

GT 1.7 Crisis de la Democracia: Fragilidad, confianza y populismos en democracias
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Rule of Law, Constitutionalism and Democracy.

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In the events of September and October of 2017 in Catalonia many voices argued that voting and democracy should be above the rule of law and the Constitution. The supporters of the independence of Catalonia thus established an opposition between the rule of law and the Constitution, on the one hand, and the democratic principle, on the other. In this talk I want to examine briefly if this opposition can be sustained and if it does not rest on mistaken assumptions or confusions about the rule of law, the sense of the Constitution and the very idea of democracy.

In the first place, I would like to frame this opposition in the current diagnoses about what some authors have called 'the populist moment'. Populism makes sense as a manifestation of the crisis of liberal democracy. So the same expression of the opposition between democracy and liberal constitutionalism, as some political actors claim, should be understood as a significant symptom of the crisis of liberal democracy nowadays. Is it possible to think of an illiberal democracy? This would amount to a democracy without the institutions of the rule of law or constitutional safeguards.

In the second part of the talk, I will consider the arguments presented in the famous ruling of the Supreme Court of Canada on the question of the secession of Quebec (1998). The sentence offers an incisive and highly relevant examination of the principles inspiring a democratic constitutional regime. I will dwell on the analysis of democracy and the constitutionalism principle since it allows us to examine closely how they relate. As the Canadian judges conclude, it is not possible to understand democracy apart from the rule of law and constitutionalism nor as being above them.