in Spain, particularly the (attempted) reforms of the GCJ (European Commission, 2021 and 2022).

In Spain, the GCJ is the body of judicial self-governance and ensures the independence of courts and judges, yet it does not form part of the judiciary. It was established to ensure the independence of the judiciary, in particular the independence from the executive.

As the Venice Commission emphasized in the 2010 Report on the independence of the judicial system this body might not be common (or necessary) in old democracies, where the executive power has sometimes a decisive influence on judicial appointments. In those political systems, such institutional setting may work well in practice and allow for an independent judiciary because executive powers are restrained by legal culture and traditions, which have grown over a long time. However, the Venice Commission warned that in the case of new democracies (Spain fits into this category), where these traditions had not been developed, appointments of judges of ordinary (non-constitutional) courts are not an appropriate subject for a vote by Parliament because the danger that political considerations prevail over the objective merits of a candidate cannot be excluded. Therefore, an appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy.

In Spain, the GCJ has competences over disciplinary actions and it is also responsible for appointing, transferring and promoting judges. The GCJ is composed of the President of the Supreme Court, 12 judges and 8 lawyers or other jurists. The GCJ members are appointed for a non-renewable period of five years. While the Spanish Constitution requires the 8 jurists to be appointed by a 3/5 majority in each Chamber of the Spanish Parliament, it does not specify how the 12 members representing judges are to be appointed. The appointment process had undergone significant changes over time and it constitutes one of the most sensitive and problematic issues (Torres, 2018). Initially, the 12 judges had been elected by judges. This model was changed in 1985 by a reform, initiated by the Socialist government of the time. Since then, the Parliament is also responsible for the appointment of the 12 judges with a 3/5 majority.

The 1985 reform was challenged before the Constitutional Court, that in its judgment 108/1986, of 29 July, found the law to be constitutional, but raised some concerns. The law is constitutional as long as the political parties do not misuse it. The Court was aware that there was a risk of partisan politics in the appointment procedure (Torres, 2018), but hoped for the best and decided not to declare the law unconstitutional, expecting that political formations would not allocate the GCJ seats according to their parliamentary representation. Unfortunately, this is exactly what has happened.

In practice, the Socialist Party and the Popular Party (the two main parties in Spain) appoint the twenty candidates between them, with the inclusion of candidates suggested by smaller political groups, depending on whether these groups support the party in power (either the

Socialist or the Popular). The risks that was foreseen by the Constitutional Court have become an unfortunate reality. It should not be surprising that as a result of this practice, the GCJ is perceived as a highly-politicized body that undermines not only its own legitimacy, but the legitimacy of the whole Spanish judiciary. Carmona refers to the situation as a "partisan colonisation" (Carmona, 2020). This poses a serious problem, since Courts not only need to be independent on paper, but they must also be seen as independent (Torres, 2018). In effect, public needs to perceive that justice is impartial. This perception is key to guarantee public confidence in the judicial system.

Thus, the Spanish model of appointing GCJ members has been, at least since 1985, contrary to the spirit of the Spanish Constitution (the risks foreseen by the Constitutional Court are today evident). Moreover, it is also against European standards. Some of these standards are to be found in the 2010 Council of Europe Recommendation on judges adopted by the Committee of Ministers: independence, efficiency and responsibilities. When it comes to Judiciary Councils, it provides that "at least half of members of such councils must be judges chosen by other judges from all levels of the judiciary" (para. 27).

In the past, with the two mainstream parties reaching agreements to renew the body, the renewal of the GCJ did not attract attention and only a few scholars and judges' associations were concerned about breaching European standards. However, in times of polarization, reaching this type of agreements entails more political costs for both parties. And deadlocks can also occur, which has been the case since December 2018. Negotiations between the Socialist and the Popular Party have been in a stalemate, not being able to reach any agreement. The former president of the GCJ has repeatedly brought the attention of Parliament to the need of proceeding with the nomination of new members and has referred to the current situation as a "democratic anomaly" (Moreno, 2022).

Beyond this, there was a worrying attempt proposed in October 2020 by the Spanish government which aimed at changing the election system of the judges of the GCJ by amending the system with an absolute majority vote of second round. Thus, the 12 judges of the GCJ would have been elected by Parliament, but the necessary majority of 3/5 would only be required in the first round of voting. If such a majority could not have been reached, the process would have continued with a second vote requiring absolute majority. This would have meant that the parliamentary majority that sustains the government would have been enough to decide the composition of the GCJ putting the independence of the body at high risk. After facing severe criticism (De la Nuez, 2020), because neglecting the notion of separation of powers and because of the populist motivation against counter-majoritarian institutions, in May 2021 the parliamentary groups supporting the draft law withdrew it. In this regard, the Letter of the President of GRECO (Group of States against Corruption of the Council of Europe) to the Spanish Head of Delegation from 14th October 2020, should be cited in which Mr Marin Mrčela regreated that "[t]his legislative initiative departs from the Council of Europe standards concerning the composition of judicial councils and election of their members and may result in a violation of the Council of Europe anti-corruption standards" (Mrčela, 2020). The European Commission also voiced that the proposed reform would endanger judicial independence and exacerbate the impression that the Spanish judiciary might be vulnerable to politicization.

In fact, the reform would have been similar to the ones that have been criticized, for instance, in Poland. One should bear in mind the composition and the functions of the equivalent Polish body to the GCJ, the Krajowa Rada Sądownictwa (KRS). In 2016, a Polish reform changed the way its members were appointed. While in the past 15 of its members were elected by Judges, since then members have been elected by the Parliament. As a result, 23 out of 25 members of the KRS are appointed by Parliament or the Government. The proposed reform in Spain would have followed the Polish model (Magaldi, 2021).

Even if the proposed reform was withdrawn, the government did pass another law affecting the GCJ. On 25 March 2021, the Parliament adopted a law establishing an ad interim organizational regime for the GCJ that drastically reduced its functions after its members' term of office expired.[3] Such disempowerment will persist until the new GCJ is elected. From a substantial point of view, it has to be noted that the reform is causing paralysis, delays and malfunctions in Courts. From a procedural approach, it deserves to be mentioned that the law is not following the recommendations of the Venice Commission. In effect, the Venice Commission has suggested that during the legislative procedure of reforms affecting the judiciary, relevant stakeholders like judges' associations or the General Councils need to be consulted. However, in this case the Parliamentary majority supporting the government bill ignored the recommendations of the Venice Commission and approved the reform without taking into account the view of the majority of judges' associations.

In short, the behaviour of both the governing parties (trying to capture the GCJ with their parliamentary majority and reducing the powers of the current ad interim GCJ) and the opposition (rejecting any renewal of the body) has eroded the legitimacy of one of the key institutions to sustain the Rule of Law in Spain.

4. The capture of counter-majoritarian institutions in Spain

Although the previous concern referred very specifically to the GCJ, one should note that, in fact, it could be put under a broader threat to the Spanish liberal democracy. In Spain, beyond the GCJ, there is a worrying attempt to politically capture or colonize counter-majoritarian institutions, designed to counterbalance political power. The agreement between the two main Spanish parties of October 2021 to renew the tenure of members of several bodies (e.g. the Constitutional Court, the Court of Accounts, the Ombudsman or the Data Protection Agency) is a good example of the abovementioned threats.

However, the (key) difference with some illiberal regimes is that in this particular case this is not to be conceived as a move of a particular government or party in power, but it is the result of a cooperation between the two main parties in Spain, which makes it less worrisome. Here there is no party in power trying to colonize the independent institutions, but the leading parties (including the opposition), which permits certain equilibrium and political pluralism. It is true that it might be argued that this is not new, that in the past 30 years, political parties in Spain have always been reaching agreements to appoint members of such institutions. In a

[3] Organic Law 4/2021, of 29 March, by virtue of which the Organic Law 6/1985, of 1 July, on the Judiciary, is modified in order to establish the legal regime applicable to the ad interim General Council of the Judiciary.

young democracy, a leading role of political parties in the functioning of the system should not be a surprise. In fact, it is essential, (Hofmeister, 2021) not necessarily a cause for concern.

However, the problem is that recently the parties are, increasingly, ignoring the letter and spirit of the law. Although the Constitution rules that the Parliament is in charge of appointing the members of these counter-majoritarian institutions by a qualified majority, there are no public hearings or discussions during the appointment procedures. On the contrary, there are closed-door negotiations with a complete lack of transparency. The leaders of the main parties announce to the press the names of the new nominees whenever they reach an agreement. They just assume that, despite the chosen candidates might raise concerns, the disciplinary vote of their party members in Parliament will guarantee a successful election. Furthermore, what today is particularly worrisome is that the aptitude, suitability and independence of the nominees has never before been doubted as much as in October 2021. And the reason is that some candidates have close relationships with the nominating parties (which means that their independence is not beyond doubt) and they lack peer prestige (De la Nuez, 2021). This default appointment process reflects the gradual erosion of the functions that are constitutionally entrusted with the Spanish Parliament (Carmona, 2021).

Having raised these concerns, I am not implying that Spain is on the verge of an illiberal shift or that there are grave systemic threats to the liberal democracy. Still, that there are warning signs that should be taken into consideration.

Conclusion

Spain is not alien to the erosion of the liberal democracy that has been ongoing in the last years in many Western countries. The populist and illiberal approach that has been present in Catalonia in the last years is particularly worrisome: a narrative that argues that popular will is enough to trump the law, even if that popular will is unclear. This is a risky enterprise: the dictatorship of the majority which is about denying the relevance of the law and only using it when it suits the political leadership. Such approach is putting a great strain on the liberal character of Catalan society. The risk here is spreading the idea that the majority can do whatever it wants, without limits, without taking into consideration rights of minorities and counter-majoritarian institutions like Courts.

Europe experienced in the first half of the 20th century what a political regime looks like when there are no restraints on majorities. The constitutional systems implemented in the second half of the century aimed at, precisely, nuancing the majoritarian and popular impulses.

These illiberal flaws are not exclusive from Catalonia but it is precisely in the Catalan region where the major erosion to liberal democracy has taken place. Spain as a whole has also some challenges that are to be addressed: how to reinforce counter-majoritarian institutions? How to guarantee their independence and the prestige of their members? Finally, how to limit the influence of the political parties in the judiciary?

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