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*Engendering the Spanish
Monarchy:
Modernizing or Abolishing?*

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Abstract: To this day, the Spanish Constitution still sanctions the rule of male preference accession to the throne and, as such, the institution of the monarchy in Spain is not gender egalitarian. This article explores why, in spite of widespread societal consensus around the need to change this, the rule favoring male heirs continues to exist in a broader political context that makes any kind of constitutional reform hugely contested. The article discusses continuities and ruptures in the gendered patterns of behaviour and symbolic representation expected from and enshrined in the current king and queen consort, who have felt pressure to modernize an institution that is increasingly challenged. It finally raises the question as to whether the true feminist path requires going beyond rendering the monarchy gender neutral in the law, and even challenging traditional gender roles within its way of operating and simply abolishing it as a relic of the inherently authoritarian and patriarchal forms of government of the past.

Keywords: monarchy; gender; nobiliary titles; Spain; Spanish Constitution; women

Any attempt to understand the contemporary debate around the monarchy in Spain, as well as its gendered dimensions, must start from the context in which the 1978 Constitution was drafted, enshrining the monarchical option.¹ Spain's short-lived second historical attempt to install a republican regime in 1931, after King Alfonso XIII lost popular support and went into exile, was interrupted by the outbreak of a violent civil conflict: the Spanish Civil War, 1936-1939. After the victory of the nationalist front, the civil war was followed by almost four decades of dictatorship under Franco, who only died in 1975. Two days after Franco's death, on 22 November 1975, Juan Carlos de Borbón was proclaimed king. This did not, however, entail the restoration of the monarchical line. In fact, it was Franco who, in 1969, had statutorily decided that after his death all the powers of the head of state would be enjoyed by Juan Carlos, even though the natural monarchical successor should have been Don Juan de Borbón Battenberg, Juan Carlos's father. Yet he was in exile and too distant from the dictatorship to make him a reliable successor to Franco. The monarchical line was thus interrupted, and Don Juan de Borbón only formally abdicated in favor of his son *ex post*, on 14 May 1977. Thus, King Juan Carlos de Borbón's initial legitimacy derived from Franco's appointment.

This dubious legitimacy of the monarchy was overcome to some extent when the Spanish people approved the Constitution through referendum in December 1978, even

¹ For more on the position of the monarchy in the Spanish Constitution of 1978, see: Antonio Colomer Viadel, "El origen de la Monarquía parlamentaria en España y el Anteproyecto constitucional," *Revista de Estudios Políticos* 3 (1987): 101-120.

though the people were never given the opportunity to decide whether they would prefer a republic over a monarchy.² In neighboring countries, such as Italy and Greece, where the choice between monarchy and republic was subject to popular referendum in the aftermath of World War II, the republican choice was victorious. Spanish citizens were only asked to vote *en bloc* for the 1978 Constitution that the constituent assembly had approved. In that assembly, the leftist forces had clearly favored the republican option but ended up accepting the monarchy, albeit a monarchy with merely symbolic powers. Interestingly, polls indicated that if a separate referendum on the preservation of the monarchy had first been held, the people would have voted in favour, and the republican parties would have lost a bargaining chip for nothing. As no such referendum was organized, the parties on the left were able to reduce the power of the king and obtain additional benefits too, in exchange for their acceptance of the crown where the monarchical regime was not only sanctioned but also seriously entrenched.³

The general support for the monarchy had much to do with the attitude that Juan Carlos had exhibited during the process of transition.⁴ In a constitution-making process guided by a permanent effort to seek consensus, the left agreed that King Juan Carlos had played a crucial role in facilitating Spain's transition to democracy, and came to the conclusion that, in the wider scheme of things, the choice between the monarchy and a republic was of secondary importance. In other words, guaranteeing a peaceful transition to democracy was much more important than defeating the monarchy and re-establishing a republic. In the end, important public figures who were not particularly monarchist turned into fervent "juancarlists." Later, in February 1981, the King's role in averting a military coup d'état only reinforced his popular support.

In the new century, and especially after the outbreak of the financial crisis in 2008, the popular support for the monarchy started to decline—initially as a result of a series of scandals that have populated the pages of the Spanish press.⁵ One of King Juan Carlos's sons-in-laws, Iñaki Urdangarín, was prosecuted and convicted of several crimes involving corruption and tax fraud.⁶ Juan Carlos himself came under political fire in March 2012 when he suffered an accident while hunting in Botswana accompanied by his lover Corinna Larsen.⁷ The image of the King spending his time and public money in Africa killing elephants, while Spain was facing a terrible economic crisis, caused anger.⁸ The King ultimately apologized on television, but his popularity was obviously affected. In this context, Juan Carlos subsequently abdicated in 2014 in favour of his son, Felipe, who became Felipe VI and has since rather unsuccessfully tried to recover the reputation of the institution.⁹ To this day, the monarchy continues to be

² Ricardo Zugasti, "La prensa de la transición como cómplice de Juan Carlos I: el ejemplo de la legitimidad franquista de la Monarquía," *Espacio Tiempo y Forma. Serie V, Historia Contemporánea* 18 (2006): 299–319.

³ See: Charles Powell, *Juan Carlos of Spain: Self-made Monarch* (Basingstoke: Palgrave Macmillan, 1995), 139.

⁴ Walther L. Bernecker, "Monarchy and Democracy: The Political role of King Juan Carlos in the Spanish Transition," *Journal of Contemporary History* 33, no. 1 (1998): 65–84.

⁵ Fernando Ramos Fernández, "El 'tabú' periodístico de la monarquía en España. La crisis real y la crisis coyuntural," *Revista latina de comunicación social* 68 (2013): 217–248.

⁶ Reyes Rincón, "El Supremo confirma la condena y sitúa a Urdangarín a un paso de la cárcel," *El País*, 12 June 2018, https://elpais.com/politica/2018/06/12/actualidad/1528786328_480498.html.

⁷ Gonzalo Araluce, "La noche en la que a Juan Carlos I se le cayeron encima un elefante, Corinna y la Corona," *El Español*, 13 April 2017, https://www.lespanol.com/reportajes/20170412/207979702_0.html.

⁸ See: Victor Ferreres Comella, *The Constitution of Spain: A Contextual Analysis* (Oxford: Hart Publishing, 2013), 72.

⁹ The abdication was statutorily ratified (Ley Orgánica 3/2014, de 18 de junio, por la que se hace efectiva la

involved in major scandals. Currently, former King Juan Carlos is being investigated for fiscal fraud and money laundering linked to a gift of 100 million euros from the government of Saudi Arabia—in the context of the adjudication to Spanish companies of a tender to build a fast train to Meca.¹⁰ In March 2020, the current king, Felipe VI, in the midst of the outbreak of the coronavirus crisis, renounced to his future inheritance rights from the money linked to the foundation created by his father—whose existence he was found to have known for some time—to protect the monarchy from the scandal. Though homebound, the next day, people banged pots on the terraces and balconies asking the former king to return the money to help fight the coronavirus health crisis. On 3 August 2020, Juan Carlos finally took the decision to leave the country such as to avoid the ongoing investigations from further harming the institution of the monarchy.¹¹

In 2014, in the midst of declining levels of popularity of the monarchy, the leftist forces in parliament asked that the government organize a consultative referendum—foreseen under Article 92 of the Spanish Constitution—about the support for the monarchy, but this initiative did not succeed.¹² Felipe was Juan Carlos's third child, but he became the new king after the abdication because he was preferred over his two elder sisters, Elena and Cristina, as the rule of male preference for the monarchy was still sanctioned in the constitution. Felipe's wife, Letizia Ortiz Rocasolano, a former journalist and TV newscaster, thus became Queen of Spain. The couple have tried to breathe new life into an institution whose legitimacy has recently been questioned, especially after becoming entangled with the Catalan secessionist threat, given that secessionist parties are seeking to declare an independent Catalan state in the form of a republic. From a feminist perspective, since the monarchy has increasingly come under attack, the central question is whether modernizing the monarchy (and rendering it fully gender equal) or abolishing it altogether should be the preferred way. Let us explore the implications of both options in their different modalities.

Modernizing the Monarchy by Rendering the Monarchical Institution Gender Neutral in the Law

Due to the gradual detachment of the Spanish population from the monarchy, there is a growing perception that Felipe VI has to work towards building a new deal with the people. Some actions undertaken by the new King seem to go in this direction and to be directly connected to the royal family's financial scandals, such as enhancing the rules of transparency of the functioning of the royal house, including a new openness around royal expenses.¹³ On

abdicación de su Majestad el Rey Don Juan Carlos I de Borbón).

¹⁰ This money was deposited in 2008 in a Swiss account in the Bahamas under the name of a fake foundation, and Juan Carlos is supposed to have diverted 65 million from it to his former lover, Ms. Larsen, when the Swiss bank invited King Juan Carlos to close his account after the outbreak of the Bostwana scandal.

¹¹ Miguel González, "Juan Carlos I abandona España para salvaguardar la Monarquía", *El País*, 04 August 2020, <https://elpais.com/espana/2020-08-03/el-juan-carlos-i-comunica-a-su-hijo-su-decision-de-trasladarse-fuera-de-espana.html>.

¹² See: Marc Carrillo, "Debatiendo: La sucesión a la Corona," *Eunomia: Revista en Cultura de la Legalidad* 7 (2014-2015): 270–271.

¹³ For different proposals for amending and modernizing the institution see Joan Oliver Araujo, "La Reforma Constitucional de la Corona (una propuesta radical y diez moderadas)," *Revista de Derecho Político* 77 (2010): 15.

this road towards modernization, overcoming the sex-based succession preference that is still anchored in the constitutional text seems an obvious milestone.

Male preference has existed in laws of the Spanish kingdoms of Navarra and Castilla León since the medieval period and from 1713 the rule of Salic Law, which excluded women from the succession, was introduced by Felipe V, the first Borbón King in Spain. The Salic regime was appealed in the Castilian Chamber in 1789 and, from 1812, the Spanish Constitution accepted the possibility that women be the legitimate monarchs, while also assuming the rule of male priority. The modern Spanish monarchy constitutes one of the few European monarchies—together with Lichtenstein and Monaco—in which the rule setting out the order of succession to the crown still discriminates against women. Section 57.1 in the current (1978) Spanish Constitution states that:

The Crown of Spain shall be inherited by the successors of H. M. Juan Carlos I de Borbón, the legitimate heir of the historic dynasty. Succession to the throne shall follow the regular order of primogeniture and representation, the first line always having preference over subsequent lines; within the same line, the closer grade over the more remote; within the same grade, the male over the female, and in the same sex, the elder over the younger.¹⁴

This explains why, after the abdication of Juan Carlos, it was his son Felipe, and not his older sisters Princesses Elena or Cristina, who inherited the throne. The successor of Felipe VI will, however, be a woman, given that his marriage to Queen Letizia has only produced two daughters: Leonor, born 31 October 2005, and Sofía, born 29 April 2007. In the meantime, Leonor, now fourteen years old has been proclaimed Princess of Asturias, a title granted since 1388 to every legitimate heir to the throne and their spouse.¹⁵

The rule of male preference in the Spanish Constitution was adopted at a time when it was common across most other European monarchies, but it was retained as a rule that reflected historical tradition.¹⁶ More than anything, the Constituent Assembly had been confronted with a historical *fait accompli*: when it started its work in 1977, Felipe de Borbón had already been proclaimed Prince of Asturias (this had taken place on 1 November 1977). The constituent assembly could have respected the established expectations, yet changed the system for the future. However, it declined to do so. The debate, held mostly in the upper chamber (*Senado*), shows that the choice reflected the generalized prejudices of the time. Indeed, those supporting the male preference rule had called on rather simplistic if not redundant arguments, including the traditional disappointment experienced by royal families when no male descendant is born; the greater ability of men to perform the tasks expected from a monarch; or the inconvenience of having to alter the family name of the royal family.¹⁷ Some voices on the left did express opposition including, most famously, that of senator Villar

¹⁴ Section 57.1 in the current (1978) Spanish Constitution.

¹⁵ See: Santos M. Coronas González, “Príncipe y Principado de Asturias: historia dinástica y territorial de un título,” *Annual de historia del derecho español* 71 (2001): 49–74.

¹⁶ The rule has been abandoned in most European countries, including the Netherlands (1983), Belgium (1991), Sweden (1980), Norway (1990), Denmark (2009) and the UK (2016). See: Aurora Gutiérrez Nogueroles, “Reflexiones en torno al régimen constitucional de sucesión a la Corona española,” *Revista de Derecho Político* 57 (2003): 199–258; and Benjamín González Alonso, “La historia de la sucesión en el trono y el artículo 57 de la Constitución de 1978,” *Revista de Estudios Políticos* 19 (1981): 7–42.

¹⁷ Araujo, “La Reforma Constitucional de la Corona,” 20.

Arregui, for whom accepting a rule in the succession that discriminated by gender was an “insult to all Spanish women who will not understand that the men elaborating the Constitution devote beautiful words of nondiscrimination to them when proclaiming values yet discriminate against them when organizing institutions.”¹⁸ But in general, the rule was accepted as part of the traditional idiosyncrasy of the institution, and a reservation was duly added to the Convention on the Elimination of Discrimination Against Women (CEDAW) when Spain ratified it.¹⁹

Once enshrined in the post-restoration Constitution, several interpretive ways around the rule of succession were defended by public opinion and constitutional scholars. One suggestion was that the constitutional prohibition of sex discrimination under Article 14 of the Spanish Constitution could be interpreted as a constitutional norm of superior rank, thus allowing the Constitutional Court or the legislator to give a constitutionally sound interpretation of the male preference succession rule, rendering it *de facto* void even if still present in the text.²⁰ This interpretation, which typically relied on German constitutional dogmatic discussing the possibility of “unconstitutional” constitutional norms, has been defended by a few but has not been widely shared.²¹ More importantly, it was precluded by the Constitutional Court which, in *obiter dictum*, validated the male preference rule in the crown succession order, in the context of a most controversial decision adopted in 1997 that validated a similar rule of male preference in the succession of nobiliary titles.²²

The 1997 decision about the inheritance of nobiliary titles caused significant uproar and deserves closer examination. The Spanish Constitution provides that it is a prerogative of the monarch to grant honours and distinctions, something which has been interpreted as allowing him the right to grant new nobiliary titles and rehabilitate older ones.²³ In this decision, which distills general contempt for nobiliary titles—it was, after all, drafted by one

¹⁸ Diario de Sesiones del Congreso de los Diputados núm. 108, Sesión Plenaria núm. 9 celebrada el jueves, 31 de agosto de 1978 pág. 2144.

¹⁹ See: United Nations, “Convention on the Elimination of All Forms of Discrimination against Women,” 18 December 1979, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en#EndDec. The CEDAW Committee, in charge of overseeing the implementation of the Convention, has systematically asked Spain to lift this reservation in response to Spain’s periodic report. See, for instance: CEDAW/C/ESP/CO/6, August 7 2009.

²⁰ This was a view expressed in the main left-wing newspaper *El País* by Miquel Roca, who had been one of the founding fathers of the Spanish Constitution. See: Miquel Roca, “Entrevista con Miquel Roca: Día de la Constitución – Uno de los ‘padras’ de la Carta Margna,” *El País*, 5 December 2008, https://elpais.com/politica/2008/12/05/actualidad/1228498200_1228502755.html.

²¹ See: Pilar Mellado Prado and Yolanda Gómez Sánchez, “En Torno a la Posible Inconstitucionalidad del Apartado Primero del Artículo 57 de la Constitución Española de 1978,” *La Ley* 4 (1984): 1145, which affirms that Article 57.1 of the Spanish Constitution amounts to an “unconstitutional constitutional” norm.

²² See: Sentencia del Tribunal Constitucional (STC) (Decision of the Constitutional Court) STC 126/1997, FJ 7 of July 3rd of 1997: “the conformity of the regular order of succession to the Crown (Article 57.1) cannot be questioned since it reflects the constituent will.” The decision was particularly controversial because in 1989 the Supreme Court (the highest court in the ordinary court system) had declared the male preference rule of transmission unconstitutional in a series of decisions calling on its discriminatory nature. However, in 1997, answering a constitutional consultation put by a lower judge who presumably disapproved of the doctrine set by the Supreme Court and wanted to bypass it, the Constitutional Court overruled such doctrine in this nine to three decision declaring the preference of men over women in accordance to the Constitution.

²³ See: Article 62.f of the Spanish Constitution.

justice who was a former member of Spain's communist party—the Court argued that since nobiliary titles had survived after the Constitution they could not be said to be “unconstitutional,” strictly speaking. Efforts to rely on a constitutional logic to modernize these nobiliary titles—by overcoming the gender-based discrimination in the transmission system—are, according to the decision, a futile attempt to conform them to a logic to which they were utterly foreign. In other words, they would amount to introducing anachronistic requirements into a practice molded by history. The Court insisted these nobiliary titles were largely symbolic and their social reach very limited, even though the titles still granted social status and economic transactions around nobiliary titles were not uncommon—which explains why potential candidates have been willing to fight for them in courts as this very case shows.²⁴

As some of the dissenting voices in the decision recognized, if there was nothing at stake there would not have been so much litigation around the issue.²⁵ Even if it was the case that only symbolic interests were in question, there was no explanation as to why symbols should not matter. Indeed, the symbolic message that the decision sent out to society was that the medieval conception of women that the transmission order reflected could survive with no harm being done to anyone. The Court probably approached the subject matter thinking that the titles were doomed to become extinct sooner or later—though they are still alive. In any event, from the way the decision was constructed, the real concern of the twelve male justices involved in making the decision was whether the existence of nobiliary titles could be reconciled with the constitutional order. In fact, it appeared that the types of discrimination at stake which would affect men—men born noble versus ordinary men, or primogenitor men versus non-primogenitor men—left no space in the minds of the male judges for addressing the gender discrimination question. Thus, the Court elaborated extensively on the former only and dedicated only a few sentences to the latter. There was practically no mention of the prior and well-elaborated doctrine of gender-based discrimination. The Court seemed deeply troubled by the idea of “modernizing” the titles. Yet, the issue was much simpler. If the nobiliary titles could survive in a constitutional democracy, which is questionable, such titles ought to conform to the Constitution's most basic mandates. Women should not be denied benefits, whether symbolic or material, because they are women.

The decision was subsequently challenged in front of the European Court of Human Rights for abridgment of both Article 14's nondiscrimination principle of the European Convention of Human Rights (ECHR) in relation to Article 8 of the Convention, which sanctions the protection of family life, and also Article 1 of Protocol No. 1 of the Convention, which refers to the protection of possessions. In a decision of 28 October 1999, the Court declared that the case was inadmissible *ratione materiae*.²⁶ Unlike surnames and forenames, the Court held that nobiliary titles did not fall within the scope of protection that the Convention

²⁴ See: Sentencia del Tribunal Constitucional (STC) (Decision of the Constitutional Court) STC 126/1997, FJ 12 of July 3rd of 1997: “The titles of nobility place us before a sphere of relationships that are limited to those people who are part of the lineage of the beneficiary of the grant and, therefore, do not have a general and defining projection of a status, but rather before a simple *nomen honoris* that implies a reference to history as a symbol.”

²⁵ See the dissenting opinion of judges Carles Viver Pi-Sunyer and Tomás S. Vives Antón, in STC 126/1997, available in Spanish here: http://hj.tribunalconstitucional.es/HJ/en-US/Resolucion/Show/SENTENCIA/1997/126#complete_resolucion&votos.

²⁶ *De la Cierva Osorio de Moscoso and Others v. Spain*, Decision, ECHR 1999-VII.

grants to family life. Neither could a nobiliary title be considered a possession of the meaning of Article 1 of Protocol No. 1. The Court interpreted that the possibility that a title could be commercially exploited was not sufficient for that purpose. Under Article 14 of the ECHR, the discriminatory treatment necessarily had to be put in relation to some other right or freedom recognized in the Convention, thus the Court found the appeal inadmissible.

In 2006, the Constitutional Court's ruling was rendered moot when the law on the equal access of men and women to nobiliary titles was passed in the Spanish parliament.²⁷ In its preamble the law explicitly declares that "full equality between men and women must project itself also over functions that are merely representative or symbolic." Its reach of application is, however, limited to succession to nobiliary titles and does not alter the rules of succession to the Spanish crown. This meant that the only way left to overcome the discrimination was a constitutional amendment.

The only time that the possibility of a constitutional amendment was politically discussed was under the socialist government of José Luis Rodríguez Zapatero in 2004. At the time, a multi-prong reform initiative was promoted that included, among other things, removing sex disparity in accession to the throne. The timing was propitious: at the time, Princess Letizia, wife of Prince Felipe who was then still successor to the throne, was pregnant with their first child, and the couple wanted to ensure the rights of their soon-to-be-born child, regardless of its sex of birth. It turned out to be a girl: Leonor. The debate was picked up again with the second pregnancy of Letizia, in 2006, in the fear that, if male, the newborn could overrule the prerogatives of Leonor, but the second child also turned out to be a girl. It was in this context that the socialist government consulted the Council of State on several proposals for constitutional amendment, including one on the rule of male preference.²⁸ The Council of State rejected the interpretation whereby a contradiction could be said to exist between Article 14—the clause that contained the general principle of equality and the prohibition of discrimination—and the rule of succession in the Spanish Constitution. Instead, the Council argued that the relationship between both provisions was to be interpreted as that between a general and a specific norm, with the latter qualifying the former.²⁹ The only way to reconcile the growing social rejection of all forms of discrimination against women, the Council of State suggested, was to actually reform the constitution. This was something that could be done through a new formulation of the rule of succession, which the Council of State proposed, leaving the existing rule untouched except for what pertains the male preference.³⁰

The rule of male preference is not, however, the only explicit sign of gender discrimination contained in the constitutional regulation of the monarchy. Although the Constitution does not rule out the possibility of a woman naturally succeeding to the throne,

²⁷ See: Ley 33/2006, de 30 de Octubre, Sobre la Igualdad del Hombre y de la Mujer en la Sucesión a los Títulos Nobiliarios (Law on the equal access of men and women to nobiliary titles), accessed 1 November 2017, <http://www.boe.es/buscar/act.php?id=BOE-A-2006-18869>.

²⁸ The Council of State is a consultative body that has the ability to prepare studies, issue reports and prepare legislative or constitutional amendment proposals when so requested by the government. See Article 107 of the Spanish Constitution.

²⁹ Council of State, "Informe Sobre Modificaciones de la Constitución Española," February 2006 n E 1/2005, 32, accessed 1 November 2017, <http://www.consejo-estado.es/pdf/MODIFICACIONES%20CONSTITUCION%20ESP.pdf>.

³⁰ Council of State, "Informe Sobre Modificaciones de la Constitución Española," 32.

the Council of State's report to the government detected that all references to the "monarch" and the "successor" used the Spanish masculine form across approximately twenty constitutional provisions.³¹ In other words, the masculine form was used as a universal generic. The Council of State considered that this too needed to be changed and, looking at historical precedents and comparative experiences, considered several possibilities for doing so. It ultimately endorsed the solution of adding one clause that explicitly spelled out that every mention to the male form should be interpreted as inclusive of the equivalent female form, rather than amending each and every specific provision. In support of this position, it referred to the fact that the text should not be made overly cumbersome.³² Not a single reference to the extensive debates around sexism in language use and the dangers of relying on the universal male form was included.

There was one additional form of sexism that was not identified by the Council of State. It concerns the wording of titles and the manner of addressing the monarch and their spouse. Article 58 uses "queen consort" to refer to a woman who, like the current Queen Letizia, came to the throne by marrying the King, but does not talk about "king consort" in reference to a male marrying a queen, but rather to the "consort of the queen." Moreover, Article 58.1 gives the king's spouse "her majesty" treatment, whereas the spouse of the queen remains "his royalty."³³ Scholars have disagreed about how to interpret this distinction, which, at least in appearance, privileges women. Some have considered it a "constitutional gallantry," or reverse discrimination, to compensate for the male preference rule in 57.1 of the Constitution.³⁴ Most have simply called on tradition to justify it, even though the spouse of Queen Isabel II (r. 1833-1868), one of the two queens regnant of Spain who inherited the throne rather than acceding through marriage, Don Francisco de Asís de Borbón, was actually addressed as king. It has also been suggested, however, that the rule may entail a subtle sexist prejudice whereby a woman married to the king could be addressed as queen because she would never be threatening enough to overshadow the dynastic monarch, whereas there would always be the risk that a man marrying the queen could pose such a threat.³⁵ By all means the rule seems to suggest that accessing the role of monarch through marriage is a much more common destiny for a woman than a man.

To this day though, none of these provisions have been amended. In fact, with the coming into power of the conservative Popular Party in 2011, the question of the constitutional amendment lost its momentum. The upsurge of Catalanian independentism has clearly rekindled the momentum, with the focus of the debate now centering on the survival of Spain's current *quasi*-federal system and the constitutionally-sanctioned unity of the country as limitations to any possible reform to better accommodate nationalist claims.³⁶ Even in this

³¹ Council of State, "Informe Sobre Modificaciones de la Constitución Española," 35–40.

³² Council of State, "Informe Sobre Modificaciones de la Constitución Española," 35–40.

³³ Article 58 of the Spanish Constitution: "La Reina consorte o el consorte de la Reina no podrán asumir funciones constitucionales, salvo lo dispuesto para la Regencia."

³⁴ Araujo, "La Reforma Constitucional de la Corona," 61.

³⁵ Araujo, "La Reforma Constitucional de la Corona," 60.

³⁶ It is unclear whether if King Felipe and Queen Letizia were to have another child, this time a male, he would become the successor of the throne inevitably, or whether a constitutional amendment passed to avoid this could have retroactive application and thus confirm Leonor's prerogatives. The Spanish Constitution foresees that a general statute should be passed, addressing, amongst other, possible uncertainties concerning the succession to

context the prospects for quick and easy reform are dubious.

Any attempt to amend male preference in the rule of succession would be extraordinarily complex. Indeed, the Spanish Constitution contemplates two different amendment procedures.³⁷ One of them—the procedure contemplated in Article 168 of the Constitution—constitutes an aggravated reform procedure and is reserved for the situation in which the Constitution is totally amended, or when the amendment affects some parts considered fundamental. Among them is Title II of the Constitution, devoted to the crown and including the rule of succession. The Article 168 procedure requires that the proposed amendment be approved by a two-third majority in the lower and upper chambers of parliament (House of Congress and Senate), the dissolution of parliament and new elections and its approval in the new parliament and popular referendum. So far, it has never been tried. Not surprisingly, Article 168 procedure was arguably introduced in the constituent assembly by the conservative forces closest to the old regime to prevent leftist forces from amending the monarchy as soon they came into power.³⁸ Aware of the anachronism entailed by the very monarchical option, it is felt that such conservative forces gave up on the idea of introducing an “unamendability” clause—declaring the monarchy unamendable. The goal, however, was similar.

Moreover, in recent times, and especially since the upsurge in Catalonia’s republican independentist forces, and in light of the never-ending scandals surrounding the monarchy, there is a decreasing support for the monarchy. At the same time, there is ever-growing polarization. On the one hand, among the general population and political forces, there are those who might support amending the Spanish constitution, and its system of devolution of powers, to somehow better accommodate nationalist forces but are unwilling to allow for a secession referendum. On the other hand, there are those willing to resist any Catalan nationalist claim that suggests that the country should go down the path of an increasing asymmetrical federalism to avoid the breakout they fear this would ultimately lead to.³⁹ Finally, there is a general fear by some and hope by others that, in the current context, any proposed amendment to the monarchy would inevitably end up becoming a plebiscite about the very monarchical form of government with uncertain results.⁴⁰ Taken together, these factors make it unlikely that a reform that singles out the male preference rule will be put forward any time soon and that the monarchy may be more readily abolished than amended sometime in the near future. In other words, in spite of overwhelming social consensus in its favour, the constitutional amendment of the discriminatory order of succession has so far been high-jacked by the fear that, if the door for a constitutional amendment is opened, the unity of the country or its monarchical regime will be challenged altogether. In this context, only the increasingly unlikely birth of a male descendant to the reigning couple might force such an amendment, especially since Leonor has now been proclaimed Princess of Asturias, the title

the throne. But such statute was never passed.

³⁷ These processes are regulated under articles 167 and 168 of the Spanish Constitution, respectively.

³⁸ Araujo, “La Reforma Constitucional de la Corona,” 33–34.

³⁹ See: Jaime Rodríguez-Arana Muñoz, “El Estado autonómico y los nacionalismos,” *Revista de Investigações Constitucionais* 1, no. 3. (2014): 91–103.

⁴⁰ See, for example: Víctor Ferreres Comella, “Monarquía, Referendum y Reforma Constitucional,” *Actualidad Jurídica* 50 (2018): 19–26.

traditionally held by the legitimate heir to the throne.⁴¹

Gender Modernizing the Monarchy Beyond the Law

There are limits as to the degree of modernization that can be expected from a monarchical regime, especially if the modernizing project is channeled through legal reforms. Indeed, there may be other more efficient forms to modernize the institution, including in gender terms, and to look for ways to enhance the institution's sociological legitimacy, mostly by tackling its symbolic dimension. In this regard, one clearly gendered debate that has occupied the attention of the media over the last two decades was Felipe's choice of partner and spouse who would become the Queen of Spain. Not unlike his European contemporaries, Felipe chose what has been described as a 'modern' woman, epitomized by the figure of a middle class professional. While Queen Letizia has overwhelmingly been recognized as beautiful and elegant, she is also deemed cold and distant. As such, she has failed to please both the more conservative population—who would have preferred a more aristocratic choice—and the wider populous who have found it difficult to connect with her.

Letizia Ortiz Rocasolano was a newscaster in charge of the Spanish daily news program with the highest audience figures when she met Prince Felipe. Her grandfather was a taxi driver and her grandmother was a radio presenter. Her parents, a journalist and a nurse, were divorced. She herself was divorced from her first marriage with a former high school teacher after a year of marriage with no children.⁴² Compared to the choice by the Norwegian successor to the throne for Mette-Marit Tjessem,⁴³ Prince Felipe's choice seemed relatively moderate, yet he had reasons to fear parental disapproval.⁴⁴ Such disapproval was said to be at the root of the failure of some of his prior relationships, including that with Eva Sannum—a Norwegian fashion model.⁴⁵ This time, Prince Felipe stood by his choice, which his parents, especially his father—known to have himself married Queen Sofia of Greece for monarchical convenience and to be a womanizer whose affairs the press did not dare to shed light on for the longest time—grudgingly accepted. Felipe married a divorced journalist and, for a man whose title includes "His Catholic Majesty," this was not a small thing. This option for a middle-class professional and, implicitly, more or less sexually liberated, woman, who lacked links to the nobility, seems to be the norm among modern European monarchies, and arguably represents the ultimate victory of the love marriage over the political marriage of pre-modern

⁴¹ Araujo, "La Reforma Constitucional de la Corona," 52.

⁴² See Letizia's official biography: "S.M. la Reina Doña Letizia – Biografía de su majestad la reina," *Casa de su Majestad el Rey*, accessed 6 October 2020, <https://casareal.es/ES/FamiliaReal/ReinaLetizia/Paginas/biografia.aspx>.

⁴³ This choice represented a true revolution among the European monarchies as Mette-Marit was a single mother who had divorced parents, an ex-stripper stepmother, and a former local newspaper journalist father, and she had a wild past that included participating in a TV program to look for a husband.

⁴⁴ There is no doubt that the Spanish Constitution reflects the need of parental approval when it comes to the choice of spouse. Thus, Article 57.4 provides that those persons with a right of succession to the throne who marry against the express prohibition of the King and the *Cortes Generales* (parliament), shall be excluded from succession to the Crown, as shall their descendants.

⁴⁵ See: Eduardo Álvarez, "Todos los choques de Don Felipe y Don Juan Carlos hasta la desunión," *El Mundo*, 18 July 2020, <https://www.elmundo.es/loc/casa-real/2020/07/18/5f10795021efa060238b4648.html>.

times.⁴⁶ For many, it also represents the possibility to offer symbols of female emancipation to the population, and to treat the monarch and the royal family as mortals and not as heroes from the classical mythology, half way between gods and humans.⁴⁷ Yet, judging from Queen Letizia's low levels of popularity, it may be that where the monarchy exists, ordinary people like to think that it is embodied by those who are not just ordinary people.

Interestingly, these royal symbols of the modern women in the form of a royal spouse appear to have intrinsic limitations in other ways. Queen Letizia was a professional journalist but abandoned her profession when becoming queen. She has, in the meantime, become a fashion icon who has been praised in the media among the best dressed women in the world.⁴⁸ Queen Letizia has a public agenda, which—like that of many other modern queens consort—includes accompanying her husband to and hosting official functions and promoting social causes nationally and internationally, such as the fight against cancer, hunger, violence against women, and for children's rights.⁴⁹ In other words, she publicly, both in the royal palace and in the world, embodies the synthesis between householding and caretaking, including but not limited to motherhood, that is so commonly expected from women in the private and even in the public domain.

Interesting times lie ahead for the gender of the monarchy in Europe. If the expected dynastic transfers are confirmed, it is very likely that five or six out of the ten current European monarchies—with the question pending on Luxemburg—will be headed by women: that is to say, Europe will have “parity monarchy.” This raises the question as to whether the way of symbolizing power will change, especially considering that these women acceding to their thrones will be the head of the military forces of their countries.⁵⁰ Moreover, with the exception of the Belgian successor, all these likely queens are the daughters of women, and in the case of Sweden a man, lacking links with the royalty or the nobility, and they all are being raised and educated within the society they inhabit and will one day rule. This scenario may raise the hope that the social causes that queens consort have traditionally supported will become central to the public agendas of this new cohort of female European monarchs, and, in this way, contribute to feminizing power. For monarchists and antimonarchists alike,

⁴⁶ Stephanie Coontz, *Marriage, A History: How Love Conquered Marriage* (New York: Penguin Books, 2005).

Technically speaking then, Juan Carlos could have opposed the choice and deprived Filipe of the throne, but he did not do so. This was probably in the fear that this could throw the institution into crisis, but he was also somebody whose extra-marital affairs are a presumed consequence of his prearranged political marriage with Queen Sofia of Spain. Sofia has always been praised for her “professional” abnegation in putting up with her husband's excesses and sticking to her role as a Queen in spite of everything.

⁴⁷ Araujo, “La Reforma Constitucional de la Corona,” 40.

⁴⁸ Nùria Tiburcio, “Letizia, la ‘Salvadora de la Monarquía Española’ para la Prensa Alemana,” *Vanitatis El Confidencial*, 24 January 2017, https://www.vanitatis.elconfidencial.com/casas-reales/2017-01-24/letizia-reina-salvadora-monarquia-espanola-prensa-alemana_1320983/; Mabel Galaz, “Letizia de España Reina en Europa,” *El País*, 18 September 2017, https://elpais.com/elpais/2017/09/15/gente/1505469516_430724.html; Matthew Dennison, “We Are All Princesses Now: The Rise of the Middle Class Monarchy,” *Mail Online*, 18 March 2011, <http://www.dailymail.co.uk/home/you/article-1364948/Were-princesses-The-rise-middle-class-monarchy.html>.

⁴⁹ See, for example: Raúl Piña, “La Reina Letizia pide combatir la violencia de género con el Estado de Derecho y la educación,” *El Mundo*, 26 November 2019; Agencia EFE, “Los Reyes ‘celebran’ seis años en el trono con una visita a Aedeas Infantiles,” *Agencia EFE*, 10 June 2020, <https://www.efe.com/efe/espana/politica/los-reyes-celebran-seis-anos-en-el-trono-con-una-visita-a-aldeas-infantiles/10002-4276191>.

⁵⁰ See: Yolanda Gómez, *La Monarquía parlamentaria: familia real y sucesión a la corona* (Madrid: Hidalguía, 2008).

however, the chances are equally that with women's parity access, the monarchy will lose the last enclave of support and succumb, something which the former regret and the latter celebrate.⁵¹

Abolishing the Monarchy: The True Feminist Project?

Gender sensitive reform of the monarchy in the constitution is, at least for the moment, being sacrificed in order to preserve the monarchy against the 'republican threat.' The sense of urgency is further diminished by the fact that the current King only has daughters: therefore, the next Spanish successor to the crown will be a woman, if the monarchy survives at all. Ironically, Spain's constitutional past also witnessed an opposite example in which gender equality was willingly sacrificed by many to preserve the republican form of government. Spanish women were granted passive right to suffrage for the first time under the short-lived second Republican Regime (1931), which was soon to be interrupted by the Civil War and Franco's dictatorship.⁵² This allowed women to be voted into a role before they could vote for others. In the following elections, three women were elected to the Spanish parliament, which was charged with drafting the Republican Constitution. Only one woman, Clara Campoamor, was included in the constitutional drafting committee. It is thanks to her that women's suffrage was ultimately—after a very heated debate—included in the 1931 Constitution. Many argued against its inclusion vociferously, including Campoamor's female parliamentary colleague, Victoria Kent, from the Socialist Party, but also the main republican parties (including most of the members of Campoamor's own Radical Party). They defended the position that women's suffrage should be postponed for fear that, under the influence of the Catholic Church, women would massively vote conservative, and thus threaten the newly established Republican order.⁵³

Those days are gone, and nowadays many consider that the only true feminist project must be the abolition of the monarchy, which is historically rooted in patriarchy and—at its core—is antithetical to constitutionalism, with the "king as divine father entitled to total obedience from his subjects."⁵⁴ This includes the academic network Feminist Network of Constitutional Law (Red Feminista de Derecho Constitucional) who met in July 2015 to elaborate a statement on "Constitutional reform, new political scene and gender perspective," outlining the main points for the reform of the Spanish Constitution, from a feminist perspective. Concerning the political form of the Spanish State, the declaration explicitly stated that, from a feminist perspective, Spain had to be a republic, given the monarchy's historic patriarchal foundations, in general, and not only as expressed in the rules of succession to the

⁵¹ Putman's rule, suggesting a correlation between the importance attached to a position and the extent to which women occupy it, seems to support this prospect. See: Robert D. Putnam, *The Comparative Study of Political Elites* (Englewood Cliffs: Prentice-Hall, 1976), 33–37.

⁵² See Jorge J. Montes Salguero, "La lucha por el sufragio," *Anuario de historia del derecho español* 67 (1997): 847–860.

⁵³ See: Alicia Ventura Franch, *Las mujeres y la Constitución Española de 197* (Madrid: Instituto de la Mujer, 1999), 79; Mary Nash, *Rojas: Las Mujeres Republicanas en la Guerra Civil*, trans. Irene Cifuentes, 2nd ed. (Madrid: Taurus, 2016), 80.

⁵⁴ See: John Kang, "Patriarchy and Constitutional Origins," in *Constitutions and Gender*, ed. Helen Irving (Cheltenham: Elgar, 2017), 505–507.

throne.⁵⁵ This position connects naturally with the general position of anti-monarchists in Spain who have traditionally denounced the fact that a monarchy represents an obvious breach of the equality principle given the hereditary and non-elective nature of the position, and the impossibility of ordinary people to run for office or elect the monarch.⁵⁶

As of recently, this link between patriarchy and monarchy has also been underscored in the context of Catalonia's independentist republican struggle. One of the most active political forces and the strongest anti-establishment forces, the CUP (*Candidatura d'Unitat Popular*),⁵⁷ has a political platform that links the defeat of the Spanish monarchy, and the birth of the Catalan republic, to previous failure of the heteropatriarchal state model. The CUP has been endorsing, among its central tenets, that the Catalan people's right to self-determination should be concretized by and within an independent Catalan republic, incorporating the fight against class inequality and for sustainable development, the struggle against gender and sexual-orientation discrimination, and the endorsement of co-responsibility in reproductive and care roles and equal salaries for men and women.

In gender terms, when assessing the symbolic dimension of the monarchical versus the republican option, one of the most fascinating debates in Europe in modern times has been the one centered around an initiative of the French President, Emmanuel Macron. Although this ultimately failed, this initiative was anticipated in his campaign to give his wife, Brigitte Macron, who is twenty-five years older than him, an official position carrying a salary and some determined functions. A web-based initiative was launched to oppose this proposal that would have entailed a tremendous legal hurdle since amending the constitution requires the vote of both chambers. The campaign collected over 250,000 signatures but was abandoned.⁵⁸ One wonders about the role that the age difference played in all of this: was there a fear that being so much older than him she might overstep her official position, if actually given one? Certain press articles certainly seem to suggest so.⁵⁹ In the end, a statute of transparency replaced the initial proposal. The staff and budget of the 'first lady' remained within the president's budget. Brigitte Macron was thus expected to continue the diplomatic tradition in her role of representation and accompaniment to the head of state. She could also engage in national and international initiatives, such as fighting climate change and violence against women and defending children's rights, as well as supporting all those social priorities Macron chose to focus on in his five-year mandate, including disabilities, education, health, culture, children and youth, and gender equality. Mrs Macron has also overseen official receptions in

⁵⁵ Red Feminista de Derecho Constitucional, "Declaración de Intenciones, 'Reforma constitucional, nuevo escenario político y perspectiva de género'" (online), 15-17 July 2015, accessed 2 November 2017, <http://feministasconstitucional.org/declaracion-de-intenciones-de-la-rfdc-xii-encuentro-biar-2015>.

⁵⁶ Araujo, "La Reforma Constitucional de la Corona," 40.

⁵⁷ Candidatura de Unitat Popular, "¿Qué es la CUP?" (online), accessed 3 April 2018, <http://cup.cat/que-es-la-cup>.

⁵⁸ See: News Wires, "French presidency gives Brigitte Macron official role, but no salary," *France 24*, 21 August 2017, <https://www.france24.com/en/20170821-french-presidency-brigitte-macron-official-role-first-lady>; Adam Lusher, "Brigitte Macron will not get official 'First Lady' job," *The Independent*, 18 August 2017, <https://www.independent.co.uk/news/world/europe/brigitte-macron-first-lady-controversy-announcement-latest-update-emmanuel-macron-wife-petition-transparency-charter-official-title-job-french-president-france-salary-cost-opposition-thierry-paul-valette-a7883131.html>.

⁵⁹ See: Margaret Abrams, "How Emmanuel Macron's Wife Brigitte Is the Power Behind the Throne," *The Observer*, 5 August 2017, <https://observer.com/2017/05/emmanuel-macron-wife-brigitte-trogneux-bio/>.

the Elysee Palace. Somehow, be it a monarchy or a republic, it seems that the role remains the same: the “first lady” and the “queen consort” are, above all, “wives” in public positions, and this feature seems to cut across the elected or hereditary nature of the male head of the state they accompany. This is food for thought.