

THE QUALITY OF INSTITUTIONS IN SPAIN

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Prologue

Alongside growth and corporate responsibility, institutional quality represents one of the three centerpieces guiding the considerations of the Círculo de Empresarios. It has been a fundamental issue of our concern since the beginning of our association more than forty years ago. It can be shown empirically that the progress and well-being of society are intricately bound up with the quality of its institutions. The balanced development of the economy and society as a whole are unattainable in the absence of institutional quality and legal certainty.

Following a long period of dictatorship, the transition to democracy represented a major step forward in terms of institutional quality, however the recent economic crisis has awoken the mistrust of wide swathes of the population concerning the workings of our institutions and the quality of our politicians, rulers, judges, regulators and public authorities.

Perhaps the impression of these public servants is somewhat unjust, however there is no question that a few, very poor examples can tarnish the image of any group as a whole. However one looks at it, the task of recovering trust in our institutions and their servants is essential to our youthful democracy should we wish to progress both collectively and as individuals.

Achieving democratic renewal in Spain and overcoming the misgivings and discontent of citizens regarding our institutions will prove possible only through significant improvements to their workings. Economic recovery and improved equality of opportunity perceived by all will naturally have an impact in dissipating this distrust and dissatisfaction. Improvements in institutional quality will also improve the competitive position of Spain over the medium term, enabling higher growth rates that will drive wealth creation, employment and tax revenues.

Given the significance of this for the health of Spanish democracy and our economic and social program, and faced with the need to seek out solutions to this issue, it appears to us crucial that we tackle the matter with the goal of improving the quality of Spanish institutions. This has been driven by the Working Group on Institutional Relations of the Círculo, presided over by the member of the Board of Directors, **Carmen Mateo**, under the guidance of Professor **Víctor Lapuente**. The latter, together with a group of prestigious experts, has analyzed the matter from various points of view and suggested a series of recommendations.

The conclusions ultimately offered as a summary invite us to avoid both exaggeration and inactivity. As pointed out by Lapuente himself, quoting from the work of **Manuel Villoria**, studies show that the Spanish are among the most reluctant in Europe to hand over cash, gifts or favors to public officials in exchange for a favorable administrative service or ruling. For some time we have been seeing the same conclusions coming out of the work of Transparency International, a distinguished and highly regarded organization with whom we wish to share the endeavors of this study. We therefore gratefully acknowledge the collaboration of the organization's President in Spain, **Jesús Lizcano**.

In order to improve the institutional framework in Spain and create a country that is more democratic, fairer, more competitive, better administered and more transparent, this work is rounded off with a proposal for a gradualist manifesto, with measures that are institutional rather than political. Measures that each and every one of us should engage with, to build a country that works better for all.

John de Zulueta,

President of the Círculo de Empresarios



...CON LA SANGRE VERDADERA DE ESTE PAÍS EN LA GUERRA DE AFRICA
1900-1902

Chapter 8

Conclusions: a gradualist manifesto*Víctor Lapuente***8.1. Shunning both exaggeration and inactivity**

Some analysts seek more Government for Spain, others wish for less. Some vouch for more ambitious redistributive policies, such as the universal basic income (Mari-Klose, Moreno & Del Pino 2016), whereas for others, the priorities lie in liberalization and a better design of active employment policies that enable reinsertion into the labor market (De la Fuente & Onrubia 2016). However, as we have attempted to demonstrate in this report, the argument regarding the optimum amount of government, namely with regard to the size of authorities as a proportion of the economy, is secondary to the debate regarding the quality of governance. In other words, the extent to which our public institutions conduct themselves effectively, efficiently and in the absence of corruption.

The available empirical evidence shows that the quality of public institutions has a considerable effect on the well-being of a country. In the first place, public institutions are fundamental in understanding economic growth (Rodríguez-Pose & Garcilazo 2015). Moreover, they assist in reducing economic inequality (Gupta, Davoodi & Alonso-Terme 2002) and environmental degradation (Welsch 2004); they improve objective health outcomes (Holmberg and Rothstein 2012), levels of happiness (Veenhoven 2010) and the subjective perception of well-being (Helliwell & Huang 2008). Other positive effects

of the quality of institutions include a reduction in tax evasion, improvements in infrastructure and an increase in confidence in society and educational results, among others (Rose-Ackerman & Palifka 2016).

In Spain we tend towards very harsh judgments of our institutions. 95% of Spanish people in the European context consider that corruption is widespread in our country, a figure surpassed solely by the Italians and Greeks (VVAA 2016). And two out of every three Spanish citizens believe that the only way to be successful in business is through political connections. This contrasts, for example, with a figure of 22% for the Dutch or 5% among Danish citizens. In recent years, both corruption and politicians have consistently appeared as one of the main problems faced by the country.

Nevertheless, the perceptions that we have of our institutions do not sit comfortably with our experience of them. In our everyday interactions with the public authorities as Spanish citizens we generally rate public services very positively and rarely do we come across fraud or corruption. Although in our perceptions of poor governance we are at the top of the European league table, in terms of our personal experience of this we are very much among the Europeans least suffering this phenomenon.

We therefore have a somewhat split relationship with the state. On the one hand we believe that our public institutions, in particular our leading politicians, are of very poor quality. On the other, we rate our experiences with public institutions very positively, above all in terms of the providers of basic services such as education and healthcare. This evaluation is based on significant improvements in these public services in Spain during recent decades.

However, avoiding over exaggeration in these matters should not be interpreted as a call to inactivity. As we have seen this report, the public sector in Spain has made very significant strides in recent decades and the impact of this has clearly been felt in the lives of the average Spanish citizen. As an example, universal secondary education has meant that the progress in educational attainment of those born in the 70s and 80s in comparison with those from the 40s and 50s is among the highest in the OECD. Nevertheless, in order to match those countries with the best institutions in the world, we need to remedy a series of defects set out in the thematic chapters of this report.

8.2. A still frame of the problems besetting our institutions

Firstly, regarding the health of our democracy, chapters 1 (Víctor Lapuente) and 2 (José Fernández-Albertos) of this report show that we must avoid the temptation to either be prophets of doom or to dismiss any sizeable issue. Spain suffers from a problem of democratic legitimacy that is somewhat similar to neighboring countries. In recent years, particularly since the financial crash, even the world's most solidly established democracies such as the United States or the United Kingdom have endured turmoil that has contributed to disillusionment with the political system among citizens. To date, no other alternative system has managed to capitalize on this discontent, however throughout the Western world the percentage of citizens who see a takeover of power as being justifiable in certain circumstances is on the rise.

Data points towards the distance between political elites and citizens widening in recent years. And the experience of various countries, from Venezuela in the 80s and 90s to Poland and Hungary today, demonstrates that an increasing gap between citizens and politicians may augur anti-democratic upheaval.

Nevertheless, we must avoid the temptation to over-exaggerate with regard to Spain. In relative terms the country occupies a medium-high ranking in comparative indicators of democracy. We occupy the 17th slot in the *The Economist Intelligence Unit* ranking, far below the Scandinavians (Norway, Iceland, Sweden, Denmark) and English-speaking countries (Canada, New Zealand and Ireland) that head up the ranking. Our democracy however appears more healthy than others that are theoretically more consolidated, such as the United States (21), Italy (21) France (24) or Belgium (35). *Freedom House* also confers a high ranking to Spain in various indicators of a healthy democracy, such as pluralism and political participation, governmental working, freedom of expression and freedom of residence, employment and education. There is room for improvement in some aspects, whether in terms of the politicization of the justice system, gender-based violence or people trafficking for sexual exploitation. In some aspects we have also taken steps backwards, such as the disproportionate fines envisaged in the Citizen Security Act (Ley de Seguridad Ciudadana) that may impact rights of free association.

However, democracy in Spain does not suffer from any structural defect. It is noteworthy that international organizations such as *Freedom House* highlight the smooth workings of our electoral system, giving us the maximum score. In terms of public debate ne-

vertheless, this represents one of our most fiercely criticized institutions, one on which reformers have most keenly set their sights. As an illustration, many intellectuals propose a change to a first-past-the-post system in which the representative faces the electorate of his or her district directly, rather than from behind the crenellated walls of their party. As pointed out by the experts on electoral systems in chapter 2, the Spanish system offers a relatively efficient balance between the two principal and contradictory virtues of an electoral system, i.e. representativeness and governance.

With regard to the situation of the justice system, **chapter 3** (Marian Ahumada and Alicia González) also offers a diagnosis that weaves a mixed picture. On the one hand, the Spanish justice system continues to appear slow, ineffective and relatively rigid in terms of responding to the changes sought by an ever more complex and globally interconnected society. On the other, and particularly since the signature of the State Treaty on Justice (Pacto de Estado por la Justicia) (2001), governments of various hues have driven forward significant reforms to our judicial system.

Once again, the fundamental problem is one of trust. Citizens lack confidence in the justice system, in contrast to the more favorable opinion of the users of the same system. International *Rule of Law* indicators place Spain at a similar level to the comparative democracies mentioned above. In these rankings, once more headed up by the Scandinavians, the Netherlands, Austria and Australia, we have around twenty countries ahead of us. However, the fact is that misgivings also extend to professionals in the system. Queried as to the independence of the justice system in their country, Spanish judges place third in terms of negative perceptions among the European countries studied.

In respect of the efficiency of the judicial system, Spain has ostensibly improved in recent years in some aspects. For example, whereas in 2010 an average of 473 days were necessary to resolve civil, mercantile and administrative cases in the first instance; only 242 were needed in 2014. This places us ahead of our nearest neighbors, such as France or Italy. In other aspects, such as the number of pending administrative cases, regrettably we lie at the tail end of the European league.

Ahumada and González also debunk a myth: that of the under-funding of judicial institutions. Expenditure on the justice system, measured both in Euros per inhabitant and percentage of GDP, is one of the highest in Europe. Curiously, it is higher than that of some countries with more efficient justice systems. In terms of human resources, we have fewer judges per inhabitant than the average, though more lawyers.

When it comes to market and competition regulation, **chapter 4** (Gerard Llobet) dissects the institutional framework charged with overseeing the proper working of our markets. The chapter breaks up the problems relating to regulation into manageable chunks, avoiding both pessimistic analyses and universal cure-alls, that, as pointed out by prestigious economists, simply do not exist because each market requires specific solutions.

Llobet makes a didactic distinction between the tasks of the competition authorities (tending to act after the fact in punishing abuses that often overlap sectors, applying similar criteria to diverse markets) and those of sector-based regulators (often acting prior to the fact and in a specific manner, formulating rules according to which companies must act in a specific sector). To put it another way, an attempt to link both tasks by creating competition authorities that also regulate specific sectors may be more troublesome than it is worth in terms of the logical advantages derived from synergies, economies of scale, complementarity of functions or the ability to resist in the face of the narrow economic interests that a merger of competition and regulatory authorities may entail.

In competition matters, Spain was able to create an authority with the status of an international benchmark, the *Comisi n Nacional de la Competencia*, created in 2007. In contrast, the regulatory bodies, in particular the *Telecommunications Market Commission (CMT)* and the *National Energy Commission (CNE)*, suffered from deficits of competency and political independence, with board members who were often designated more as a result of their coziness with a political party than for their knowledge of the market. The so-called *tariff deficit* in the energy market and high mobile telephone charges represent two of the problems derived from this defective institutional design.

In its attempt to remedy this, in 2013 the government created a *super-regulator* the *National Markets and Competition Commission (CNMC)*, bringing together competition and regulatory functions. Yet at the moment of truth, the reform granted several powers to central government (examination of cases, collection of levies from operators, compensation of CNMC employees, etc.). The reform was strongly disputed by experts and even international bodies, including the European Commission, the latter threatening to open sanction proceedings against Spain and thus leading to the introduction of intricate amendments, such as the creation of two independent chambers - one for competition and another for regulation.

The creation of the CNMC is an example of the institutional reforms that we see in other areas in Spain regardless of the color of the governing party. An ambitious reform, often accompanied by a bombastic name theoretically designed to transform the entire approach to a specific sector, granting it greater independence and professionalization. However in reality, the dynamics of political dependence remain unaltered. Moreover, as a result of being fundamentally produced by only one side (the party in government), there is a logical tendency towards suspicion on the part of others. The result is a feeling of being back at the starting gate.

The 5 chapter (Salvador Parrado), relating to Public Authorities, analyses another much awaited reform, that of the Commission for the Reform of Public Authorities (CORA), also put forward in 2013. CORA has achieved some economic and operational successes, promoting savings in public authorities essential to curbing the public sector deficit, simplifying processes and reducing duplication among authorities.

Nevertheless, as shown by Parrado and despite the improvements in the state's finances, CORA has failed to significantly tackle aspects essential to a public administration for the 21st-century providing and implementing sophisticated welfare policies. Examples include improvements in services in keeping with the demands of society, the organizational design and training of human capital in public authorities with the analytical capacity to face up to the management of the public sector within a context in which a significant part of public activities are outsourced to companies or NGOs.

Our authorities still find themselves in intermediate positions within European rankings of e-government. In recent years however, adaptation to new technologies has forged ahead at pace, enabling one to be optimistic regarding the technical article modernization of our State. Moreover, the majority of users are satisfied with their treatment on the part of the Spanish authorities.

Having said that, there remain significant voids in the relationship between the organs of governance and the governed. In terms of the efficiency and effectiveness of services provided to companies we limp along in 23rd place out of the 28 EU member states. In Spain, the authorities pay companies for goods and services at an average of 80 days, in comparison with the European average of 28.2 days. It is likewise difficult to measure the results achieved by Spanish public authorities in that we lack shared methodologies and indicators. Recent initiatives, such as the Effectiveness, Quality and Efficiency Indices (SIECE) have not had the impact anticipated.

When designing public policy in Spain there is a disconnect between politicians on the one hand and experts and the often rarely consulted citizens on the other. Within this context, we are among the European countries that least uses empirical evidence to formulate public policy.

The problem is substantial. There is a lack of autonomy in public sector management to enable the adoption of the techniques and values of effective, efficient management. Whereas three out of every four European public sector managers believe that the goals of their organization are clear, in Spain this figure is true for only one half of these employees. Only 17% consider that they have a high degree of autonomy, in contrast to 40% of European public sector managers.

As explored in detail by Parrado, these managers also have few tools to administer their human resources due to the lack of systematic analyses of workload, of competency assessment or of the effects of an ageing workforce on public organizations. Remuneration policies are also deficient, with productivity and specific bonuses provided by public authorities following criteria that lack transparency. Far too often these bonuses are paid out according to who the person is (the level within the organization's hierarchy) rather than what they have done (their competencies, merits or results achieved). The training of human resources in the Spanish public sector remains essentially *ad hoc*.

Representatives of trade unions and civil society, as well as the media, are also responsible for the condition of the State in the future. Though often legitimate and plausible, criticism of public sector cuts has frequently been mixed with attacks based less on facts than prejudice regarding the deterioration of public values in new forms of welfare policy provision and, very specifically, on the subcontracting of services to private entities. Even further extended in those countries that lead the rankings of good governance and including not only English-speaking countries but, to the surprise of many, Scandinavian countries whose social-democratic governments have endorsed innovative outsourcing, such as school or health care credits, this outsourcing is frequently confused in Spain with the privatization of public services.

Accordingly, together with the increase in the autonomy of public sector managers to design and ensure compliance with contracts based on results, a change in culture regarding the way to deal with public matters in Spain is essential, removing ideology from the debate and ceasing to associate the outsourcing of public services with a neo-liberal agenda to dismantle, privatize and commercialize the public sector. The publication of

research may represent a contribution to this, such as the study by Parrado and Reynaers on the maintenance and even improvement of public values in companies assigned the provision of public services.

Not only should we increase the flexibility of relationships between public and private organizations in Spain, there is also a great deal of room to raise the level of internal flexibility of public authorities. Among 26 European countries, Spain places seventh in terms of the rigidity and closed nature of the civil service. Our administration largely continues to recruit civil servants for a career in a specific institution or sector rather than choosing the ideal candidates for each post.

These may come from other public organizations or from the private sector. Although there have been achievements in reducing the administrative burden in some sectors, for example the introduction of online auctions has reduced the bureaucracy of judicial auctions, international indicators continue to show Spain as being excessively bureaucratic in terms of administrative procedures.

One aspect of the analysis in chapter 5 regarding public authorities that links up with the items dealt with in chapter 6 regarding transparency and the fight against corruption is the politicization of public authorities and the perception of partiality in some of their conduct. Both within the General Administration of the State, the autonomous regions and in local bodies, Spain has a high number of politically appointed posts (that often reach the level of managing director or equivalent). To these must be added the posts involving free appointment among civil servants (at level 30 in the General State Administration, but covering many other levels in some autonomous regions). Although often presented as a triumph over autonomous bureaucracy, in essence these increase the politicization of the bureaucracy because they end up being decided upon by political appointees. This inevitably sends a message to younger civil servants: if you want to get on, you have to think of your political connections. It is also important to add to this the many advisers existing in the cabinet offices of political appointees of whatever administrative level in any Spanish territorial area.

The result is that the leadership of our authorities is highly politicized in comparison with other neighboring countries. As shown by the available evidence (Dahlsrom & Lapuente 2017), the politicization of public authorities is directly related to a less effective, less innovative and more corrupt public sector.

With regard to transparency and the fight against corruption, **chapter 6** (Manuel Villorla) shows that Spain rarely appears among the world's top 20 countries according to indicators of good governance. For example, it currently occupies a modest 41st position in Transparency International's *Corruption Perception Index*, sharing this position with Costa Rica and Brunei. The most worrying thing is that this situation is not improving and, in general terms, the country is sliding down the list.

It is true that the most prevalent form of corruption in countries suffering this at an endemic level is so-called low-level or administrative corruption, a phenomenon virtually non-existent in Spain. Only 2% of Spanish citizens have suffered a recent experience of corruption when dealing with public officials, in contrast to Lithuania or Romania for example, where 29% and 25% respectively report this (YVAA 2016). Nevertheless, so-called high-level or political corruption appears fairly serious in our country. Once again we are basing this fundamentally on subjective perceptions in that it is very difficult to estimate with any degree of certainty the level of political corruption truly existing in any country.

Nonetheless, all of the data appears to point in the same direction: Spain suffers from significant levels of political corruption and, what is more, the situation has worsened over the past 15 years. This is when International indicators of quality of governance began to detect a slide in the relative position of our country. The 132 amnesties handed out to persons convicted of corruption in Spain between 2000 and 2012 have done little to help this. Neither does the steadfast defense on the part of political parties of their leaders when prosecuted for corruption. As a consequence, and in particular following the economic and political crisis, in recent years corruption has become the second most important problem highlighted by our citizenry. Amongst EU countries, Spain has seen the greatest increase in perceived corruption, with a rise of more than 20 percentage points in less than a decade. This represents a very distressing record and a problem that cannot be put down to the mischievous side to our culture. Studies show that the Spanish are among the Europeans least given to handing over cash, gifts or favors to public officials in exchange for a service or favorable administrative decision. Political corruption does not form part of our cultural DNA, nor the DNA of political parties. However, as soon as power is achieved, the majority of parties sooner or later become tainted with corruption scandals. At most, the evidence points towards political corruption being written into our institutional DNA: public organizations that are highly controlled by governing parties lack checks and balances. These could consist of autonomous public managers in the general state administration and autonomous authorities, national enabling bodies with the genuine power to resist the pressures of mayors in local entities and who remain vigilant over the integrity and impartiality of public sector intervention.

Chapter 7 (Lucas Gort-zar) dissects the main challenges facing education in the 21st-century. This is done once again by means of comparison, the best way to view our strengths and weaknesses. As a result, it is possible to view the two fundamental facts that characterize education in Spain. The first is the extraordinary progress in education since the 1970s. Spanish citizens educated under democratic rule score much higher in basic competencies, such as reading, writing and mathematics, than those of previous generations. Despite the fact that these younger citizens do not find themselves among the top positions in the most prestigious international tests, such as PISA, they are at the level of countries with a much longer democratic tradition and greater public investment in education, such as France, Italy, Sweden and the USA.

The second defining fact with regard to education in Spain is worrisome. The school dropout rate is high and, despite a brief pause during the recession, has even increased since the beginning of the millennium. This increase in the dropout rate is largely due to the peculiarities of Spain's socio-economic structure this century, with the arrival of almost 5 million immigrants and an economic boom linked to construction and tourism.

Education has recently been one of the most debated areas in Spain. Nevertheless, as in the case with other areas, there is scarcely any consensus between observers. For some, the problem with the Spanish education system resides in an excess of egalitarianism that limits the flowering of talent and brings everyone down to the lowest common denominator. For others, the main obstacle is exactly the reverse: that it perpetuates socio-economic differences penalizing families with fewer resources in the most impoverished towns and neighborhoods.

Gort-zar takes these one-dimensional viewpoints regarding education in Spain apart, showing that our country is suffering from both problems at the same time. On the one hand, our education system does not foster excellence. It is inflexible with those who are able to progress in line with their potential. At the same time, our education system is far from even-handed, in that we are among the developed countries where social background weighs most heavily on academic results. We also have one of the highest percentages, a third of the student population, repeating courses. Aside from representing an inefficient use of resources, this particularly impacts students from more modest socio-economic backgrounds. Such is the conundrum posed by education in Spain: how to increase both rewards for excellence and equality of opportunity for all children regardless of their social background.

In summary, despite the enormous progress made by our public institutions in recent decades, there remain major aspects requiring correction. It is necessary to move away from the trap of over-exaggeration into which we so often fall in Spain. We recall regenerationist authors who upheld a break, albeit violent, with the institutions of the Restoration, rather than an ambitious, reformist program.

However, we must also avoid the temptation to remain inactive. For the time being, our political class is split between adherents of rupture and inactivity. On the one hand, the representatives of a new politics favor root and branch institutional transformation, in the best cases following examples from the successful experiences of other countries and in the worst appealing to abstract principles that are difficult to put into practice. The accumulated evidence regarding large-scale institutional reforms modeled on *ibetter countries* is not particularly positive. Institutions cannot be simply copied and pasted. It is not possible to transplant organisms from one ecosystem to another without unforeseeable consequences.

Meanwhile, the representatives of traditional parties have taken refuge in the economic situation to avoid institutional reforms that could alter the status quo. For these parties, the debate regarding institutions boils down to budgetary matters: who wins and who loses in the share out of resources. Any assessment of the workings of our institutions is secondary.

Between the over-exaggeration of some and the passivity of others, this report proposes a gradualist agenda for institutional reform. Whilst paying regard to the advances made in terms of managing the public sector, we propose a series of reforms in the various thematic sections covered by this Report: health of our democracy, justice, markets and competition, public authorities and transparency and the battle against corruption.

8.3. The goal is a more democratic, fairer, more competitive, better governed and more transparent Spain

Why do some policies work and others fail? In its *World Development Report* (2017), the World Bank offers two clues that may prove useful in the current political debate in Spain. Firstly, the World Bank focuses on institutions, on the governance of public affairs. And,

in particular, the World Bank understands that the key lies in designing public organizations that institutionalize 'power-sharing', avoiding the accumulation of the capacity to make or execute decisions in the hands of a few individuals, parties, groups or lobbies. Secondly, the Bank considers that successful institutional reforms are gradual, based on minor, continuous improvements. Reforms that start from a clean slate and that try to import successful institutions from countries that are socio-economically or culturally different, tend to fail.

In this Report we wish also to assert a gradualist manifesto aimed at improving the institutional framework in Spain. Our goal is to match the best practices of other countries whilst bearing in mind both the idiosyncrasies of our public organizations and the journey begun by some reforms adopted in our country that, despite their positive effects, have either been dismantled prior to evaluating their contribution or politicized and subjected to severe criticism.

Our proposals are classified into six blocks: **Democratic renewal, justice, market regulation, public administration, transparency and the fight against corruption and education.** The distinction is arbitrary and many of the proposed reforms overlap. Moreover, the list is neither exclusive nor does it seek to exclude. Many other reforms remain pending, starting with the thorny question of the territorial structure of the state and finishing with the potential and limits of the welfare state. Despite their relevance, these matters carry either a distributive element, in that some groups win and others lose, or have a basis in identity, where some groups have preferences regarding the nation and others differ. As a result, these must be clarified using political mechanisms and through negotiations and agreements between political representatives.

The measures that we propose here are institutional, rather than political. It is not a case of some social groups or adherents of a particular ideology winning against others. This does not mean that these measures do not lead to changes in power relationships and the short-term resistance to these. In the long term however, we understand that, by means of these measures, everyone wins. Here are our proposals for a more democratic, fairer, more competitive, better governed and more transparent Spain.

With regard to **democratic renewal**, the main pending task is to galvanize voters towards increased political participation. This means we have to talk about participatory processes that, in certain spheres, particularly among those to the right of the political spectrum, are rapidly branded as plebiscitary or even populist. At the same time, it is necessary to

defend the basic characteristics of representative democracy, those which in our country are repeatedly criticized on the left. At its heart, this is a didactic question. There is a pressing need to explain the characteristics of the Spanish political system, particularly the electoral system, demonstrating that any change in the system will alter the delicate balance between representation and governance. When compared with other countries, this balance is fairly enviable. As a result, any reform aimed at correcting over-representation in certain constituencies (such as the more rural provinces) must take into account any impact on this precious balance. Another characteristic that must be bolstered is party discipline. In a proportional electoral system, this is the only way to make representatives answerable to the electorate.

The second item involves achieving an improved working of the justice system in Spain. To start out, this requires an assessment of the impact of reforms introduced in recent years. These have been numerous and the debate regarding these has been based more on politicized arguments rather than evidence.

The Spanish justice system has seen various *supply-side* reforms, in other words, in terms of the provision and management of justice. An individualized study of the impact of these is necessary: The new Judicial Office; paperless courts; the creation of specialized courts, such as mercantile or gender violence courts; the increase in the number of judges (some 13% between 2010 and 2014); the Voluntary Jurisdiction Act (2015) that delegates to justice administration attorneys, notaries and property and mercantile registrars the resolution of cases that previously would have gone to court; limitations on the admittance to examining magistrates courts of matters arising from the processing of proceedings brought by police attached to the prosecutor's office; the elimination of infringements from criminal jurisdiction; a criminal small claims procedure to accelerate the management of minor, less serious offences; the limitation of the pre-trial period of instruction to 6 months in general terms and up to 36 as a maximum; or the attempts to introduce a system of productivity-based incentives for judges.

In recent years we have also carried out significant reforms to the *demand-side* of the justice system, in other words to the degree of litigiousness and accessibility of the system, the effects of which must be studied independently. The most controversial reform consisted of the regulation of cost of access to the justice system with the 2012 Legal Fees Act, amended by Royal Decree in 2013 and 2015 and declared unconstitutional in 2016. On the one hand, the vast majority of neighboring countries have established fees to rationalize access to the justice system. Together with France and Luxembourg, Spain

is the only country belonging to the Council of Europe in which the right of access to the courts is not subject to the payment of a fee. On the other hand, the lack of political consensus and the technical problems with implementation condemned the new law to failure. In contrast, Act 37/2011 on procedural streamlining, applying the criterion of expiry in the imposition of legal costs in administrative litigation, seems to have contributed to a significant reduction in the admittance of cases in these courts.

In addition to a rigorous assessment of the measures adopted in recent years, to improve the workings of the justice system we need to adopt various measures. One that appears technical but has a substantial impact upon legal certainty is the fact that courts of higher instance guarantee predictability with appeals to the court of cassation. In order to achieve this, it is necessary to limit access to cassation appeals to those matters of significant economic value.

A second measure consists of establishing non-jurisdictional independent bodies to control the activities of the authorities. The existing general administrative appeals procedures, namely appeals for review and reversal, are ineffective in ensuring the legality of administrative proceedings. In Spain we see three times as many administrative litigation proceedings as Germany, a country with almost double the population. Administrative control prior to administrative litigation proceedings is undoubtedly deficient and, in Spain, the fact is that it is the hierarchically superior body that decides on verdicts against the proceedings of an administrative body. Consequently, we need authorities that are independent from that which issues the appealed administrative verdicts and, in addition, we must provide these with the necessary technical and qualified human resources. An example worth following could be that of the economic-administrative courts: the Regional Economic-Administrative Tribunals (TEAR) and the Central Economic-Administrative Tribunal (TEAC).

Other urgent measures consist of the improvement of coordination between authorities with competencies in judicial administration and the establishment of a court of second instance in criminal proceedings.

Three measures take priority in terms of the design of **market regulating institutions**. Firstly, we must separate sector-based regulatory functions from competition policy, the two currently being integrated within the National Markets and Competition Commission (CNMC). With respect to competition policy, this implies recuperating the now defunct but internationally renowned National Competition Commission (CNC), whilst, at the

same time adjusting to the international trend seen in countries such as Italy, the UK or Denmark, namely the merger of competition policy with the protection of consumers' interests. The renewed competition authority could thus assist in balancing the two sides to the market, businesses and consumers.

In terms of sector based regulators, the most reasonable proposal to deal on the one hand with markets of similar characteristics and take advantage of economies of scale whilst, on the other hand, guaranteeing the greatest degree of autonomy and specialized knowledge, is that developed by Delgado, García Cabos and García Díaz (2012). The proposal consists of creating three sector-based regulators: one for energy, another for communications (telecommunications, as well as the postal and audiovisual sectors) and a third for transport (rail and airports).

The second important measure consists of giving greater competencies to both the competition authorities and sector-based regulators. The goal here is to reinforce legal guarantees and avoid decisions appearing to be subject to the political to and fro. This does not mean depoliticizing the regulation of market workings and transferring all powers to technocratic authorities. There has to be space for politics when establishing the goals to be pursued. The political sphere has the right, for example, to determine what is to be considered a universal service in transport or telecommunications. Nevertheless, the achievement of these objectives must be delegated to the competition authorities and sector-based regulators.

In political terms, this implies that governments will be unable to arbitrarily veto the decisions of these bodies (as has occurred in Spain with the decisions of the competition authority regarding mergers). It also implies that the regulators will be charged with establishing openly-competitive access charges for infrastructure, such as motorway tolls and electricity charges, that should be set by the energy market regulator and not by politicians or the custodians of technical competencies currently residing in the Ministry of Works and the Ministry of Industry. This is currently the case with telecommunications, management of the radio spectrum, security, net neutrality or customer service.

The third measure refers to designations and the freedom to hire. As an example, the board members of the CNMC currently reflect the balance between the political forces in Parliament. The objective should consist of attracting the best professionals, regardless of their political affiliation. It would, for instance, be possible to start a public selection process with a commission later choosing the best candidates based on their technical knowledge. Moreover, this process is also compatible with subsequent parliamentary control of the candidates.

With regard to **public administration**, we feel that a number of changes are important. First of all, general administration must be geared more towards results and less towards processes. Furthermore, greater emphasis must be given to the implication of users in service provision - what has become known as the 'IKEAization' of administration.

As a third item, public debate regarding the public authorities must incorporate one of the basic premises adopted by the world's best governed countries: it matters less who manages public services (whether public organizations, businesses or NGOs) than how we best achieve the public values of efficiency, quality, transparency, fairness or accountability in the provision of services.

Moreover, we must take a new approach to the management of human resources in the Spanish public sector. To control clientelism and the excess of discretionary designated posts and advisers, it is necessary to professionalize the leadership of public organizations. The time has come to introduce a professional management function that is impervious to politicization, bureaucratization and becoming snared by some elements of state administration. The existence of professional managers, such as those who direct authorities in countries leading the way in quality of governance, would guarantee an improvement in public sector management, avoiding the two parallel excesses suffered by our authorities: politicization and bureaucratization.

In addition, it is a priority to increase the **transparency** of our public authorities and this is achievable by adapting to the Spanish context practices popular in neighboring countries. To start off with, the authorities must recognize the principle of maximum openness regarding public sector activities, provided that the greater public good is not put at risk. Moreover, we need to make information access application, claims, complaints and appeals processes more dynamic. We must also train civil servants subject to information requests in the values of transparency and good governance, rather than just technical matters. We additionally still have a long way to go in terms of protecting whistle-blowers. As per the case in other countries, the attempt by superiors to investigate the origin of leaks could be classified as an offence. As a fifth item, information available on the activities of public authorities must be made more legible and comparable (databases) in order to enable public scrutiny.

Lastly, the need to make reforms to the **education system** is essential. First of all, we need to increase the funding of programs aimed at achieving greater equality of opportunity. Although it is true that, as indicated by a number of studies, increasing spending on

education does not necessarily translate into better academic results, focusing the investment on educational centers in underprivileged areas does help in improving provision. This could be achieved by recovering the PROA strengthening and support program of the Ministry of Education. This was eliminated in 2012 despite the fact that, whilst in operation, it contributed to improving the learning of students from more socio-economically challenged backgrounds.

The second aspect needing reform within our education system is the provision of teaching and the management of centers. This could be achieved with the introduction of the much talked over *MIR educativo* a teaching induction program that selects candidates who are academically suitable and who have the necessary empathy, leadership, collaborative and adaptability skills to work flexibly with groups of students. Moreover, in order to get away from being the only country in the EU where the management teams of schools are chosen by the Board of Governors and the teaching staff, we need to introduce a system that, as in the case of other countries, combines participation and professionalization.

Another pending reform consists of transforming the assessment of education that, in Spain, is primarily based on the logic of qualifications - where the object is to pass rather than learn. There is an urgent need to set the wheels in motion for an assessment system that bears in mind diverse competencies, other than reading and mathematics, and which may enable a diagnosis of the specific needs of each educational center and the proper working of innovation and consolidation programs. Cooperation between the Ministry of Education and the autonomous regions is necessary for all of these reforms. The method of achieving this would be to reproduce the practices seen in federal countries such as Germany, Canada or the United States. In other words, a Ministry of Education that enables the strategic, legal and administrative autonomy of the autonomous regional authorities, but that, at the same time, sets fundamental goals (e.g. educational support programs) and enables the dissemination of good practice among the regional authorities.

Despite their disparate nature, all of these measures share the same philosophy, namely that which forms the backbone of this report: gradual reforms aimed at sharing power. In one way or another, our main problems arise from an acute concentration of decision-making capacity among a limited number of hands or specific players. By sharing out this power, both to other institutions and to civil society organizations or citizens themselves, we can help to mitigate these problems.

Due to their very nature, it is impossible to have perfect institutions. No single country has them. However, we can choose whether we move towards the leading countries in this aspect or towards the rather less exemplary. And, if we wish to follow the leaders, we must understand that the transformations that they have made in recent decades have followed precisely this path: reforms that are gradual, rather than radical and that seek to share power, rather than hoard it.



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