KINGDOM OF SPAIN

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The Spanish Constitution of 1978 committed Spain to a form of territorial state organization (later referred to as "state of the autonomies") that, despite not having a federal name or nature, has allowed a decentralization of political responsibilities that is far superior to that of some nominally federal countries.[i] This peculiar model of political organization has probably not favoured the development of an authentic federal culture, nor has it sufficiently extended the value of territorial pluralism as a commodity to be protected and promoted. But it has made possible the greatest period in Spain's history, at least with regard to recognition of autonomy and self-government vis-à-vis the different parts of its territory.

The Spanish Constitution is an open text and it allows for quite different interpretations. The adopted interpretations have not favoured the expectations initially held in those territories with a deep desire for self-government (Catalonia, the Basque Country, and, to a lesser degree, Galicia). As a result, the period that began with the promulgation of the Constitution of 1978 can now be assessed as only a relative success. The political autonomy of the nationalities and regions that make up Spain has been recognized, but some of them still have not been harmoniously integrated into the Spanish state. This explains the strong divergences with regard to the desired state model - divergences that move between the defence of the status quo and demands for territorial power that go far beyond what is offered in the current system. Although in both Catalonia and the Basque Country separatist sentiment continues to be in the minority, the political demands of the nationalist forces have undoubtedly become increasingly strident, pointing more and more frequently to models of coexistence based upon the idea of true joint sovereignty or other such confederal models. These models would not seek to improve the present system but, rather, to replace it. Despite the fact that this prospect seems far off, there exists sufficient pressure to raise the possibility of an important reform of the system. This is described below.

THE FEDERAL CONSTITUTION IN ITS HISTORICAL AND CULTURAL CONTEXT

Basic Social and Economic Features

Currently, Spain has a land area of 505,988 square kilometres and a total population of 43,197,684 inhabitants.[ii] The vast majority of the population is indigenous and does not exhibit ethnic or racial differences. Although the Constitution only recognizes the existence of one nation (the Spanish nation, which is referred to as "the common and indivisible homeland of all Spaniards"), what is certain is that it also expresses a desire to protect all of the "peoples" of Spain, who are free to practise their cultures, traditions, languages, and institutions (Preamble). It also recognizes the right to autonomy of the "nationalities" and "regions" that comprise the nation (Article 2).

The clearly predominant, and official, language is Spanish; it co-exists with languages such as Catalan, Euskera, and Galician, which, in some regions, have co-official language status and are spoken by a significant portion of the population. With regard to religion, the strong establishment of Roman Catholicism and the close ties between state and Church have been transformed within a constitutional framework that affirms the non-denominational nature of the state. This allows the co-existence of Roman Catholics – both practising and non-practising (the latter being quite numerous) – with persons professing to have no religion.

The cultural situation in Spain is undergoing significant change as a result of

immigration. After the emigration of many Spaniards for political reasons (after the Spanish Civil War in 1939) or for economic reasons (during the 1960s), Spain has become, like many other European countries, the destination of a significant flow of immigrants from Africa, Latin America, Asia, and Eastern Europe. In relative terms, the immigrant population is still not significant (given that it does not yet reach 10 percent of the total population), but its rapid increase in the last few years has had a great political and social impact.

Since the arrival of democracy in 1978, and with Spain's admission into the European Union in 1986, the nation has experienced marked economic development, with an overall rise in the standard of living, although it continues to have a significant unemployment rate (11.3 percent of the working population).[iii] In 2002 the GDP rose to US$649,791,500,000, which signifies a gross national income per capita (former GDP per capita) of US$14,430. At present, the life expectancy at birth is seventy-eight years.[iv]

Basic Political and Constitutional Features

In the 1970s Spain peacefully moved from a dictatorship to a democracy with a significant level of political consensus. This process, internationally considered to be an exemplary, ended with the approval of the Constitution of 1978. The Constitution was drawn up by a parliamentary commission created by the first democratic Parliament. The commission was made up of seven members representing the main parliamentary groups. Its final text was approved on 31 October 1978 by the House of Deputies and the Senate, ratified by a referendum of the electorate on 6 December, promulgated by the king on 27 December, and officially published on 29 December, at which time it became effective (in accordance with its final provision).

The Constitution attempted to respond to two basic and indivisible social demands: (1) the establishment of the rights and liberties of citizens living within a democratic institutional framework and (2) the recognition of the political autonomy of those territories/communities that were demanding it. The Constitution expressly attributes sovereignty to all Spanish people (Article 1.2) and is founded on the indissoluble unity of the Spanish nation. It also recognizes and guarantees the right to autonomy of the nationalities and regions that comprise the state as well as their solidarity with each other and the state (Article 2). In addition to establishing the foundation for the political decentralization of the state, the Constitution protects territorial pluralism (i.e., the personality and features of the societies established in each of the territories that comprise the state).

The Constitution states that Spanish is the only official language of the state and that all Spaniards must have enough knowledge of it to be able to use it in a social context (Article 3.1). With respect to the other languages (Catalan, Euskera, Galician), the Constitution indicates that they shall also be official in their respective Autonomous Communities (subfederal self-governing territorial units with political power) in accordance with their respective Statutes of Autonomy (regulations similar to those provided in a constitution). The Statutes of Autonomy of six of Spain's seventeen Autonomous Communities declare the official status of a language other than Spanish: this is the case for Catalan (Catalonia, the Valencian Community,[v] and the Balearic Islands), for Euskera (the Basque Country and part of Navarra), and for Galician (Galicia). As a result, a system of co-official languages exists throughout a great portion of Spain. The predominance of Spanish, however, impedes the achievement of perfect bilingualism, even though the autonomous institutions have developed policies for the promotion and standardization of their own co-official languages.

The co-official character of these languages and, therefore, the right of citizens to use them means that public institutions are obliged to serve people in the language of their

choice. This also means that all legal and administrative documents have the same value in Catalan, Euskera, and Galician as they do in Spanish and that laws and other regulations shall be published in both Spanish and the co-official language in question.[vi] But this system is provided only to those territories that have a system of official linguistic duality: constitutionally, the state is not obliged to publish its laws or to serve its citizens in a language other than Spanish. As a result, documents written in a language other than Spanish must be translated into Spanish whenever they are applied outside the Autonomous Community in which they originated. Despite all these measures, language remains one of the issues that arises frequently in political (although not social) conflicts.

The Constitution guarantees the ideological, religious, and cultural freedom of individuals and communities and affirms that the state shall have no denominational affinities. Historically, religion has divided Spaniards. For this reason the Constitution mandates that public authorities are to take into consideration the religious beliefs of all Spaniards and to maintain cooperative relationships with the Roman Catholic Church and other religious denominations.

The Constitution re-establishes the monarchy in the form of a parliamentary monarch, reserving a symbolic role for the crowned head. It ensures the horizontal division of powers through a parliamentary system of government based on a two-chamber legislative structure (the House of Deputies and the Senate),[vii] the political preeminence of the executive, the recognition of the independence of judicial power. Finally, it establishes a special jurisdiction through the creation of the Constitutional Court, a juridical institution responsible for ensuring the constitutionality of laws, territorial autonomy, the power distribution system, and the protection of the constitutional rights of citizens.

Effectively, the Constitution neither recognizes nor determines the political units that constitute the state: it does not establish a territorial "map" nor does it indicate what responsibilities or powers can be exercised by these units. The Constitution simply recognizes the right of territories to autonomy, assuming these territories function through Statutes of Autonomy, which are drawn up by their political representatives. The same occurs in relation to the number and the type of powers assumed by the new political entities. Thus this issue is reserved to the corresponding Statutes of Autonomy, which operate within the framework and limits imposed by the Constitution. The Constitution does not expressly establish the principle of federal (or institutional) loyalty, although this principle is implicit in the territorial organization of the state, as the Constitutional Court has repeatedly indicated.[viii]

Logically, these constitutional design features can be explained through the country's history and in the concrete circumstances that surround the constitutional process. In the first place, we must remember that Spain, along with France, is one of the oldest countries of Europe, its origins dating back to the end of the fifteenth century. The state was constructed through the union of kingdoms, or independent Crowns - personal unions that allowed each political entity to maintain its own institutions and its particular form of government. However, tensions between centripetal and centrifugal pressures were resolved militarily in favour of the former, which allowed for the consolidation of the nation-state, unitary and centralized in nature, during the eighteenth century. The Constitution of 1931 rejected this model and recognized the right of the territories to accede to political autonomy; however, only Catalonia was able to exercise this right. The short life of the second Republic (1931-39) ended with a bloody civil war that gave way to forty long years of military dictatorship and totalitarianism. During this period the freedom of individuals and distinct groups was repressed with extreme firmness. That was why the move towards democracy was seen as an opportunity to recognize both types of rights (i.e., individual civil rights and collective territorial rights).

In the second place, we must also consider the importance given to political consensus

when the constitutional text was drafted. The purpose of emphasizing consensus was to overcome the many fractures that had deeply divided Spanish society (monarchy-republic, State-Church, the system of territorial organization, and individual and collective rights) and to achieve a text that, without closing the door on various ideological options, would be adopted by all political forces. We must also remember that the Constitution was drawn up within precarious democratic conditions. Those who wrote it were under pressure from forces that had put up with the previous authoritarian regime and, in particular, from the military corps (a small faction of which was responsible for a frustrated coup d'état three years after the promulgation of the 1978 Constitution).

The alteration in the territorial structure of the state, which involved a clash between irreconcilable conceptions of the state, provoked great political controversy. As in the previous democratic period, constituents rejected the adoption of comparative constitutional models, particularly the federal model. Federalism was rejected by both the more centralist political forces, who considered it excessively rash and contrary to the unity of the nation and sovereignty, as well as by the majority of the regional political forces with nationalist leanings, who understood federalism as a process that inexorably leaned towards centralism and progressive political and social uniformity. They regarded federalism as being incapable of responding to the needs of those groups whose strong feelings of territorial identity precluded them from identifying with the nation as a whole. In addition, when the Constitution was written, the different regions demonstrated various levels of desire for self-government: this desire was strong in some and practically non-existent in others. However, in 1977-78 fourteen regions recognized a system of provisional autonomy, and this situation became difficult to reverse.[ix]

The concurrence of these factors explains why the framers of the Constitution were not inspired by a general political theory or by a concrete ideological orientation, or, particularly, by one or another federal constitution from elsewhere. They tried to respond to specific problems with particular and pragmatic solutions. In many instances these were based on the democratic Constitution of 1931, and they were adopted by the greatest possible consensus. The end result was a constitutional text that is especially open and flexible, that encompasses many issues that lack definition, and that leaves many matters to future political and legislative decisions. The territorial autonomy issue, which is the most controversial, is also the least precisely defined. Some of the constitutional provisions, in particular those that provide an outline and establish principles, limits, and processes, are essentially transitory. The Spanish model of federalism cannot be explained without taking note of the importance of the Statutes of Autonomy and other regulations that have a quasi-constitutional value. Both types of regulations are approved by the state Parliament.

CONSTITUTIONAL AND STATUTORY DISTRIBUTION OF POWERS

The Role of the Statutes of Autonomy

The situation described above affected the distribution of powers between the state and the Autonomous Communities in a particular way. The constitutional design is neither exact nor complete. The Constitution lists the exclusive powers of the state (Article 149.1) but does not specify the powers of the Autonomous Communities; rather it transfers this determination to the provisions of the many Statutes of Autonomy. These statutes may assume all the powers not expressly attributed to the state by the Constitution, although without pushing certain explicit or implicit limits. As a result, it is not possible to understand Spain's power system, or the level of powers assumed by each entity, without understanding the concurrence of

three types of regulations: the Constitution, the Statutes of Autonomy, and certain state laws to which the Constitution refers in order to frame the distribution of powers (e.g., laws pertaining to the "delimitation of powers," which are needed in areas such as public safety, the administration of justice, education, and the mass media).

The statutes and the laws pertaining to delimitation of powers lack constitutional status, but they are a necessary complement to the Constitution. For this reason, they, along with the Constitution, are considered to form part of the so-called "block of constitutionality" - the complex set of regulations that the Constitutional Court must consider in order to determine the validity or invalidity of state and/or Autonomous Community regulations.

The constitutional reliance on the Statutes of Autonomy in order to determine the powers of the Autonomous Communities has two main consequences. On the one hand, it lessens the guarantees and stability of such powers in comparison with state powers (which are directly guaranteed by the Constitution). On the other hand, it introduces the possibility of having a clearly asymmetrical power distribution. The Statutes of Autonomy can assume all the powers not reserved for the state, but they are neither obligated to do so nor must they do so in the same way, and this allows for a range of powers that may differ substantially among the Autonomous Communities.

The distribution system is characterized by its complexity and the originality of many of its options. These features prevent one from including the Spanish model among the usual theoretical articulations of federalism (e.g., dual, cooperative, executive, or competitive). Nonetheless, once one recognizes its peculiar features, the Spanish system of federalism can be defined as an "impure dual system." For, despite basing itself mainly on the idea of exclusivity, or division of powers, there are many areas that require the joint intervention of the state and the institutions of the Autonomous Communities. In a good portion of these areas or subjects, the Spanish system leans towards the German system of administrative federalism (e.g., execution of state legislation by the Autonomous Communities). Unlike in Germany, Austria, and Switzerland, however, in Spain such a solution does not have general application, nor does it, either explicitly or implicitly, constitute a constitutional principle.

In addition, the relationship between both spheres of power has been extended in a progressive way to the vast majority of areas of public intervention. The result has been a dynamic of intergovernmental relations not provided for by the Constitution (e.g., involving mixed agencies, collaboration agreements, joint investments or planning, and other technical features of cooperative federalism). In the end, and in a limited way, some solutions or practices could be considered to be similar to those produced in competitive federal systems. Consequently, the best way to describe the Spanish system is to say that it is based on the specific attribution of powers and responsibilities in each material field or subfield and its respective relationship to the different levels of government.

Retained State (Central Government) Powers

Overall, the distribution of powers reflects the existence of a political system in which centralization continues to predominate over decentralization. Effectively, in addition to the ability to modify the distribution of powers through constitutional reform,[x] the state can count on a collection of very important exclusive powers, both quantitatively and qualitatively (see below). Such powers grant great prominence to state institutions with respect to the regulation, intervention, and control of matters of the greatest political, economic, and/or social interest. Indeed, some constitutional provisions attributing power to the state have demonstrated a considerable capacity for penetrating areas of Autonomous Community jurisdiction.

In exceptional cases, the Constitution allows for the enactment of state laws in order

to harmonize laws passed by the Autonomous Communities. It also attributes residual powers to the state, an option exercised in some, but not many, other federations. This can be explained as the process of a state devolving power to new political groups within it and thus achieving a form of decentralization.[xi] The allocation of residual powers reveals that the powers of the Autonomous Communities have been devolved, while the powers of the state have not, with all of the consequences that these qualifications carry.

Despite all this, the current interpretation and practical application of the constitutional system entails weak, or low-intensity, autonomy. Yet, the autonomy recognized throughout the regions is not merely administrative but essentially political. The Autonomous Communities represent differentiated political communities, enjoy very strong organizational autonomy, and have democratically elected parliaments that exercise full legislative authority. The executive body is led by a president, who presides over the Autonomous Community and is the regular representative of the state - not in the sense of a prefect in France but, rather, in a symbolic sense (i.e., denoting that the Autonomous Communities are also part of the state).

Autonomous Community Powers

The Autonomous Communities count on numerous and significant powers in areas such as urbanism, local government, public safety, and the environment; they are responsible for the provision of such major public services as education and health; and they administer a significant portion of public spending (close to 40 percent of the total) and, overall, have at their disposal a larger number of public workers than does the central government.

The power distribution system allows for decentralization, even carrying it to unexpected extremes, whether through interpretation or through the use of constitutional mechanisms for reassigning powers. Effectively, the open and amorphous nature of constitutional clauses allows for a drastic reduction in the scope of state powers without betraying either the wording or the spirit of the Constitution. In addition, as we shall see below, the constitutional text includes various mechanisms for devolving state powers towards the Autonomous Communities, without establishing precise material or functional limits.

Local Government

Decentralization also reaches the local level. The Constitution expressly indicates that the state must be organized territorially into municipalities, provinces, and Autonomous Communities,[xii] and that all of these entities should enjoy autonomy with regard to the administration of their respective interests (Article 137). Logically, the (basically administrative) autonomy of the local entities is of less significance than is that of the Autonomous Communities. Constitutional references to local governments are rare but transcendental. Effectively, the Constitution expressly guarantees the autonomy of the municipalities, entrusting their government to democratically elected representatives of the population. It foresees the existence – necessary or optional – of some local intermediary bodies (i.e., provinces, regions, councils) and stipulates that all local entities should have sufficient financial resources to meet their responsibilities (Articles 140-142).

From these basic profiles, the concrete level of local government autonomy (institutional, organizational, and financial) is derived almost completely from the laws of the state and of the Autonomous Communities. Local bodies must generally rely on their "own" powers (i.e., those that are autonomous), but they can also exercise powers through delegation or by order of the state or the appropriate Autonomous Community. Nonetheless,

the local level has rarely involved itself in indirect state or Autonomous Community administration. The overall position of local governments has experienced some important changes since 1978; for example, it now includes direct access to the Constitutional Court and a separate and specific system for large cities. However, the traditional weakness of local governments with regard to power and finances continues to generate a lively debate.

Understanding State versus Autonomous Community Powers

The list of powers exclusive to the state, important for a proper understanding of the Spanish system, does not constitute a good example of technical precision. Basically, it consists of an extensive, generic list of concerns arranged into thirty-two sections. It includes areas of public intervention, large sectors of the legal system, concrete legal institutions, infrastructure, and so on - all in a non-systematic way. Thus, the power of the state is extended to areas such as nationality; migratory movements; international relations; defence; judicial organization; public safety (the creation of autonomous policing bodies notwithstanding); legislation on all civil matters (the civil, regional, or special laws existing in some regions notwithstanding); legislation on labour, mercantile, criminal matters as well as on intellectual and industrial property and pharmaceutical products; foreign trade; international health and large parts of domestic health matters; large infrastructure of an interterritorial nature (highways, railroads, ports, airports, hydroelectrical facilities); shipping and air traffic control; and the basic system for protecting the environment, mines and energy, and mass media.

Other state powers, again due to their generic nature, can affect fields reserved to the Autonomous Communities. Examples of these are the state's power to ensure the equality of citizens in their exercise of their constitutional rights, its economic powers (such as coordinating economic activity and general finance), and its administrative powers.

The fact that the Constitution qualifies central powers as exclusive does not mean that the state enjoys a monopoly over all public functions. Although in certain areas (e.g., defence and immigration) such a monopoly does, in effect, exist, in other areas state power is limited to a legislative function (e.g., labour legislation and intellectual property law) or to determining the principles underpinning certain matters (e.g., the legal system behind public administration and environmental regulation). Therefore, the Spanish system is not based on the concept of exclusivity of powers in a strong, or "Belgian-style," sense; rather, the idea of *exclusive* powers is ambivalent. In some cases it is compatible with the existence of autonomous powers, although it is always limited to the development and/or execution of state legislation (i.e., *shared* powers).

The Statutes of Autonomy divided the powers of the Autonomous Communities into three different lists: (1) exclusive powers (both legislative and administrative), (2) powers limited to the development and execution of basic state legislation, and (3) powers restricted to the mere execution of state legislation. These three lists correspond to the three basic power distribution schemes in the Spanish system. Outside these lists both the Constitution and Statutes of Autonomy establish specific power relationships explainable by the particular nature of the matters affected (such as special complexity, the necessity of joint or concurrent actions, and the desire of Autonomous Communities to intervene in areas theoretically belonging to the state).

Initially, there were two different levels of autonomous powers as some Autonomous Communities were able to assume all the powers not reserved for the state, while others were restricted to limited powers regarding those matters mentioned in Article 148.1. In this way, two different rates of access to autonomy were established, depending upon the different traditions and motivations of each region.

Those Autonomous Communities (Catalonia, the Basque Country, and Galicia) that held an affirmative plebiscite on proposed Statutes of Autonomy were able to accede to the privileged system right away. Also in this was Andalucia, which had acceded to autonomy through a process that required a qualified majority in territorial initiative voting and in the system's final ratification. In different ways Navarra, the Canary Islands, and the Valencian Community achieved powers comparable to those of the first group of Autonomous Communities. However, the great asymmetry of power that separated these seven regions from the ten remaining ones was transitory.

The Constitution itself provided that, after five years, the "slow-route" Autonomous Communities would be able to increase their initial powers, which would be limited only by those reserved exclusively for the state, to reach the same status as that held by the other communities. This occurred after a delay of some years.[xiii] Once this process was completed, the powers of all the Autonomous Communities were substantially identical, despite the persistence of some differences explainable through reference to several particular causes. The provisions contained in Article 148 of the Constitution remain obsolete, but, according to the Constitutional Court, its list of powers may serve as a canon for interpreting the division of powers between the state and the Autonomous Communities.[xiv]

Mechanisms for Constitutional Flexibility

The Constitution completes the federal system described above by providing mechanisms that allow flexibility in the distribution of powers both in an ascending sense (i.e., harmonization laws) and in a descending sense (i.e., laws relating to the attribution, transfer, or delegation of state powers) (Article 150).[xv] It also contains some closure clauses (e.g., the supremacy clause) relating to the resolution of regulatory conflicts and to the supplementary nature of state law with respect to the Autonomous Communities (Article 149.3).[xvi]

We would add that, in comparison with other federal systems, the Spanish system has more highly regulated mechanisms allowing for more flexibility with regard to redistribution of powers. In addition, these mechanisms may be utilized for the benefit of all of the Autonomous Communities, for the benefit of a few, or for the benefit of only one - a solution that allows for much power asymmetry.

The clause regarding the supremacy of federal law (paramountcy), which is present in the Constitutions of Australia, Argentina, Germany, Canada, the United States, and Switzerland, is also found in the Spanish Constitution. However, this clause is difficult to interpret since it holds that state laws "shall prevail, in case of conflict, over those of the Self-governing [Autonomous] Communities regarding all matters in which exclusive jurisdiction has not been conferred" upon the latter. The issue then becomes the determination – no less controversial – of what can be understood by the phrase "exclusively attributed to the Autonomous Communities." It is perhaps for this reason that this clause is seldom applied (except in cases where the state passes the normative principles and the Autonomous Communities develop them). The hypothesis that, when facing a conflict of laws, courts other than the Constitutional Court may make use of the supremacy clause has been firmly rejected by the latter, it being the only court statutorily empowered to control the constitutionality of legal provisions.[xvii]

The constitutional clause relating to the supplementary nature of state law has become problematic. This clause seems to cover the legal voids that existed during the founding period of the autonomous state, when the Autonomous Communities still had not legislated in many of the areas in which they had the power to do so. Nonetheless, since then, and based solely on this supplementary clause, the state has handed down new regulations regarding matters within the powers of the Autonomous Communities. However, the Constitutional

Court has closed the door on such practices. It has affirmed that the supplementary clause constitutes a rule concerning the relationship between systems and not a universal rule pertaining to state powers. In other words, it is a rule that facilitates the application of the law but not its creation. Certain important authors have disputed this opinion;[xviii] we, however, firmly share it.[xix]

The limitation of spending power has great importance in the Spanish system, as it does in any federal or compound system of government. In Spain this issue resulted in an important debate and often necessitates the intervention of the Constitutional Court, which recapitulated and consolidated its doctrine in Ruling 13/1992 of 6 February 1992. This ruling makes it clear that the state is not to exercise its spending power outside its area of legislative jurisdiction. Consequently, the state cannot use grants to recover powers at the expense of those of the Autonomous Communities. Nonetheless, reality has not always adapted itself to this constitutional doctrine.[xx]

In practice, the doctrine of implied powers has not come into play with regard to resolving problems inherent in the distribution of powers. In theory, if a power is not expressly recognized then it does not exist. The exhaustive nature of the distribution of powers does not demand, nor does it ordinarily admit, the application of such a doctrine. However, the elasticity of specific state powers often allows for what amounts to the same thing. Even when the state does not count on an expressly recognized power, the residual clause can increase its jurisdiction whenever the equality of citizens, territorial solidarity, or the unity of the market may be affected by the exertion of an autonomous power. This may occur, for example, when an Autonomous Community exerts a power with extraterritorial effect. However, on this point the Constitutional Court's doctrine fluctuates between legitimating the state's intervention and upholding the powers of the Autonomous Communities.

LOGIC OF THE CONSTITUTIONAL DISTRIBUTION OF POWERS

The Spanish constitutional system is based on two principles, simultaneously enacted through Article 2 of the Constitution: the unity of the Spanish nation and the autonomy of the nationalities and regions. The distribution of powers must reconcile both principles and ensure their effective enforcement by attaining the equilibrium embodied in the Constitution. This equilibrium is not, however, absolute. In fact, as the Constitutional Court recalls, "it is clear that autonomy refers to a limited power, (that) autonomy is not sovereignty ... and given that each autonomous territorial organization is a part of it all, in no instance may the principle of autonomy be opposed to that of unity, but rather it is precisely within it where a true sense is reached."[xxi]

In other words, the principle of unity requires that the powers of the state enjoy a certain preeminence, since it is the state that has the primary responsibility of satisfying the general interest, identified in the Spanish case with unitary interests. The idea of the general interest is converted, in this way, into the basic criteria for distributing the powers among the state and the Autonomous Communities: the state must have the powers needed to preserve the unity of the system. However, the general interest criteria do not grant the state the power of disposition over the distribution of powers, nor do they permit an interpretation that allows state institutions to override the powers of the Autonomous Communities whenever they consider it necessary. The concept of general interest was applied at the time of the original distribution of the powers, not at a later stage. In other words, the Constitution has already translated the general interest into the concrete powers of the state; therefore the satisfaction of such interest is to be pursued through – and not despite – the constitutional distribution of

powers.

The recognition of autonomy constituted a radical change in Spain. It assumed the substitution of the model of a strongly rooted unitary and centralized state with a model based on territorial pluralism and political decentralization. The magnitude of this change, the inertia of centralism, and the fear of something new explains the average Spaniard's distrust of the emergence of new political entities. It also explains the provision of multiple mechanisms to ensure unity as well as the numerous cautions that surround the exercise of autonomy.

Some of the techniques included within the Constitution are very much akin to federalism, while others are not. Since the Constitution maintains a unity of judicial power and restricts the powers of the Autonomous Communities in the exercise of their legislative and executive functions, the distribution of powers does not encompass all the classic powers of the state. Thus the Autonomous Communities have no independent judicial power.

In addition, the Constitution prohibits formal association among Autonomous Communities, limits the cooperation agreements that may be established among them to those with prior federal authorization, and allows for federal constraint in the event that an Autonomous Community does not meet its constitutional obligations or poses a serious threat to the general interests of Spain.[xxii] Should the central executive so request, offending laws and autonomous provisions could be brought before the Constitutional Court, which, in turn, could suspend them. This solution is hardly compatible with the political autonomy of the regional units, nor is it typical of relations between federal and state laws in other federations.

The more significant public powers are reserved for the state, whose powers are often clearly expansive in character. The lack of confidence in the Autonomous Communities reached the point at which the state was constitutionally granted the exclusive power to consult the people through referenda. This precaution allows the state to abort the legitimacy of any possible secessionist movement by issuing a call to the polls. Referenda like those that took place in Quebec are not legal in Spain if they do not have the prior authorization of the central institutions. As has been shown above, the regulation of residual and prevailing powers leans in favour of the state.

The Autonomous Communities are not able to participate either in state decision making or in appointing members of essential institutions such as the Constitutional Court or the General Council of Judicial Power.[xxiii] Given that the Senate does not function as a real house of territorial representation, the communities cannot participate through this route either.

Within this framework, the defence of the interests of the Autonomous Communities has been effective only when state political parties need the collaboration of the nationalist forces located in the autonomous territories. However, in these instances the dialogue has been not so much between public institutions as between political parties - specifically, between the majority party in the central arena and the majority party in the concerned Autonomous Community. The compensation obtained by the latter is usually seen as the result of political blackmail and as a source of privileges and inequalities, which tends to be reflected in the next election. The result has generally been either greater electoral backing for the state party (thus freeing it from the further need to negotiate) or a change of the Autonomous Community's governing party. With respect to autonomy, a nationalist group's support for a state party may generate the false image that this group is the only defender of territorial interests. Even so, this collaboration invariably tends to translate into a decrease in electoral support for the local majority party. This is due to voter discontent with the terms of the political pact between the state and community majority parties, which are seen as not sufficiently sensitive towards autonomous interests.

Symmetry and Asymmetry

Some brief allusions to the debate over symmetry and asymmetry will serve to complete our discussion of the logic of the power distribution. At the outset, the Spanish model of federalism allowed great doses of organizational and power asymmetry; however, from this initial situation, and despite the survival of some outstanding elements of asymmetry, the distribution of powers has certainly moved progressively towards the equalization of all seventeen Autonomous Communities. Nevertheless, these communities continue to exhibit historical, linguistic, geographic (two communities are in archipelagos), political, legal, and economic differences. It is probably with regard to the economy that one sees the greatest differences among Autonomous Communities as two of them, the Basque Country and Navarra, enjoy their own privileged system of financing (the result of some historical arrangements sheltered by the Constitution).

The main sources of uniformity among the Autonomous Communities arise from the exercise of state powers, the integration into the European Union, the progressive importance of multilateral over bilateral relationships, and the fact that state political parties are often the same parties that govern the vast majority of the communities. The main sources of asymmetry arise mainly from particular constitutional provisions (e.g., different systems of financing), certain determinations of several Statutes of Autonomy (e.g., the existence of specific levels of local administration), a slightly superior number of powers in some Autonomous Communities (e.g., in matters such as language, civil rights, and/or the creation of their own police force), and/or the transfer of limited state powers to only one community (this is very rare).

In sum, the power and organizational asymmetry of the Autonomous Communities has definitely been reduced, but the multinational reality of the state obliges it to continue to maintain some asymmetrical regulations that, occasionally, continue to be significant.

EVOLUTION OF THE DISTRIBUTION OF POWERS

The distribution of powers between the state and the Autonomous Communities is established in the Constitution and in the Statutes of Autonomy. The reform of this framework could take us, logically, towards another power system. On this point the Constitution is not too rigid since strong majorities could achieve reform (i.e., amendment) through the passage of proposals in each central chamber, without the need for general referendum.[xxiv]

Nonetheless, the Spanish Constitution has not been changed in this manner; however, this is not the case with the Statutes of Autonomy. On the one hand, most of the statutes that initially covered the Autonomous Communities with low levels of competence have been amended to allow those communities to reach the maximum level. On the other hand, current reform proposals pertaining to the so-called “historical” Autonomous Communities (especially Catalonia and the Basque Country) enjoy great political support in their territories and have certain possibilities of success.

As we have seen, the Constitution provided for several mechanisms to readjust the distribution of powers, without the need for constitutional or statutory reforms. However, these mechanisms have rarely been utilized and then for purposes not always coincident with those initially foreseen. Thus, the state gave all Autonomous Communities administrative powers relating to cross-boundary transportation systems; it also transferred to Catalonia its functions relating to police control of vehicular traffic. Recently, the state transferred to the Autonomous Communities limited regulatory powers with respect to state taxes that had been ceded to them. These are the most obvious examples of the utilization of the above-mentioned constitutional mechanisms, which have also been used to vary the powers of some

Autonomous Communities (as a preliminary step to the reform of their statutes).

It is certain, however, that the current distribution of responsibilities among the state and the Autonomous Communities could vary substantially through the use of constitutional mechanisms. One major constraint on the use of these mechanisms is the constitutional requirement that each use must be authorized by specific legislation passed by the state Parliament. The practical effect of this is to introduce a clear element of rigidity into a system that, on first glance, appears to be very flexible.

The distribution of financial responsibilities has also changed, and in a very significant way, thanks to the successive reforms of the system of financing as it relates to Autonomous Communities. This did not require constitutional modification since the Constitution gave the state the authority to implement this system. Through this method, it has been possible for the state to cede a portion of the income taxes collected – initially 15 percent and subsequently 30 percent – to the Autonomous Communities.

Apart from the exceptions noted above and a few others, it is clear that the distribution of powers has moved towards progressively centralizing public responsibilities in state institutions. This process has been driven by the successive executives that have governed Spain, and it has occurred mainly when the governing party has had an absolute majority in Parliament.

The trend towards centralization has generated strong opposition in some Autonomous Communities, and it constitutes one of the key explanations for the escalating power struggle that has taken place before the Constitutional Court. To the disenchantment of the Autonomous Communities, we must also add the weak position of local governments, which have been faced with the resistance of the state and the autonomous authorities to any increase in its level of powers and financing. At the root of this problem lies the controversy surrounding the fiscal and legal dependence of local governments on the other levels of government.

Centralization must mainly be attributed to the fact that state institutions have broadly interpreted the functional and material scope of their powers. The Constitutional Court has tended to accept this interpretation, although indicating that the Constitution allows equally for readings that favour the interests of the Autonomous Communities. One important factor has been the understanding given to the constitutional powers granted to the state concerning the "basic rules" (or framework rules) regarding any specific matter - a much extended power category. The Constitution does not define what should be understood by "basic rules" or by "basic legislation," and we are faced with very different initial interpretations. One interpretation is that the basic rules would be confined to the establishment of simple principles, through regulations in law, but would not be directly applicable on the ground without further legislation on the part of the Autonomous Community. However, the interpretation that has been imposed grants great leeway to the state Parliament's definition of basic rules. It allows a particularly exhaustive regulation of each matter affected, permits these rules to be set through administrative regulations, and even allows the rules to extend to administrative decisions. Even though the Constitutional Court has recognized the need for the Autonomous Communities to have sufficient room to further develop the state's framework legislation in order to adopt their own political options, the practical effect of this interpretation is to annul that capacity. This is seen, for example, in such cases as environmental law, local government organization, and administrative law.

Where the state is authorized to pass legislation, but where those laws are to be executed by the Autonomous Communities, state laws reserve certain actions of execution to the central institutions (e.g., the state grants administrative authorization to entities that preserve intellectual property; in many fields it is the state that manages subsidies). In addition, the Constitutional Court - faced with the silence of the Constitution on this point -

has attributed jurisdiction for administrative regulation to the state. In this case, the Autonomous Communities can only pass administrative regulations that refer to organizational matters.[xxv]

The role of the Constitutional Court in the evolution of the system is ambivalent. In general, it is recognized that its doctrine has contributed to the centralization of the distribution of powers. Nonetheless, it must also be remembered that the Court only confirms the compatibility of the state's initiatives with the constitutional text: it does not close the door on other interpretations, which might be equally legitimate from a constitutional perspective. Basically, we can affirm that the Court has abandoned the possibility of establishing a general doctrine, preferring to lean towards a casuistic jurisprudence, and this has resulted in a complex system. Despite all this, we should point out that, on some occasions, its intervention has guaranteed the institutional role of the Autonomous Communities. For instance, this occurred in 1983, when the Court rejected the intention of the state legislature to redefine the whole system through a "harmonization law." Other cases include the Court's restrictive interpretation of such constitutional provisions as the residual clause and the supplementary clause, not to mention its quite rigorous doctrine regarding state spending power – all of which are discussed above.

The strengthening of central institutions is also the result of several factors that we can conventionally summarize under the idea of globalization. We refer mainly to the incorporation of Spain into the European Union but also to the growing importance of immigration and of information and communication technologies. The immigration phenomenon presents some radically different dimensions from those that were present when the Constitution granted exclusive powers to the state in this matter. The current situation clashes with the fact that the Autonomous Communities and local entities are the ones that are principally required to attend to the demands of the immigrant population in areas such as housing, education, and health care. Regarding information and communication technologies there are no direct provisions for powers. However, some state powers, such as the exclusive power over telecommunications, grant the state a clear preeminence in this new area.

Nonetheless, today the greatest threat to the powers of the Autonomous Communities comes from European institutions. The European Union has progressively increased its powers in areas originally entrusted to the Autonomous Communities. The Spanish Constitutional Court has ruled that admission to the European Community does not alter the internal distribution of powers with regard to executing or applying community policies – a general principle that it has not always been able to maintain. However, the problem persists with respect to ongoing decision making regarding European integration. The state and the Autonomous Communities have tried but thus far have failed to achieve the kind of cooperative process on European affairs – including the direct presence of the subnational governments before the institutions of the European Union – that has been achieved by the Belgian and German federal systems. This is, without a doubt, one of the greatest challenges faced today by the "state of the Autonomies."

PERTINENCE AND FUTURE OF POWER DISTRIBUTION

Although all predictions for the future are risky, it is always possible, in view of recent experience and current debates, to venture down some of the roads that the state model and its particular system of territorial distribution of political power might take.

One of the more generally held opinions is that the state of the Autonomies has been consolidated and is in relative equilibrium. This diagnosis obliges us to accept, as a first hypothesis, that nothing will substantially change in the short or medium term and that the state model will remain unaltered despite the existence of contrary pressures. The inverse

hypothesis is equally admissible. One of the peculiarities of the Spanish model of federalism is that it may evolve in many and varied ways. Logically, the future will unfold according to the correlation of political forces that the citizens opt to establish at any given time.

Experience tells us that, in regard to the state model, the two large political parties (the conservative party [*Partido Popular*] and the Spanish Socialist Party [Partido Socialista], winner of the March 2004 election) do not substantially differ from one another. The state of the Autonomies has been deeply marked by two substantial agreements between those two large political groups: the Autonomous Agreements of 1981 and of 1992. The first related to the spread of autonomy throughout all the regions, and the second related to the equalization of the level of power for all Autonomous Communities.

Currently, the major political forces at the central level have begun to lay the foundations for a third agreement, known by the name of the "second decentralization," which favours a massive transfer of administrative responsibilities from the Autonomous Communities to the local government. In addition to controlling and dominating the evolution of the Spanish model, these agreements give evidence of the desire to channel it towards homogeneous solutions, with the state maintaining a preeminent position in all instances.

Until now, this centralist tendency has only been inverted – or counter-balanced – when the government does not have an absolute majority in the state Parliament and has been obliged to count on the political support of nationalist political forces, which are established only in some of the Autonomous Communities. On these occasions, political collaboration translates into an increase in powers for some or all of the Autonomous Communities as well as into an improvement of their institutional and financial positions. However, these improvements are a long way from meeting the expectations in some parts of these communities, which explains why the debate continues to be open and controversial. Today, this debate moves between those who consider the construction of the autonomous state to be complete, requiring only reinforcement and consolidation (especially through intergovernmental relations), and those who affirm that the current model is unsustainable and that it will fall into a structural crisis if deep changes are not introduced.

The defence of autonomous interests has occurred in the last few years and has involved several strategies. In the first place, some have demanded an improvement of the position of the Autonomous Communities within the frame of the existing system, "without touching" its basic institutional regulations (i.e., the Constitution and the Statutes of Autonomy). This could substantially change the model of power distribution.[xxvi] The failure of this approach has reoriented the demand for reform of the Statutes of Autonomy, both in the Basque Country and in Catalonia as well as in other Autonomous Communities (such as Andalucia and the Valencian Community). In the first two instances, the desire to reform statutes has had broad support among "native" political forces and has been translated into some particularly ambitious first texts.[xxvii] The possibilities for the success of these proposals are still uncertain, but they have increased notably thanks to the results of the 2004 general election and to the fact that the same party (the socialist) is now governing at the state level as well as at the Autonomous Community level (e.g., Catalonia). However, it is difficult to ensure the success of some of these proposals – mainly those from the Basque Country - because they are either in contradiction to the Spanish Constitution or demand an interpretation of the Constitution that differs completely from the current one.

If reform of the statutes fails or does not respond to present expectations, it is very likely that we will witness an increase in demands for greater autonomy or constitutional amendment - an option that has already begun to receive clear political and doctrinal support.[xxviii] Having accepted the need to reform the Constitution, divergence persists regarding the scope of this reform. There is a largely majoritarian agreement in support of the

"convenience" of modifying the constitutional provisions relating to the Senate, an institution that has little current use and that has not been able to exercise its theoretical constitutional function as a house of territorial representation. It would be hard to reform the Constitution only to modify the structure of the Senate, but it would also be difficult not to deal with this issue within the framework of a broad constitutional reform.

The demands for greater autonomy are varied and strong, and we can sort them into four broad areas. The first is the need to adapt the judicial system to the plural structure of the state, to ensure greater participation of the Autonomous Communities in the institutions and policies of the state, and to perfect vertical (state-Autonomous Communities) as well as horizontal (among the Autonomous Communities) institutional relations. The most important demand relates to the participation of the Autonomous Communities in the process of constructing the European Union. Certainly, some of these objectives could be reached through the constitutional reform of the Senate.

The second, and equally important, area involves the distribution powers. The Autonomous Communities want to increase their powers through a greater guarantee of those they already have as well as through the recognition of their right to intervene in areas currently dominated by the state. In the first case they advocate a new, restrictive interpretation of state powers (particularly those that allow the state to establish the "basic rules" for a specific matter) so that they may set their own policies fully and coherently. In addition, they demand that the state transfer or delegate to them the vast majority of the administrative functions that the former currently exercises in their territories - a proposal that would simplify administrative structures in favour of those Autonomous Communities sufficiently prepared to assume these new responsibilities. The pressure for an increase in powers is particularly strong in those areas that the Constitution has dealt with in a particularly restrictive way (such as the judicial power or the international activities of the Autonomous Communities) and in those areas that have progressively increased in importance since the adoption of the Constitution (such as immigration and information technologies).

The third area involves the financial system, with which the Constitution deals in a particularly open way. Here Autonomous Communities point to the need to increase the sufficiency of their resources, particularly through increasing their revenue autonomy in order to provide more guarantees of stability.

The fourth area involves respect for territorial pluralism. Here the Autonomous Communities demand that the different expressions of diversity within the state (language, traditions, culture, systems of civil law, political parties, etc.) not only be respected but also protected and promoted by state authorities, both in their organization and in their performance as well as through positive actions of an asymmetrical nature.

Finally, there is a need to improve the mechanisms of intergovernmental relations - an issue that has been the cause of several debates. These debates have concerned whether preference should be given to bilateral or multilateral relations as well as the constitutional limits of cooperative federalism. A number of Autonomous Communities feel that they have still not found a good fit within the overall state system. This has begun to lead to the perception that, after twenty-five years of the Constitution's being in force, Spain is again at a point of departure, that it is faced with the need to articulate a new system that harmonizes the unity of the state with the greatest possible respect for the autonomy and diversity of the territories that it comprises.

We foresee a long road that, at this stage, we can only walk along slowly, in unity and peace, through the introduction of changes (more or less profound) to our institutional system. In spite of everything, the success of this complex challenge does not depend so much on legal mechanisms as it does on dialogue and respect for pluralism.

[i] Traditionally, in Spain the term "state" refers not only to the overall system of government but also to the central institutions. Thus it could be understood as a synonym for "federation." The "parts" have been named "regions," or "autonomous communities." For general references on the Spanish system see Eliseo Aja, *El Estado autonómico* [*The Autonomous state*], 2nd ed. (Madrid: Alianza, 2003); Eliseo Aja, ed., *El sistema jurídico de las Comunidades Autónomas* [*The Legal System of Autonomous Communities*] (Madrid: Tecnos, 1985); Eduardo García de Enterría, *Estudios sobre autonomías territoriales* [*Essays on Territorial Autonomies*] (Madrid: Civitas, 1985); Jesús Leguina, *Escritos sobre autonomías territoriales* [*Papers on Territorial Autonomy*], 2nd ed. (Madrid: Tecnos, 1995); Santiago Muñoz Machado, *Derecho público de las Comunidades Autónomas* [*The Public Law of the Autonomous Communities*], 2 vols. (Madrid: Civitas, 1982-84); Adolfo Hernández, ed., *El funcionamiento del Estado autonómico* [*The Functions of the Autonomous State*], 2nd ed. (Madrid: Ministerio de Administraciones Públicas, 1999).

[ii] The population information refers to 1 January 2003 and is available through the Web site of the *Instituto Nacional de Estadística* [National Statis Institute], <http://www.ine.es/inebase/cgi.axi> (accessed 26 June 2005).

[iii] Information provided by the Bank of Spain <http://www.bde.es/infoest/e0202.pdf> accessed 26 June 2005).

[iv] Information obtained from World Development Indicators, <http://devdata.worldbank.org/esternal/CPProfile.asp?SelectedCountry=ESP&CCODE=ESP&CNAME-Spain&PTYPE=CP> (accessed 26 June 2005).

[v] The Statute of Autonomy of the Valencian Community does not utilize the term "Catalan" but, rather, "Valencian." There is great controversy – more political than philological – over the unity and/or diversity of such languages. The linguistic differences are not abundant, nor do they impede the respective speakers from easily understanding each other. However, at the official (i.e., legal) level, Catalan and Valencian are treated as distinct languages.

[vi] Eliseo Aja, *El Estado Autonómico* [*The Autonomous State*], 2nd ed. (Madrid: Alianza, 2003), p. 14.

[vii] Both Houses comprise the Parliament, the constitutional institution that represents the Spanish people, exercises the legislative power of the state, adopts its budget, and controls the actions of the government. The House of Deputies has 350 members who are elected by universal suffrage within a proportional system of representation, in which the electoral constituency is the province (a small administrative unit, not to be confused with the Autonomous Communities). The Constitution expressly states that the Senate is the "house of

territorial representation." Voters of each province shall elect four senators by universal suffrage. Autonomous Communities shall, in addition, appoint one senator and a further senator for every million inhabitants in their respective territories. However, in practice, the senators do not vote according to their territorial origin but, rather, according to their party affiliation. This fact prevents the Senate from accomplishing its constitutional function as a "House of territorial representation"; rather, it has become a house in which legislative initiatives are reviewed before their final adoption by the House of Deputies.

[viii] The first such affirmation of the court occurred in the early Ruling number 18/1982 of 4 May 1982. The principle of institutional loyalty has been recognized and developed by state legislation.

[ix] The first region that was conceded this system of provisional autonomy was Catalonia (5 October 1977). The last one to obtain it, barely two months prior to the enactment of the Constitution was Castilla-La Mancha (31 October 1978).

[x] On this topic, see Santiago Muñoz Machado, *Derecho Público de las Comunidades Autónomas* [*The Public Law of the Autonomous Communities*], 2 vols. (Madrid: Civitas, 1982), pp. 344-345.

[xi] See the contributions of Professor Francis Delpérée in Enric Argullol Murgadas, ed., *Federalismo y Autonomía* [*Federalism and Autonomy*] (Barcelona: Ariel, 2004), pp. 89-90.

[xii] We use the term "municipalities" to refer to the basic level of local administration, without considering their size or population as "towns," "cities," "villages," and so on. The Constitution states that members of their government must be elected directly by universal suffrage. Provinces - and other smaller local entities - occupy a second level, situated between Autonomous Communities and municipalities. Basically, they cooperate with and provide aid and support to the municipalities. They also carry out functions delegated or transferred to them by the state or the Autonomous Communities. These governments are not directly elected by the population.

[xiii] The majority political forces at the central, or national, level (the *Partido Popular* [Conservative Party] and the *Partido Socialista* [Socialist Party]) were inclined to frame this process in a prior and general agreement ("Autonomous Pacts of 1992") that, in an attempt to achieve the maximum rationality and uniformity, put off reforming the statutes in favour of transferring state powers only to those Autonomous Communities who were interested. The political solution adopted was strongly criticized by some authors because they understood that it was adjusted neither to constitutional provisions nor to the spirit of the system. See Santiago Muñoz Machado, "Los Pactos Autonómicos de 1992: La ampliación de competencias y la reforma de los Estatutos" [Autonomous Agreements of 1992: Extension of Powers and Statutes Reform], *Revista de Administración Pública* [*Public Administration Review*] 128 (May-August 1992): 85-105.

[xiv] Ruling number 40/1998: "the content of art. 148.1 of the Constitution may be converted into interpretive criteria of art. 149.1 and of the corresponding precepts of the Statutes of Autonomy ... the Autonomous Communities may invoke art. 148.1, if not as an originating source of its powers, then at least as an argument of a systematic nature in the interpretation of the precepts that make up its own block of the constitutionality."

[xv] The long and controversial Article 150 of the Constitution provides: "1. The parliament, in matters of state jurisdiction, may confer upon all or any of the Self-governing [Autonomous] Communities the power to pass legislation for themselves within the framework of the principles, bases and guidelines laid down by a state act. Without prejudice to the jurisdiction of the Courts, each enabling act shall make provision for the method of supervision by the Parliament over the Communities' legislation. 2. The state may transfer or delegate to the Self-governing Communities, through an organic act, some of its powers which by their very nature can be transferred or delegated. The law shall, in each case, provide for the appropriate transfer of financial means, as well as specify the forms of control to be retained by the state."

[xvi] This constitutional provision states: "Matters not expressly assigned to the state by this Constitution may fall under the jurisdiction of the Self-governing Communities by virtue of their Statutes of Autonomy. Jurisdiction on matters not claimed by Statutes of Autonomy shall fall with the state, *whose laws shall prevail, in case of conflict, over those of the Self-governing Communities regarding all matters in which exclusive jurisdiction has not been conferred upon the latter. State law shall in any case be suppletory of that of the Self-governing Communities*" (emphasis added).

[xvii] Different interpretations of this clause and its effects are studied in Julio C. Tejedor, *La garantía constitucional de la unidad del ordenamiento en el Estado autonómico: competencia, prevalencia y supletoriedad* [The constitutional guarantee of legal system unity in the Autonomous state: competence, prevalence and supplementarity] (Madrid: Civitas, 2000).

[xviii] See Javier Barnés, "Una reflexión sobre la cláusula de supletoriedad del artículo 149.3 CE" [A reflection on the supplementarity of article 149.3 of the Spanish Constitution], *Revista Española de Derecho Administrativo* [*Spanish Review of Administrative Law*] 93 (January-March 1997): 83-97; and Eduardo García de Enterría, "Una reflexión sobre la supletoriedad del derecho del Estado respecto del de las Comunidades Autónomas" [A reflection about the supplementarity of the state law in relation to Autonomous Community law], *Revista Española de Derecho Administrativo* [*Spanish Review of Administrative Law*] 95 (July-September 1997): 407-15. Also, the magistrate Manuel Jiménez de Parga (later appointed President of the Constitutional Court)

considered that the jurisprudence on these matters had a "constitutional" transcendence that implied "the de-configuration of the Autonomous state and the openness to the implementation of a federal model."

[xix] With the same opinion, see Iñaki Lasagabaster Herrarte, "La interpretación del principio de supletoriedad y su adecuación a los principios constitucionales rectores del Estado de las autonomías" [The interpretation of the principle of supplementarity and its adjustment to the constitutional principles informing the Autonomous state] *Revista Española de Derecho Constitucional* [*Spanish Review of Constitutional Law*] 55 (January-April 1999): 43-76.

[xx] Eliseo Aja and Carles Viver Pi-Sunyer, "Valoración de 25 años de autonomía*"* [Evaluation of 25 years of autonomy] *Revista Española de Derecho Constitucional* 69 (October-December 2003): 69-114.

[xxi] Ruling of 2 February 1981.

[xxii] Article 155 of the Constitution provides that: "If a Self-governing Community does not fulfill the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to meet said obligations, or to protect the above-mentioned general interest." This mechanism has to be understood as an exceptional solution, usable only on occasions of critical institutional conflict that simply cannot be solved in less dramatic ways.

[xxiii] The Constitutional Court consists of twelve judges. Of these, four are nominated by the House of Deputies, four by the Senate (with the same majority), two by the government, and two by the General Council of the Judicial Power. The General Council of the Judicial Power consists of the president of the Supreme Court (it is the highest judicial body in all branches of justice, with jurisdiction over the whole of Spain, except with regard to provisions concerning constitutional guarantees) and twenty other members. Of these twenty, twelve are judges and magistrates of all judicial categories; six are appointed by the House of Deputies and six by the Senate. Eight of its members are picked from among lawyers and other jurists of acknowledged competence and more than fifteen years of professional practice. Of these eight, four are nominated by Congress and four by the Senate.

[xxiv] The Spanish Constitution provides for two different amendment processes: the ordinary one, which demands strong majorities in each Chamber (a three-fifths majority of the House of Deputies and Senate or a two-thirds majority of the former if the latter only reaches an absolute majority) and ratification by referendum only when one-tenth of deputies or senators request it; and the exceptional one, which involves the approval of the reform

principle by two-thirds of each House, the subsequent dissolution of Parliament and convocation of elections, the ratification of the new Parliament's decision to reform the Constitution, the approval of the text by two-thirds of each House, and the ratification of the reform by referendum. This last procedure must be followed when what is proposed is either the total revision of the Constitution or a partial revision that would affect the Preliminary Chapter (basic principles), fundamental rights and public liberties, and/or to the institution of the Crown.

[xxv] For a copy of the doctrine of the Constitutional Court in this regard, see Ruling 103/1999, 3 June 1999, 4th legal principle (available at <www.tribunalconstitcional.es>).

[xxvi] This was the thesis that we maintained and tried to demonstrate in Enric Argullol Murgadas, *Desarrollar el autogobierno* [*Developing Self-Government*] (Barcelona: Peninsula, 2002).

[xxvii] In the case of Catalonia the proposals for the reform of the Statute of Autonomy prepared by four of the five parliamentary political groups can be read on the Web site for the *Observatorio de la Evolución de las Instituciones* [*Evolution of Institutions Observatory*] <http://www.upf.edu/obsei> (accessed 26 June 2005). See also the study prepared by an academic commission by order of the Autonomous Government: Antoni Bayona Rocamora, ed., *Informe sobre la reforma del Estatuto* [*Report on Statute reform*] (Barcelona: Generalitat de Catalunya [Government of Catalonia], 2003). In the case of the Basque Country, see the proposal formulated by the *Lehendakari* (president) of the Autonomous Community. This proposal is known as "Plan Ibarretxe" and is available, in English, on the following Web site: <http://www.nuevoestatutodeeuskadi.net/default.asp?hizk=ing> (accessed 26 June 2005).

[xxviii] In the realm of academics, the debate began with the work of Aja and Viver, "Valoración de 25 años de autonomía" ["Evaluation of 25 Years of Autonomy"], *Revista Española de Derecho Constitucional* 69 (October-December 2003): 69-114.

The need to reform the Constitution has been accepted and, nowadays, is clearly defended by the Spanish Socialist Party, which is currently in power. The rest of the political forces - including the conservative party (until now the principal opponent to this initiative) - also agree with this proposal.