
Article:
Castillo Ortiz, P.J. (2015) Framing the Court. Political Reactions to the Ruling on the Declaration of Sovereignty of the Catalan Parliament. Hague Journal on the Rule of Law, 7 (1). pp. 27-47. ISSN 1876-4053

https://doi.org/10.1007/s40803-015-0002-x

Framing the Court. Political Reactions to the Ruling on the Declaration of Sovereignty of the Catalan Parliament

Abstract

This article analyses the reactions by political actors to the ruling of the Spanish Constitutional Court on the Declaration of Sovereignty of the Catalan Parliament. It is suggested that political framings of the ruling can be classified into the legalist, attitudinal and institutional academic models of judicial behaviour. As will be shown, these models have a normative dimension, with implications for the ideal of the Rule of Law. These implications are skilfully captured and exploited by political actors as part of a wider battle for the framing of the ruling. The Rule of Law thus becomes politicised as a result of the tension around the judicialisation of the so-called Catalan 'sovereignist process'.

Key words

Rule of Law – Spanish Constitutional Court – Catalonia-

Framing Theory –Judicial Decision-Making

Presentation

On 23 January 2013, the Catalan Parliament passed the 'Declaration on the Sovereignty and right to decide of the people of Catalonia'. Amongst the ultimate aims of the Declaration was the holding of a referendum through which Catalan citizens could decide on the status of Catalonia vis-à-vis the Spanish State, including the option for independence. The Spanish Government, as well as the main Spanish political parties, opposed the content of the Declaration. Through the State's Attorney, the Spanish Government filed an objection of unconstitutionality before the Constitutional Court, which on 26 March 2014 issued a ruling stating that the Declaration was contrary to the Spanish Constitution as long as it included the idea of 'Catalan sovereignty'. The Court, however, also considered that the 'right to decide' of Catalan citizens could be considered constitutional if exercised in accordance with the Spanish constitutional system.

Political reactions to the ruling were diverse, ranging from furious attacks against the Court to closed defences of the institution as guarantor of the constitutional framework and the Rule of Law. Such reactions will be studied in this article. Most literature on Judicial Politics focuses on courts' decisions on merits, which are explained through different theories of decision-making. Although these theories will be used in this article as well, my focus is instead on political framings of the judicial outcome. As will be illustrated, beyond their neutralist, positivist use in academic research, theories of judicial decision-making have unavoidable normative implications related to the Rule of Law and the role of constitutional courts in a democratic society. With the aid of framing theory, this article explains how simplified versions of such theories are also

discursively mobilised by political actors for strategic purposes as rival narratives about the ruling with legitimating and de-legitimating effects. While parties opposing the referendum implied that the ruling was the result of a neutral application of the Constitution to the case, pro-referendum actors often accused the Court of being politically biased. My claim is that framings of the ruling depended on the gap between the preferences of politicians and the judicial outcome. Furthermore, in the context of the Catalan sovereignist process, these legalist and political framings had different implications in terms of the legitimacy of the Spanish Constitution to channel political conflict over the issues of self-determination and independence.

The remainder of this article proceeds as follows. After this brief introduction, I will provide a description of the background of the case, briefly summarising the decentralised political organisation of the Spanish State as well as the role of the Constitutional Court in such a political structure. Then, I will explore my theoretical framework, which combines theories of judicial decision-making and framing theories in the study of political reactions to the rulings of courts. Subsequently, I will devote a few lines to explain the methodology and sources of the paper. In the next section, I will describe the most recent political events in Catalonia and the current scenario. After that, I will explore the very ruling of the Spanish Constitutional Court on the Declaration of Catalan Parliament from the perspectives of the legalist, attitudinal and institutional theories of judicial decision-making, presenting them as alternative narratives. Next, I will show how, depending on their preferences, political actors selected some of these different narratives as a framing strategy. I will finish with some conclusions about the case.

The role of the Constitutional Court in contemporary decentralised Spain

After the death of the dictator Franco, the formerly repressed demands for self-government of the so-called ´historic nationalities' -such as Catalonia or the Basque Country- flourished in Spain[1]. According to Hopkin, the country 'embarked in 1977 on a progressive and profound decentralization of political and administrative functions affecting the whole of State'[2]. This process of decentralisation was made possible by the political agreements reached during the period of transition to democracy, which crystallised in the Spanish Constitution of 1978 (hereinafter 'SC').

Article 2 SC states that the Constitution is based 'on the indissoluble unity of the Spanish Nation' but also that 'it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed'. Art.143 of the Constitution allows for the creation of Autonomous Communities, which shall enjoy self-government for the management of their interests (Art.137 SC) and have as their basic institutional rule a Statute of Autonomy (Art.147 SC). According to Aja and Colino, this constitutional framework ´displayed a great degree of flexibility and openness'[3] and

[1] Luis Moreno, 'Decentralization in Spain', in: 36 Regional Studies (2002), p. 399, at pp.399-400. Enric Martinez-Herrera, 'From nation-building to building identification with political communities: Consequences of political decentralization in Spain, the Basque Country, Catalonia and Galicia', in: 41 European Journal of Political Research (2002), p.421, at p.428.

[2] Jonathan Hopkin, 'Devolution and Party Politics in Britain and Spain', in: 15 Party Politics (2009), p.179, at p.191.

[3] Eliseo Aja and César Colino, 'Multilevel structures, coordination and partisan politics in Spanish intergovernmental relations', in: 12 Comparative European Politics (2014), p.444, at p.445.

permitted Autonomous Communities to have an active role in the process of devolution from which they were benefiting. The result has been a deep decentralisation of the political structure of the State, to the point that some authors speak about a process of federalisation of Spain[4].

The Constitutional Court has been considered of paramount importance in this process[5]. According to Shapiro, one of the explanations for the blooming of constitutional review is precisely political decentralisation, as 'federalism required some institution to police its complex constitutional boundary arrangements'[6]. In Spain, the function of constitutional review is entrusted to an independent institution, a Constitutional Court inspired in the Kelsenian model that is currently dominant in continental Europe[7]. Together with other functions, most notably the defence of the constitutional rights of citizens, the Constitutional Court ensures the respect by legislation of the constitutional mandates, including those that delimit the respective competences of State level organs

---

[4] Robert Agranoff and Juan Antonio Ramos Gallarín, ´Toward Federal Democracy in Spain: An Examination of Intergovernmental Relations', in: 27 Publius (1997), p.1. Gemma Sala, 'Federalism without Adjectives in Spain', in: 44 Publius (2014), p.109.

[5] Luis Moreno, 'Federalization and Ethnoterritorial Concurrence in Spain', in: 27 Publius (1997), p.65 at p.70.

[6] Martin Shapiro, 'The Success of Judicial Review and Democracy', in Martin Shapiro and Alec Stone Sweet, On Law Politics and Judicialization, p.148, at p.148.

[7] For a discussion on constitutional democracy and the legitimacy of a constitutional review of legislation, see, inter alia, Michael Rosenfeld, 'The Rule of Law and the Legitimacy of Constitutional Democracy', in: 74 Southern California Law Review (2001), p.1307. Luc B. Tremblay, 'General Legitimacy of Judicial Review and the Fundamental Basis of Constitutional Law', in: 23 Oxford Journal of Legal Studies (2003), p. 525. Dimitrios Kyritsis, 'Constitutional Review in Representative Democracy', in: 32 Oxford Journal of Legal Studies (2012), p. 297. Or Bassok and Yoav Dotan, 'Solving the Countermajoritarian Difficulty?', in: 11 International Journal of Constitutional Law (2013), p.13.

and of Autonomous Communities. According to Art.161.1.c SC, the Court can solve 'conflicts of competences between the State and the Autonomous Communities or between the Autonomous Communities themselves'. Additionally, Art.161.2 SC states that 'the [Spanish] Government may appeal to the Constitutional Court against provisions and resolutions adopted by the bodies of the Autonomous Communities'. This latter article was precisely the provision invoked by the Spanish Government to bring before the Court the Declaration of Sovereignty of the Catalan Parliament. The new decision of the Court was issued just a few years after its polemical ruling on the reform of the Statute of Autonomy of Catalonia (STC 31/2010)[8], and it again placed the institution at the centre of debates regarding the territorial politics of Spain.

Theoretical Framework: Theories of Judicial Decision-Making as a Political Weapon

In this article, I aim to show that theories of judicial decision-making are not the realm of scholars only, but that they are mobilised by political actors in defence of their interests. The Judicial Politics literature usually speaks of three different models or theories of judicial decision-making: the legalist, attitudinal and institutionalist models[9].

---

[8] On this ruling, see, inter alia, Carles Viver Pi-Sunyer, 'El Tribunal Constitucional, ¿"Sempre, només…i indiscutible"? La funció constitucional dels estatuts en l'àmbit de la distribución de competències segons la STC 31/2010', in: 12 *Revista d'Estudis* Autonòmics i Federals (2011), p.363. Joaquim Ferret Jacas, 'Nació, símbols i drets historics', in: 12 *Revista d'Estudis Autonòmics i Federals* (2011), p.44.

[9] Inter alia, Britta Redher, 'What is Political about Jurisprudence? Courts, Politics and Political Science in Europe and the United States', MPIfG Discussion Paper 07/5 (2007). Arthur Dyevre, 'Unifying the field of comparative judicial politics: towards a general theory of judicial behavior', in: 2 European Political Science Review (2010), p.

I do not claim that these theories directly fed political discourses but rather that political framings can be classified into the three dominant theories of judicial decision-making for taxonomical and analytical purposes. Each of the three models will be studied individually in the next lines:

- The legalist approach. A traditional way to understand the activity of courts is the legalist model, in which judicial behaviour is depicted as 'based on legal logic and legal reasoning'[10]. According to Segal and Spaeth[11], in this model, a court 'decides disputes before it in the light of the facts of the case vis-à-vis precedent, the plain meaning of the Constitution and statutes, and the intent of the framers'. It must be acknowledged that the legalist approach is more an abstract type than a description of the actual work of most law scholars[12]. However, as an abstract type, this view of judicial decision-making seems to be the closest to an ideal understanding of courts

---

297. See also Michael A. Bailey and Forrest Maltzman, The Constrained Court. Law, Politics and the Decisions the Justices Make 2011. Harold Spaeth 'Reflections about Judicial Politics', in Gregory Caldeira, Daniel Kelemen and Keith Whittington, The Oxford Handbook of Law and Politics, p. 752. Jeffrey R. Lax, 'The New Judicial Politics of Legal Doctrine', in: 14 Annual Review of Political Science (2011), p. 131. David Landau, 'The Two Discourses in Colombian Constitutional Jurisprudence: A New Approach to Modeling Judicial Behavior in Latin America', in: 37 The George Washintong International Law Review (2005), p.687. Howard Gillman and Cornell W. Clayton, Supreme Court Decision-Making: New Institutionalist Approaches 1999.

[10] Karen Alter, 'Explaining National Court Acceptance of European Court Jurisprudence: A Critical Evaluation of Theories of Legal Integration', in Anne M. Slaughter, Alec Stone Sweet and Joseph H.H. Weiler (eds.), The European Court and National Courts – Doctrine and Jurisprudence, p. 227, at p.230.

[11] Jeffrey Segal and Harold Spaeth, The Supreme Court and the Attitudinal Model Revisited 2002, p.86.

[12] As stated by Clayton, 'the legalist model (...) does not rely upon the simplistic, mechanical, apolitical jurisprudence' that attitudinalists suggest. Cornell W. Clayton, 'The Supreme Court and Political Jurisprudence: New and Old Institutionalisms', in Howard Gillman and Cornell W. Clayton, Supreme Court Decision-Making: New Institutionalist Approaches, p.15, at p. 27.

as independent and neutral actors. Unlike in the rest of the approaches 'in the legalist paradigm (…) politicians are given virtually no role in influencing legal interpretation of the legislation'[13].

- The attitudinal approach. It is said that the attitudinal model had its genesis in American Legal Realism, although melded with some key concepts of political science, psychology and economics[14]. The attitudinal model assumes 'that judges decide cases in light of their brute policy preferences'[15]. According to this model, progressive magistrates will tend to make progressive interpretations of the law and thus make progressive decisions when adjudicating disputes. The opposite will occur with conservative magistrates. According to Britta Redher[16], the attitudinal model considers that 'personal preferences and values are the most important variable in explaining judicial behavior'.

- The institutional approach. The institutional model is a departure from the attitudinal model, with important theoretical implications. Like the attitudinal model, it assumes that judges have policy preferences beyond the neutral application of law to the cases, but unlike such model, it considers that, when seeking their goals, the behaviour of magistrates is constrained by their institutional

[13] Alter, 'Explaining National Court Acceptance of European Court Jurisprudence', at p.233.

[14] Segal and Spaeth, The Supreme Court and the Attitudinal Model Revisited, p.86.

[15] Dyevre, 'Unifying the field of comparative judicial politics', at pp.297-300.

[16] Redher, 'What is Political about Jurisprudence?' at p.12.

environment[17]. Dyevre distinguishes two types of institutional approach: internalist and externalist[18]. The internalist model assumes that institutional rules of decision-making within the court, such as the number of votes necessary to pass a decision or the prohibition of dissenting opinions, have an impact on judges' decisions. The externalist model, in contrast, analyses the wider institutional frame in which courts behave and, in particular, the institutional rules that regulate their relations with other branches of government. What the two institutionalist models have in common is their depiction of courts and magistrates as strategic actors.

In this article, I do not aim to test which of these three approaches best describes judicial decision-making but to understand what the normative implications of each are and how they are captured by political actors. The legalist approach overlaps with a normative ideal: the ideal of unbiased, independent and non-partisan courts simply applying the law to cases, which is an essential part of the notion of the Rule of Law. The attitudinal and institutional approaches deviate from this normative ideal by suggesting that political variables influence the decisions of courts. Unlike the legalist approach, the attitudinal and institutional approaches are not normative per se, but they nonetheless have 'unintended' normative implications. Experimental research has shown that legalist depictions of judicial activity engender in citizens more positive reactions than political depictions[19]. As stated by Nicholson and Howard, if the public

---

[17] Dyevre, 'Unifying the field of comparative judicial politics'. Redher, 'What is Political about Jurisprudence?'.

[18] Dyevre, 'Unifying the field of comparative judicial politics', at p. 302.

[19] Vanessa Baird and Amy Gangl. 'Shattering the myth of legality: The impact of the media's framing of Supreme Court procedures on perceptions of fairness', in: 27 Political Psychology (2006), p. 597 at p.597.

perceives a decision 'as biased or partisan, the decision might undermine the legitimacy of the Court. The justification behind this reasoning is simple: Courts are supposed to decide cases based on the law, not on policy preferences'[20].

In my view, these different normative implications of legalist and political approaches to judicial decision-making are captured by political actors, which mobilise them as part of their framing strategies. According to Chong and Druckman 'the major premise of framing theory is that an issue can be viewed from a variety of perspectives and be construed as having implications for multiple values or considerations'[21]. Nelson and Kinder consider that 'the framing of issues –by partisan elites and mass media organizations- shapes public understanding of the roots of contemporary problems and the merits of alternative solutions'[22]. With the judicialisation of politics currently being a frequent phenomenon[23], it is expectable that political actors will develop framing strategies to respond to judicial decisions. Literature on courts and political framings is still scarce, although there are some promising works[24]. However, none of these studies

---

[20] Stepehn Nicholson.and Robert M. Howard, 'Framing Support for the Supreme Court in the Aftermath of Bush v. Gore',in: 65 The Journal of Politics (2003), p.676 at p.677.

[21] Dennis Chong and James N. Druckman, 'Framing Theory', in: 10 Annual Review of Political Science (2007), p. 103 at p.104.

[22] Thomas Nelson and Donald .R. Kinder. 'Issue Frames and Group-Centrism in American Public Opinion', in: 58 The Journal of Politics (1996), p. 1055 at p.1055.

[23] Lars Blichner and Anders Molander. 'What is Juridification?', ARENA Working Papers, N.14 March 2005, on line at https://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers2005/wp05_14.pdf (15.09.2014)

[24] See, inter alia, Justin Wedeking, 'Supreme Court Litigants and Strategic Framing', in: 54 American Political Science Review (2010), p. 617. Nicholson and Howard, 'Framing Support for the Supreme Court in the Aftermath of Bush v. Gore'. Bryna

has devoted attention to why and how political actors opt for different post-litigation framing strategies in light of a concrete judicial decision. Although analyses of these strategies often take place in public debate, a more sophisticated academic theorisation and empirical testing has not been carried out.

This article aims to fill that gap. Its assumption is that theories of judicial decision-making are not only competing academic perspectives on judicial activity, but in less sophisticated versions, they are also used by political actors and utilised in political struggles over the interpretation of the law and of judicial decisions. Political actors have an interest in legitimising favourable judicial outcomes by framing them as the result of unbiased processes of decision-making. By using 'legalist' framings, all of the legitimising potential of the Rule of Law ideal is transferred to the judicial decision. Conversely, unfavourable decisions are to be presented as the result of a politically biased court. This framing strategy delegitimises the ruling and is a form of retaliation against the court. It also appeals to the ideal of the Rule of Law, but only to suggest that the unfavourable decision does not meet its standards and is thus illegitimate. What I want to argue is that, from this perspective, legalistic framings of the rulings are political strategies as much as attitudinal and institutional framings. My hypothesis, therefore, is that the selection of framings can be explained by the distance between the actors' preferred judicial outcome and the actual decision of the court.

Bogoch and Yifat Holzman-Gazit, 'Mutual Bonds: Media Frames and the Israeli High Court of Justice', in: 33 Law and Social Inquiry (2008), p. 53.

Methodology and Sources

This article uses a qualitative methodology. To analyse the political framings of the ruling of the Spanish Constitutional Court on the Resolution 5/X of the Catalan Parliament –the 'Declaration of Sovereignty'- I used parliamentary debates and newspaper articles. Although I also analysed, to some extent, earlier periods to construct my narrative, the analysis focused on the week subsequent to the decision of the Spanish Constitutional Court. An exhaustive newspaper review was performed using five different periodicals, which together cover most of the political spectrum. I used the progressive Madrid-based EL PAÍS, the conservative Madrid-based EL MUNDO and ABC, the conservative Barcelona-based LA VANGUARDIA, and the progressive Barcelona-based EL PERIÓDICO. Note that my description of newspapers as conservative or progressive is based on admittedly contestable conventional definitions. To ensure comprehensiveness, instead of simply searching for key words in a digital search engine, I performed an exhaustive review of all articles published in the paper and digital editions of these newspapers during the analysed period and selected all those that referred to the ruling in one form or another. For the framing analysis in the penultimate section, I only included reported speeches of politicians and opinion articles written by them and excluded opinion articles written by other subjects or by the editorial teams. Parliamentary debates were also used: these were available for this period at the website of the Catalan Parlament de Catalunya. Although parliamentary debates at the Spanish Congreso de los Diputados and at the Senado were also sought, they did not cover the topic of this article during the analysed period.

The Political Scenario in Catalonia

The evolution of Catalan Politics in the years before the decision of the Constitutional Court had been marked by increasing political polarisation. The 2012 Catalan elections gave rise to a complex political landscape. The ruling CiU party lost some support compared to the previous elections, but it remained the most voted-for party. Furthermore, the pro-referendum parties (CiU, ERC, ICV, and CUP) together obtained a large majority[25]. In view of the results, the two most voted-for parties, CiU and ERC, reached a governability agreement that included the call for a referendum on self-determination. With this background, on Wednesday the 23rd of January 2013, the Catalan parliament passed the 'Declaration of Sovereignty', with 85 votes in favour, 41 against and only 2 abstentions[26]. The Declaration consisted of nine principles preceded by a Preamble. The Preamble begins by stating that Catalonia 'all along its history has manifested democratically its will to self-govern' and then goes on to relate a narrative about the history of the Catalan people, summarising the evolution of the Catalan institutions for self-government from the Middle Ages to the present time. Subsequently, the body of the Declaration affirmed that the Catalan Parliament agrees to initiate the process for 'the right to decide' of the Catalan people to become effective and that this process will be guided by nine principles:

a. Sovereignty. The Catalan people are deemed to be 'legally and politically a sovereign people'.

[25] David Martí, 'The 2012 Catalan Election: The First Step Towards Independence?', in: 23 Regional and Federal Studies (2013), p. 507 at p. 513.

[26] La Vanguardia (digital edition). 2013. El Parlament de Catalunya aprueba la declaración de soberanía de CiU y ERC. 23 Jan.

b. Democratic legitimacy. The right to decide of the Catalan people will be exercised in a 'scrupulously democratic' way.
c. Transparency. All the necessary information and knowledge for the exercise of the right to decide will be provided to the Catalan society.
d. Social cohesion. The Declaration places emphasis on keeping 'Catalonia as only one people'.
e. Europeanism. The foundational principles of the European Union will be promoted.
f. Legality. Every available legal frame will be used in order to exercise the right to decide.
g. Prominent role of the Catalan Parliament.
h. Participation. The Catalan institutions must require local and social actors to participate in the process.

As stated above, the final text of the Declaration was passed by the Catalan Parliament with the support of three parties: the centre-right CiU and the left-wing ERC and ICV. Three parties voted against the Declaration: PSC, PP and Ciutadans. Finally, the three deputies of the seventh party in the Catalan chamber, the radical left CUP party, did not follow any party discipline: while one of the deputies backed the declaration, the two remaining deputies abstained.

Table 1 The Political Scenario and the Debate on Catalan Sovereignty

Party	Leader (at the time of the ruling)	Preference status Catalonia	Preference referendum	Role at Catalan level	Role at Spanish level
CiU	Artur Mas			In power from 2010. Formerly opposition	Opposition
CDC	Artur Mas	Independent	In favour		
UDC	J. A. Duran i Lleida	Confederated	In favour		
ERC	Oriol Junqueras	Independent	In favour	Supporting CiU government. Until 2010, member of the PSC-led government	Opposition
PSOE-PSC				Opposition from 2010. Formerly in power	Opposition from 2011. Formerly in power
PSOE	A.P. Rubalcaba	Federated	Against		
PSC	Pere Navarro	Federated	Against		
PP	Mariano Rajoy (Spanish Level) Alicia S. Camacho (Catalan level)	Autonomy	Against	Opposition	In power from 2011. Formerly opposition
ICV	Joan Herrera	Federated/ Independent	In favour	Opposition	Opposition from 2010. Formerly member of PSC-led government
Ciutadans	Albert Rivera	Autonomy	Against	Opposition	Not running
CUP	No formal leadership	Independent	In favour	Opposition	Opposition

Own elaboration

Table 1 describes this political landscape at the time of the ruling on the Declaration of Sovereignty, including relevant political parties, their leaders, their political roles and their stances towards the issues of referendum and independence. Because topics of Catalan and Spanish politics will often be discussed throughout this article, I recommend the readers refer to this table as often as necessary and to use it as a map of the political scenario.

As the table shows, political parties had divergent positions regarding the issue of the 'right of decide' of the Catalan people. Beginning from more Catalan-sovereignists stances, the small radical-left CUP was in favour of holding a referendum, as the left wing ERC. The ruling coalition party, CiU, was also in favour of the referendum. However, its two component parties placed slightly different emphases on the process: while CDC was clearly in line with the idea of giving voice to Catalan citizens and driving Catalonia to independence, UDC insisted more on the need to agree upon the referendum with the Spanish State and, if possible, achieve a con-federal solution for Catalonia. The left-wing ICV, although it supported the referendum, did not have a clear political stance on what outcome they preferred in case such a referendum took place. The socialists of PSC had in principle supported the view that Catalan citizens should be consulted about their future, but at a later stage, they opposed the holding of the referendum with the argument that it had not been agreed upon with the Spanish State. Together with PSOE –the party to which it is federated- PSC defended an agreed consultation that intended a federalisation of the Spanish Constitution. Finally, PP –in power in the Spanish government- and Ciutadans defended that the referendum should not take place and advocated in favour of the current State of Autonomies and the status quo.

The Ruling by the Spanish Constitutional Court on the Declaration of Sovereignty

The Spanish Government considered the Declaration of Sovereignty of the Catalan Parliament to be unconstitutional, and through the State's Attorney, it filed an objection of unconstitutionality before the Spanish Constitutional Court. The Court reached a

decision on 25 March 2014 (STC 42/2014), and the ruling had two major outcomes. On the one hand, the Court stated that the Declaration of Sovereignty was unconstitutional. On the other hand, the Court considered that the 'right to decide' of the Catalan citizens was not per se unconstitutional if exercised within the constitutional framework. Thus, although the Court acknowledged the existence of no other sovereign people but the Spanish people, citizens of Catalonia could eventually be consulted if constitutional mechanisms were respected. Although the Court is not clear in this regard, this could suggest that the referendum could be valid at least after a constitutional amendment. According to the Court, if the constitutional amendment was promoted by the Parliament of an Autonomous Community, the Spanish Parliament would have to give consideration to it.

In this section, I will reconstruct three readings of this ruling: legalist, attitudinal and institutionalist. My aim is not to test these three approaches in this case but rather to show how the case could be interpreted from these three perspectives in order to illustrate, in the next section, how different political actors selected each of these readings according to their preferences.

A Legalist Reading

Legalist views of judicial decision-making assume that courts simply apply the law to a case when adjudicating disputes[27]. Magistrates usually resort to legalistic interpretations

[27] See Alter, 'Explaining National Court Acceptance of European Court Jurisprudence'. Segal and Spaeth, The Supreme Court and the Attitudinal Model Revisited.

of their own activity and dismiss accusations of politicisation. A few days before the ruling, for instance, one of the magistrates of the Court, Luis Ortega, said that 'we are not at the service of political parties, that is science fiction'[28]. Rulings are also, by definition, legalistic narratives: courts phrase their decisions as the mere impartial, neutral and apolitical application of the legal system to a dispute they must resolve. Thus, to reconstruct a legalist narrative for this case, the reasoning of the Constitutional Court can be followed.

Before the Court issued the ruling, part of the discussion among legal scholars and political actors referred to the question of whether the Resolution of the Catalan Parliament had actual legal effects or was simply a political declaration, as the Constitutional Court was only allowed to make a decision on the merits in the first case. In its ruling, the Court considers that the Resolution 5/X of the Catalan Parliament is a 'perfect or definitive act' in the sense of being a final declaration of the will of the Catalan Parliament issued in the exercise of the powers conferred to it by the legal system of the Autonomous Community. Furthermore, although the resolution was not deemed to have binding effects, it would nonetheless have legal effects because it attributes powers inherent to sovereignty to Catalan political actors and because it requires the carrying out of concrete actions to give effect to the 'right to decide'. This allowed the Court to consider the Resolution as a legitimate object of review.

Subsequently, the ruling goes on to assess the idea that the Catalan people is a sovereign subject. Such idea is, according to the Court, contrary to Arts. 1.2 and 2 of the Spanish

[28] María Fabra, 2014. La tendencia en el Constitucional es mayor a la unidad que a la autonomía. El País (digital edition), 17 March.

Constitution and to the previous case law of the court (SSTC 6/1981, 12/2008, 13/2009, 31/2010). The Court considered that, according to Art.1.2 of the Constitution, in the current Spanish constitutional system, only the Spanish people are sovereign, and the attribution of sovereignty to the people of an Autonomous Community would be a negation of the former. Furthermore, such recognition of sovereignty would be incompatible with Art.2 SC, which declares 'the indissoluble unity of the Spanish Nation'. The Court insists in this point on its previous case-law, according to which the autonomy granted by Art.2 SC to Autonomous Communities is not equivalent to sovereignty (SSTC 76/1988, 247/2007). The Declaration of Sovereignty would be, in addition, contrary to Arts. 1 and 2.4 of the Statute of Autonomy of Catalonia as well as Art. 9.1 SC (the primacy of the Constitution) and 168 SC (the rigid procedure of constitutional amendment).

Before finishing the resolution, however, the Court assessed the statement in the Declaration of Sovereignty regarding the 'right to decide' of the Catalan citizens. The Court considered that an interpretation could be made according to which such right to decide is constitutional, as long as it is not linked to the idea of Catalan sovereignty. The Constitutional Court considered that the principle of 'democratic legitimacy' proclaimed by the second point of the Declaration was compatible with Art.1.1 of the Constitution, according to which democracy is a superior value of the Spanish legal system. The principle of 'legality' in point seven of the Declaration was read in light of the idea of the primacy of the Constitution. According to the Court, such primacy did not equate to a requirement of adhesion to the Constitution, as the Spanish legal system is not based on a conception of militant democracy, but it admits conceptions aimed at changing the very functioning of the constitutional system as long as they respect the

constitutional mandates and the formal procedures of constitutional amendment. The Court recalls, in addition, that according to Arts. 87.2 and 166 of the Spanish Constitution, the Parliaments of Autonomous Communities have a right of initiative for constitutional amendment, whose merits the Spanish Parliament must give consideration to.

In substantive terms, this meant that the Court took an intricate approach: the 'right to decide', which had been invoked by actors supporting the Declaration, was not necessarily unconstitutional. However, the actual exercise of that right could not be carried out beyond the constitutional mandates, which, according to the Court, stated that only the Spanish people –and not the Catalan people- were sovereign, as was defended by the opponents of the Declaration. Implicitly, the Court seemed to suggest that a referendum about the status of Catalonia could only be constitutional after a constitutional amendment.

In the last part of the ruling, the 'fallo', the Court first declares unconstitutional the principle of Catalan sovereignty enshrined in the Declaration. Second, however, it declares constitutional 'the right to decide of the citizens of Catalonia' if interpreted according to the legal reasoning of the Court, and it rejects the petition in all other regards. In summary, as has been shown, the discourse of the Court in the ruling follows a legalist structure, with every decision being depicted as anchored in a neutral and apolitical interpretation of the constitutional framework.

An Attitudinal Reading

Unlike the former reading, an attitudinal reading would suggest that the final decision of the ruling was simply the result of the preferences of the magistrates[29]. In general, the Spanish media talks about 'conservative' and 'progressive' magistrates in the Constitutional Court, and it is assumed that each of these blocks is close to the preferences of the Spanish main parties: PP and PSOE. As was shown in Table 1 above, these two political parties were opposed to the option of independence, and their preferences regarding the decision of the Court pointed to the protection of the status quo. Only one magistrate, Encarnación Roca, was deemed to be ideologically close to the nationalist CiU, one of the parties that supported the Declaration of the Catalan Parliament and the possibility of a popular consult on the status of Catalonia. Table 2 shows the composition of the Court as it was described by the Spanish media[30]. As seen, the Court was allegedly formed mainly by conservative magistrates close to PP and by progressive magistrates close to PSOE.

[29] Dyevre, 'Unifying the field of comparative judicial politics'. Redher, 'What is Political about Jurisprudence?'.

[30] Nati Villanueva, 2013. Un nuevo TC conservador por 7 a 5. ABC (digital edition), 7 June. María Jesús Cañizares, 2014. Fracasa la estrategia catalana de recusar a tres magistrados del TC. ABC, 26 March.

Table 2 Ideological composition of the Constitutional Court

Magistrate	Appointing organ	Ideology	Attempted disqualification
Francisco de los Cobos (President)	Senate	Conservative	Yes
Adela Asua	Senate	Progressive	
Luis Ignacio Ortega	Senate	Progressive	
Encarnación Roca Trías	Congress of Deputies	Progressive /Catalanist	
Andrés Ollero Tassara	Congress of Deputies	Conservative	
Fernando Valdés Dal-Ré	Congress of Deputies	Progressive	
Juan José González	Congress of Deputies	Conservative	
Santiago Martínez-Vares	Council of the Judiciary	Conservative	
Juan Antonio Xiol	Council of the Judiciary	Progressive	
Pedro González-Trevijano	Government	Conservative	Yes
Enrique López	Government	Conservative	Yes
Ricardo Enríquez Sancho	Senate	Conservative	

Sources: newspapers. Own elaboration

Furthermore, before the ruling, there was ongoing discussion in Spain about the ideological composition of the Court. It was emphasised that some of the magistrates had shown anti-nationalist stances in the past[31]. It was said that Pedro Gonzalez Trevijano had called the nationalists 'nazionalists', with a 'z'. Enrique López was accused of being politically biased because of his writings, in which he called to 'expulse the paradoxes of exacerbated nationalism' from the Spanish institutional frame[32]. Furthermore, the President of the Court Francisco de los Cobos had recently been the protagonist of a scandal when it was discovered that he was a member of PP at

[31] Luís Garcia, 2014. Las "perlas" sobre Catalunya de los magistrados conservadores del TC que quería recusar el Parlament. La Vanguardia (digital edition), 26 March.
[32] Luís Garcia, 2014. Las "perlas" sobre Catalunya de los magistrados conservadores del TC que quería recusar el Parlament. La Vanguardia (digital edition), 26 March.

the time of his appointment as magistrate of the Court, a fact he had not declared. De los Cobos had also been accused of alleged criticisms of Catalonia and nationalism, as he would have written, inter alia, a number of aphorisms in which he called money the 'rationalising balm of Catalonia' and in which he accused nationalism of being 'the only ideology still capable of producing nightmares'[33]. With this background, the Catalan Parliament initiated proceedings to disqualify these three magistrates under the accusation of 'lack of impartiality and independence', although the ruling was issued before such disqualification was processed[34].

An Institutional Reading

An institutionalist internalist reading would suggest that the rules of the institution, especially the rules on decision-making, condition the decisions of individual magistrates and the outcome of the Court as a whole. An institutionalist externalist reading would conversely emphasise the wider institutional context in which the court operates and its interaction with other actors[35]. These two variants of institutionalism are not, however, incompatible. Together, they can provide for a third narrative of how the Court made a decision.

---

[33] Luís Garcia, 2014. Las "perlas" sobre Catalunya de los magistrados conservadores del TC que quería recusar el Parlament. La Vanguardia (digital edition), 26 March.

[34] María Jesús Cañizares, 2014. Fracasa la estrategia catalana de recusar a tres magistrados del TC. ABC, 26 March.

[35] Redher, 'What is Political about Jurisprudence?'.

On the externalist side, the emphasis would be on how other actors secured control over the institution. In this regard, the institutionalist externalist model could be said to converge with the attitudinal model: if magistrates are progressive or conservative, it is because political parties appoint like-minded lawyers for the Court. Until June 2013, the majority of justices of the Court (seven of twelve) belonged to the 'progressive wing', which was linked to the opposition Socialist Party. However, by the 4th of June, the mandate of four of them concluded. Two of the new justices had to be selected by the right-wing Government, and the other two had to be selected by the Consejo General del Poder Judicial, the Council of the Judiciary[36]. After these appointments, the balance of power changed within the Court in favour of the conservative sector. Although the sudden death of the conservative magistrate Francisco Hernando reduced the conservative majority within the institution, the ruling right-wing Partido Popular 'boosted with a great interest the streamlining of the formalities to nominate the new magistrate' in order to recover the 7 against 5 majority[37].

In this context, it might be more easily understood how the rules on decision-making within the institution –the internalist side of the model- operated in order to produce the final outcome. In principle, the magistrate in charge of making a draft resolution was Adela Asua, who was closer to the progressive minority. Her initial drafts, which considered the Declaration as lacking legal efficacy and, hence, as outside the scope of the Court's powers of review, found the opposition of the conservative majority of

[36] Fernando Garea, 2013. Rajoy tiene listo el vuelco de la mayoría en el Tribunal Constitucional. El País (digital edition), 11 March.

[37] José María Brunet, 2014. El TC anulará la declaración soberanista antes de Semana Santa. La Vanguardia (digital edition), 2 March

magistrates[38]. In March 2014, the media asserted that the President of the Court, Francisco Pérez de los Cobos, wanted the ruling to be issued without delay so that if Adela Asúa did not present a draft ruling concordant with the position of the conservative majority –to annul the Declaration as the Government had requested- she would be substituted[39].

The final decision would be, from this perspective, the result of a compromise between the conservative and progressive sectors in the Court. The rules of the institution do not require consensus by all magistrates but allow dissenting opinions. However, according to Spanish newspapers, 'The conservative magistrates had a safe seven votes majority, but they wanted to avoid at any cost –specially the President - that the Court was divided and ended up deciding on the sovereignist declaration by a margin of two votes'. The reason seemed to be 'the memories of the great discredit suffered by the Constitutional Court because of the way in which it conducted its debates regarding the reform of the Statute [of Autonomy]'[40]. The outcome could be seen as a compromise between both sectors, in which the Court considered that it could review the merits of the Declaration and declare it unconstitutional, as the conservative wing preferred, but left a door open for the 'right to decide' to be exercised within the constitutional framework, as progressive magistrates advocated.

---

[38] José María Brunet, 2014. El TC anulará la declaración soberanista antes de Semana Santa. La Vanguardia (digital edition), 2 March

[39] José María Brunet, 2014. El TC anulará la declaración soberanista antes de Semana Santa. La Vanguardia (digital edition), 2 March

[40] José María Brunet, 2014. El fallo del TC sobre la declaración soberanista se discutió en Santo Domingo. La Vanguardia (digital edition), 27 March.

The Framing by Political Actors

As has been shown, the ruling of the Spanish Constitutional Court was susceptible to interpretations from the perspective of any of the three dominant theories of judicial decision-making. In this section, I will show that framings by political actors actually correspond, in less sophisticated versions, with these three theories.

Table 3 Framings of the judicial decision by political stance

	In favour of independence and referendum	**Intermediate stances**	**Against independence and referendum**
Legalist		Pere Navarro (PSC) Ramón Jáuregui (PSOE)	Enric Millo (PP) A. Sánchez-Camacho (PP) Pedro Gómez (PP) Alberto Núñez (PP) Carmen Mejías (*Ciutadans*)
Attitudinal	Jordi Turull (CiU) Pere Aragonès (ERC) Artur Mas (CiU)		
Institutional	Pere Aragonès (ERC) Isabel Vallet (CUP) Alfred Bosch (ERC)	Josep Vendrell (ICV) Joan Herrera (ICV)	

Own elaboration

Table 3 summarises the discourses of the political actors, including only those who could be considered unequivocally legalist, attitudinal or institutional. Discourses were considered legalist if they resorted to the idea of the Rule of Law, the need to respect judicial decisions and the legitimacy of the court. Speeches that used cognitive frames related to the ideology or partisanship of the magistrates were considered attitudinal. Finally, discourses were considered institutional if they appealed to the relation of the court with other political actors or referred to its institutional biases. To justify the

classification in Table 3, all speeches are presented and qualitatively analysed in the following subsections.

As expected, supporters of the referendum were rather critical of the ruling and accused the Court of being politicised, either from institutionalist (i.e., politicisation of the institution, connections with other State organs) or attitudinal (most notably, hostile preferences of the magistrates) discourses. Opponents of the referendum tended instead to make legalist framings of the ruling, although in this case the message was more subtle and indirect: instead of explicitly saying that the Court had simply applied the law to the case, their speech focused on reclaiming respect for judicial decisions and for the Rule of Law. Thus, as theorised, the framings of the ruling were directly connected to the preferred outcomes of the political actors. Together with this pattern, however, a second one was detected, according to which all actors tried to emphasise those parts of the ruling that were closer to their political stance on the question of the referendum: opponents of the referendum underlined that the ruling had declared Catalonia not to be a sovereign people and that a unilateral plebiscite was unconstitutional, while supporters of the referendum, after some hesitation, focused on the idea that at the end of the day, the ruling opened the door to a consultation if the constitutional framework was respected. Finally, it must be noted that most reactions to the ruling were articulated around political concepts. Neither supporters nor opponents of the ruling tried to use arguments of a doctrinal type, i.e., referring to concrete legal provisions and their interpretation to back or oppose the ruling of the Court. Instead, they preferred to resort to highly political framings based on notions such as that of the Rule of Law, the partisanship of magistrates or the politicisation of the Court.

Pro-Referendum Actors: Denial of Legitimacy of a *"Political" Court*

The reactions of pro-referendum parties immediately after the decision (on 25th March) were notably critical. They combined attitudinal references to the ideology of the magistrates, institutionalist statements regarding the connections between the main Spanish parties and the Court, and general statements about the politicisation of the institution. Jordi Turull (CiU/CDC) denied 'the credibility' of the decisions of a Court in which some of its members are 'agitators of Catalan-phobia'. This interpretation had clear attitudinal reminiscences and was connected to the critiques of some members of the Court for their past declarations and their political background. Turull continued by saying that the ruling 'makes clear that the Constitutional Court is not a legal organ, but a political organ which decorates its decisions in a juridical way'[41]. In the statements of Pere Aragonès (ERC), attitudinal and institutional-externalist framings converged. He stated that the Court had 'entered into the game of ideology and parliaments' and that 'the opinion expressed by the Catalan Parliament is of much more worth that a decision adopted by twelve people appointed at their discretion by two parties, PP and PSOE'[42]. Joan Tardà (ERC) stated that Court was 'corrupted'[43]. Finally, the CUP's response seemed harsher than that of any other party. Its deputy Isabel Vallet considered that the Court was eminently political and that the proof of its politicisation was that it has analysed the issue faster than other ones that were much more important for the society, such the law on bankruptcy or the ongoing foreclosures. Furthermore, she did not accept

[41] ACN/Barcelona. 2014. CiU no le da "ninguna credibilidad" a las resoluciones de un TC donde hay "agitadores de la catalanofobia". El Periódico (digital edition), 25 March.

[42] Europa Press. 2014. ERC: "La hoja de ruta de la consultationa no debe moverse ni un milímetro". La Vanguardia (digital edition), 25 March

[43] Josep Gisbert and Iñaki Ellakuría, 2014. El Govern considera que el tribunal avala la aspiración de la consultationa. La Vanguardia, 26 March.

the ruling as a 'valid' decision and considered that the exercise of sovereignty is not susceptible to being legally assessed[44].

Statements by political actors continued during the days subsequent to the ruling. Debates in the Catalan Parliament, registered in its official publication Diari de Sessions del Parlament de Catalunya, show that a slight change could be detected in the reactions of pro-referendum actors. They seemed to have learned that they could exploit certain parts of the ruling in their favour, even if de-legitimising criticisms of the Court were still frequent. The Catalan President, Artur Mas (CiU/CDC), is a good example. In his speech to the Catalan Parliament, he recalled that, according to the Court, the 'right to decide' could be interpreted as constitutional, quoting a paragraph of the ruling. However, his criticisms were still harsh. He disparaged the Spanish Constitutional Court for making a decision on a political declaration of a Parliament, which was an unprecedented move. He made a legalistic concession, saying that the duty of the Court was to enforce the Constitution. However, he then suggested that in assessing the Declaration of Sovereignty, it had given up its role as a referee at the service of the 'entire people, of all the State'[45]. Furthermore, he reiterated the attitudinal criticism of the Court by recalling that the Catalan Parliament had disqualified three members of the Court for having made 'offensive statements against certain political processes boosted by the Catalan people', using the example of the declarations of the magistrate Pedro

[44] ACN/Barcelona. 2014. La CUP asegura que "el ejercicio de la soberanía no es analizable jurídicamente". La Vanguardia (digital edition), 25 March

[45] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.21.

González Trevijano, in which he used the word 'nazionalist', suggesting that someone who writes such a thing is not apt to assess what Catalonia does[46].

In subsequent days, the framings by political actors continued to reflect this tension between the idea that the Court was politically biased and the temptation to insist that the ruling partially backed pro-referendum stances. Francesc Homs (CiU/CDC) considered that, in its small print, the ruling supported the thesis defended by the Catalan Government[47]. However, Alfred Bosch (ERC) stated that the content of the ruling was foreseeable and that it was 'an eminently political ruling by a politicised Court'[48].

Intermediate Stances: the Ruling as a Catalyst for a New Political Dialogue

A number of political parties had more intermediate preferences regarding the relation between Catalonia and the Spanish State. Leaders of UDC (part of the CiU coalition) had often referred to the possibility of a con-federal solution, ICV had a federal tradition, and PSC opted for the federal approach after an agreement with PSOE. Having said this, the differences between all these parties were clear: while UDC and ICV supported the referendum called by the Catalan President, PSC opposed it. This is not a minor difference, and it had a real impact on political framings; thus, separate

[46] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.22.
[47] Jordi Barbeta, 2014. El Govern utilizará argumentos del TC en defensa de la consultationa. La Vanguardia, 28 March.
[48] José Manuel Romero and Vera Gutierrez, 2014. Líneas rojas en Cataluña. El País, 30 March.

analyses will be devoted to UDC and ICV on the one hand and to PSC on the other. However, as I will show, these three parties exhibited a common pattern: because the judicial outcome was not far from their preferences, they tried to frame it as a call to dialogue and to intermediate solutions, which they regarded with sympathy.

The pro-referendum parties UDC and ICV will be analysed first. On the day of the ruling, the reactions of the ICV leaders were rather critical. The Secretary General of the party, Josep Vendrell, accused the court of acting 'as a third legislative chamber', as it had already done with the Statute of Autonomy[49]. The day after, however, the discourse of the party became more moderate. The party's spokesperson in the Catalan Parliament, Joan Herrera, criticised the Court for making a pronouncement over a 'political declaration' and made a harsh reference to 'a sort of controlled democracy'[50]. However, he then stated that the good news was that, according to the ruling, the right to decide is legal and legitimate, and thus, the Spanish Government could allow the consultation if it wanted[51]. The leader of UDC, Duran i Lleida, was rather moderate from the very beginning, and although he considered the ruling an unnecessary mistake, he made a call to respect the decision[52]. In subsequent days, he declared that he was 'positively surprised' that the Court had admitted the 'right to decide [of Catalonia]'

[49] ACN/Barcelona. 2014. ICV-EUiA: "12 señores de un tribunal de Madrid no nos harán desistir del objetivo de poder votar". La Vanguardia (digital edition), 25 March.

[50] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.20

[51] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.21

[52] Alex Gubern, 2014. CiU llama "agitador" al TC y habla de "catalanofobia". ABC, 26 March.

linked to a negotiation[53]. Although not explicitly legalist, the statements by Duran i Lleida avoided accusations of politicisation and had legalist reminiscences. In this regard, he could be seen as an outlier. The explanation for this could lie in that his party, UDC, had been the most moderate within the pro-referendum block, having always supported dialogue with the Spanish Government and con-federal solutions for Catalonia. The content of the ruling was thus not far from his preferred outcome. At the same time, the burden of harsh criticisms of the Court had already been assumed by other allied parties, allowing him play a different role. Nevertheless, other UDC actors took a slightly less conciliatory stance. Montserrat Surroca, for instance, stated that her party was 'neither going to obey the ruling nor to disobey it', as the Declaration of Sovereignty had, in their view, no legal effects[54].

As said above, PSC also opted for federal-type solutions for the status of Catalonia, but unlike ICV and UDC, it did not support the Declaration of Sovereignty and considered that any referendum should be preceded by an agreement with the Spanish Government. Maurici Lucena, spokesperson of the PSC in the Catalan Parliament, said that the ruling showed that the only way to celebrate the consultation was through agreement between the Catalan and Spanish governments[55]. The leader of the PSC, Pere Navarro, made a subtly legalistic reading when he said that the ruling had confirmed the interpretation of his party that, in order to make a legal consultation, it was necessary to amend the Constitution first. This was followed by an invitation to the Catalan President 'to use the

[53] Jordi Barbeta, 2014. El Govern utilizará argumentos del TC en defensa de la consultationa. La Vanguardia, 28 March.
[54] José Manuel Romero and Vera Gutierrez, 2014. Líneas rojas en Cataluña. El País, 30 March.
[55] Europa Press. 2014. El PSC cree que la sentencia del TC evidencia que el "único camino" es el acuerdo entre gobiernos. La Vanguardia (digital edition), 25 March.

door that the Constitutional Court has left open, jump on the bus of PSC and amend together the Constitution'[56]. The leaders of PSOE –the Spanish socialist party with which PSC is federated- said, in addition, that the ruling appealed to the need for dialogue[57]. Furthermore, the PSOE spokesman, Ramón Jáuregui, responded to the accusations by Alfred Bosh (ERC) that the Court was a politicised institution: 'The Constitutional Court is much more than that, Alfred. I would like that, if you ever had a Constitutional Court, did not treat it as bad as you treat this one. Without respect to democratic institutions we are in the wrong way'[58].

Anti-Referendum Actors: Demanding Respect for the Rule of Law

As expected, opponents of the referendum underlined the opposite elements in the ruling. Their discourse was constructed around two interrelated strategies: they focused on those aspects of the ruling that were closer to their political stance –that the Catalan people were not deemed to be sovereign and that the consultation was considered impossible under the current constitutional framework- and simultaneously tried to reaffirm the legitimacy of the Court.

The PP-led Spanish Government said after the ruling that the law was on their side and that the ruling should be respected. The spokesperson of PP in the Catalan Parliament,

[56] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.23.
[57] Juan Ruiz Serra, 2014. El PSOE considera que la sentencia revalida sus tesis federalistas. El Periódico (digital edition), 25 March.
[58] Juan Manuel Romero and Vera Gutierrez. 2014. Líneas rojas en Cataluña. El País, 30 March.

Enric Millo, asked the Catalan President to respect a decision adopted by unanimity by the Court[59]. The same discourse was followed by the leader of PP in Catalonia, Alícia Sanchez-Camacho, who urged the Catalan President to respect the judicial decision. Furthermore, she explicitly counter-argued against attitudinal criticisms of the Court: 'We heard the other day that Mr. Homs [CiU] said that they respect the decisions by all (…). But it seems that yesterday we were said that this Court has no credibility, and that they are agitators of Catalan-phobia. Respect can be lost in minutes'[60]. Her discourse seemed to be explicitly directed at reasserting the legitimacy of the Court. She recalled that there were members of the Court nominated at the request of CiU, thus emphasising its internal plurality and representativeness, and she insisted that such party had often brought cases before it[61]. Some days after the ruling, Pedro Gómez de la Serna (PP) suggested that the ruling had confirmed the thesis of his party and that 'in democracy, the normal thing is to abide to the rulings'[62]. Even the leader of PP in Galicia, Alberto Núñez Feijóo, dared to give his opinion on the topic: 'That a party calls to a rebellion against the highest constitutional organ [of the State] which has issued a ruling by unanimity is a surprising thing. There is just one possibility for Mas: to accept the decisions by the courts and to come back to the path of the Rule of Law'[63].

---

[59] ACN/Parlament. 2014. El PPC pide a Mas que atienda a la unanimidad del TC y "aparque la consultationa". El Periódico (digital edition), 25 March.

[60] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.22.

[61] Diari de Sessions del Parlament de Catalunya, Sèrie P – Núm. 54. 26th March 2014, p.22.

[62] Juan Manuel Romero and Vera Gutierrez. 2014. Líneas rojas en Cataluña. El País, 30 March.

[63] Esther Esteban, 2014. "Mas ignora la ayuda que le queremos dar". El Mundo, 31 March.

Finally, the Ciutadans party exhibited similar patterns in the discourse of its leaders. Carina Mejías said that the ruling showed that the Catalan Government was acting 'against the legal system' and that it should 'act according to the Constitution'[64]. The leader of Ciutadans, Albert Rivera, went further and called the possibility of a unilateral declaration of independence suggested by the Catalan President 'a coup d'Etat against the Statute [of Autonomy of Catalonia] and the Constitution'[65].

Conclusions

The decision of the Spanish Constitutional Court on the Declaration of Sovereignty of the Catalan Parliament is a major episode of the political dynamics of the Catalan sovereignist process. Because of this importance, political actors devoted a great deal of effort to the framing of the decision. For analytical purposes, framings by political actors could be classified into any of the three academic theories of judicial decision-making. With such framings, politicians followed different post-litigation strategies in which the will to use the ruling to back their preferred policy outcomes was combined with the intent to legitimise the Court as a neutral adjudicator of the Constitution or, alternatively, to delegitimise it as a politically biased institution. Attitudinal and institutional framings of the ruling were linked to the ideas of politicisation and partisanship of the Court, while legalist framings more subtly resorted to the idea of the Rule of Law and the need to respect judicial decisions. Furthermore, legalist framings

[64] EFE/Barcelona. 2014. Ciutadans se muestran "satisfechos" con la resolución del Tribunal Constitucional. El Periódico (digital edition), 25 March.

[65] María Jesús Cañizares, 2014. Mas ningunea al TC y redobla su desafío secesionista sin importarle "los escollos". ABC, 27 March

reasserted the legitimacy of the constitutional status quo and the capacity of the Spanish Constitution to regulate the ongoing political conflict over the Catalan sovereignist process.

The political reactions to the ruling of the Spanish Constitutional Court show how such an institution can become the object of intense political debates: episodes of the judicialisation of politics become, at the same time, catalysts for the politicisation of the interpretation of judicial decisions. The framings of the ruling also show the disputed nature of the notion of the Rule of Law in concrete contexts and how judicial decisions might contribute to debate in this regard. For opponents of the referendum, the ideal of the Rule of Law was an instrument to be mobilised as part of their political strategy. Probably as a reaction, some of the supporters of the referendum asserted that the legitimacy of their claim to a vote is higher than that of the Spanish legal system: 'the time has come to blow off the Spanish laws', the leader of the ERC party recently said[66]. This clash between legality and legitimacy, in which the idea of the Rule of Law is at the core, continues to be one of the most prominent aspects of Catalan and Spanish political life.

[66] Salvador Sostres, 2014. "Para blindar la consulta entraríamos en el Govern". El Mundo, 14 September.